



El Dorado County Board of Supervisors

Final Draft Response

to the

2013-14 Grand Jury Midterm Report

June 10, 2014

EL DORADO COUNTY GRAND JURY, 2013-2014

REPORT NUMBER 13/14-01

WHERE IS THE IOWA HILL MONEY FROM SMUD?

Reason for the Report:

Many residents in the Camino area of El Dorado County have complained that their area did not receive the monetary proceeds it deserved under the 2005 El Dorado County-Sacramento Municipal Utility District (SMUD) Cooperation Agreement concerning the building of the Iowa Hill Development by SMUD.

Background:

Since 1957, SMUD has operated a series of electricity-producing dams and reservoirs within El Dorado County. These facilities must be licensed by the Federal Energy Regulatory Commission (FERC). In 2004, SMUD applied to re-license its facilities, as well as propose a new project, the Iowa Hill Pumped Water Storage Facility, that would be located in the Camino area.

The Iowa Hill Facility would pump water from the SMUD-operated Slab Creek Reservoir to the top of Iowa Hill, located 1800 feet above the reservoir, store the water for brief periods of time then release the water through pipes back down to Slab Creek Reservoir to produce electricity.

SMUD sought to have El Dorado County's approval for both the re-licensing of its current facilities and the Iowa Hill Project by paying certain sums of money on an installment basis to the County.

2013-2014 Grand Jury Actions:

- The 61-page agreement and its exhibits between SMUD and the County were reviewed and pertinent provisions of the agreement were analyzed.
- County records were reviewed.
- Members of the past and present County Board of Supervisors were interviewed.
- An evaluation was made as to how monies in the agreement were to be distributed.

Grand Jury Findings:

1. The agreement was entered into as a supplement to earlier agreements between SMUD and the County in 1957 and 1961 regarding the use and operation of the Upper American River Project (UARP) for electric power and water.

Response: The respondent agrees with the finding.

2. In 2005 SMUD had to be re-licensed by the Federal Energy Regulation Commission (FERC) to continue operating in the UARP. Under the agreement, SMUD obtained assurances that the County and certain water agencies and districts within the County would not object to the re-licensing. SMUD would continue to plan the building of the Iowa Hill Pumped Storage project.

Response: The respondent agrees with the finding.

3. The County was, and is, to receive from SMUD certain different amounts of money pursuant to the agreement. The monies agreed to are as follows:
 - a) \$2,600,000 payable in two installments; the second installment to be paid not later than August 1, 2012 (already paid)
 - b) \$590,000 per year after issuance of the new license (already paid).
 - c) \$250,000 upon SMUD issuing a "Notice of Intention to Proceed" with the Iowa Hill project.
 - d) \$50,000 per year after the issuance of the "Notice to Proceed."
 - e) An amount not to exceed \$2,000,000 for socioeconomic impacts of the building of the Iowa Hill project; such money not to be paid prior to construction.

Response: The respondent agrees with the finding.

4. The County has received payments under items 3a and 3b above, but as SMUD has not issued a Notice of Intention to Proceed with the Iowa Hill Development, no funds have been paid under items 3c, 3d, and 3e.

Response: The respondent agrees with the finding.

5. The agreement describes, relative to items 3 and 4 above, to whom and on what such monies should be spent. Section 4.4 of the contract addresses those issues with the following language: "SMUD's payment as described in Section 4.3 are to be utilized by the County in order to minimize, avoid, or mitigate socioeconomic impacts attributable to the construction of the Iowa Hill Development within those areas of the County affected by such construction. The determination of which specific uses of payments by SMUD under Article IV and consistent with the limitations of the Section are to be made by the County in its sole discretion."

Response: The respondent agrees with the finding.

Grand Jury Evaluation of Findings:

Because the monies under items 3c and 3d have not yet been paid, but presumably will be paid, the Grand Jury believes it is important to render its opinion as to the meaning of the quoted contract language above to help avoid confusion after the project has been constructed and the socioeconomic impact monies are to be distributed.

The Grand Jury understands that all sentences within a contract have meaning and importance. This leads to the conclusion that the agreement does not simply call for the County to spend this money in any way it sees fit as some have suggested. This sole discretion language is clearly tempered by the sentence indicating that the money is to recompense for socioeconomic impacts within the affected area. Iowa Hill is within the Camino/Apple Hill area of El Dorado County.

The Grand Jury understands that no funds have been paid relative to item 3e above, and no funds will be paid until after completion of construction and assessment of socio economic impact pursuant to Exhibit I of the agreement. At that time an amount up to \$2,000,000 will be paid by SMUD to the County for the socioeconomic impacts of the construction of the Iowa Hill project.

Grand Jury Recommendations:

Residents of the Camino area should be notified by the Board of Supervisors of these findings. The County should also notify these residents when SMUD issues a Notice of Intent to Proceed with the Iowa Hill Development and continue to advise these residents of the County's receipt of funds under the contract. The County should take steps to ensure that residents have the opportunity to be advised of and participate in decisions about how funds

received under this contract are to be spent.

Response: The recommendation has not yet been implemented, but will be implemented in the future. The County supports the concept of helping to notify residents of the project, as well as opportunities to participate in funding decisions. Specific notification measures will depend on the timing of the project and available resources.

**EL DORADO COUNTY GRAND JURY, 2013-
2014**

**REPORT NUMBER 13/14-
02**

***EL DORADO COUNTY JAILS
INSPECTIONS***

Reason for the Report

Each year, the grand jury is mandated by California Penal Code §919(b) to “inquire into the conditions and management of the public prisons within the county.”

Background

The South Lake Tahoe and Placerville jails are relatively older facilities, and house county inmates, as well as other inmates that have come to our two jails as a result of the California State Public Safety Act / Assembly Bill 109 (AB 109) authorized in April, 2011.

The original South Lake Tahoe jail was built in 1973 and Placerville jail in 1988. While the original jail was constructed in 1973, the majority of the facility currently in use is an addition which was erected during approximately the same time frame as the Placerville Jail.

2013-2014 Grand Jury Actions

This grand jury conducted on-site inspections of the South Lake Tahoe Jail September 23, 2013, and the Placerville Jail on October 21, 2013. At the time of our visits, the jails were at approximately ¾ capacity; South Lake Tahoe at 114 inmates with a capacity of 158, and Placerville housing 243 inmates with a capacity of 311. We interviewed staff regarding the condition and management of the facilities.

Grand Jury Findings

1. Staff at both jails identified several negative impacts to inmate populations due to California AB 109.

Response: The respondent agrees with the finding.

2. In spite of their ages, both facilities appeared to be clean and well maintained.

Response: The respondent agrees with the finding.

3. Both jails appeared to be well managed and staff morale seemed to be good.

Response: The respondent agrees with the finding.

4. Staff indicated that maintaining adequate female staff has been a problem at both jails, but recent aggressive recruitment efforts have been effective in alleviating that problem.

Response: The respondent agrees with the finding.

5. Staff reported that turnover has been a problem at the South Lake Tahoe Jail and to a lesser degree in Placerville.

Response: The respondent agrees with the finding.

6. Staff commented that inmates with mental health issues, as well as older and homeless inmates, are an ongoing problem. One staff comment was that jails have become a repository for people with mental health issues.

Response: The respondent agrees with the finding.

7. Several inmate programs are offered, including substance abuse, life skills, culinary arts (to include state culinary certification), GED education, and religious services.

Response: The respondent agrees with the finding.

8. Medical services are out-sourced to the California Forensic Medical Group.

Response: The respondent agrees with the finding.

9. 15% of meals are special diets (religious, diabetic, vegetarian, etc.).

Response: The respondent agrees with the finding.

10. Staff at the Placerville facility reported that an additional room where attorneys can meet confidentially with clients is needed because of the lengthy time attorneys must wait to use current rooms. It was noted that the pass-through slot in the existing

attorney rooms were quite small (only 4 or 5 pages at a time), and often adds much time to a visit as the transfer of paper back and forth does not easily accommodate typical paperwork.

Response: The respondent agrees with the finding.

Grand Jury Evaluation of Findings

As noted in Finding #1, the implementation of AB 109 has created several negative impacts to inmate populations at both of our jails. Since these problems are serious, and affect other county departments including Probation and Sheriff, they will be specifically addressed in a separate grand jury report to be released later this year focusing on how AB 109 has affected our county.

Based on our inspections of both facilities, we commend the El Dorado County Sheriff's Office under the command of Cpt. Peshon for hiring very competent leaders and staff. Our two County Jails are well maintained and operated.

Grand Jury Recommendations

1. Because of their ages, both Placerville and South Lake Tahoe jails should be evaluated for replacement and/or refurbishment.

Response: The recommendation has been implemented. The County contracted with Vanir Construction Management for a detailed assessment of all county-owned facilities including the Placerville and South Lake Tahoe jails. The 2013-14 Facilities Capital Improvement Plan was presented to the Board of Supervisors on October 28, 2013. For each facility, the ratio of deferred maintenance as a percentage of replacement costs was calculated. The analysis suggests investment in both the jails is warranted, but the cost of replacing the facilities would be prohibitive. Some refurbishment projects are underway. On January 27, 2014 the Board again considered the Facilities Capital Improvement Plan, approving in concept years two through five of the deferred maintenance plans, and also approved the priority of facility replacements as such 1) Sheriff Administration, 2) El Dorado Center and 3) District Attorney's office.

2. Reasons for staff turnover at both facilities should be evaluated, and consideration given to adjacent region's salary ranges as well as other retention tools.

Response: The recommendation has not yet been implemented but will be

implemented in the future. The Chief Administrative Office, Human Resources Department and the Sheriff Office will work to address turnover, and endeavor to report back to Board of Supervisors within six months as resources permit.

3. An advisory team including the Sheriff's Office, county mental health professionals, and other incarceration experts should be formed to make recommendations to improve the care, treatment and housing of mentally ill inmates.

Response: The recommendation has been implemented. County departments already work with the Sheriff's Office to address the mental health care of inmates at the time of incarceration and when being release from jail.

4. Search for a better process for attorney/client paperwork transfer (perhaps in a manner similar to regular mail) to alleviate the attorney wait times. This may eliminate the need for an additional attorney room.

Response: The recommendation will not be implemented because it is not warranted. The Sheriff's Office already offers a system of bulk paperwork delivery from an attorney to a client.

**EL DORADO COUNTY GRAND JURY, 2013-
2014**

**REPORT NUMBER 13/14-
03**

***EL DORADO COUNTY JUVENILE DETENTION
FACILITIES INSPECTIONS***

Reason for the Report

Each year, the grand jury is mandated by California Penal Code §919(b) to “inquire into the conditions and management of the public prisons within the county.”

Background

Both South Lake Tahoe and Placerville have Juvenile Detention Centers. They are managed by the El Dorado County Probation Department. The South Lake Tahoe facility is relatively new (2005), while the Placerville facility was built in 1971. Both facilities can accommodate approximately 40 wards, and at the time of our inspection were at about 50% capacity. The average age of the wards is 13 years.

2013-2014 Grand Jury Actions

This grand jury conducted on-site inspections of the South Lake Tahoe Juvenile Detention Center on September 23, 2013, and the Placerville facility on October 21, 2013. We interviewed both staff and wards regarding the condition and management of the facilities.

Grand Jury Findings

1. Both facilities appeared to be well maintained.

Response: The respondent agrees with the finding.

2. Both facilities appeared to be well managed.

Response: The respondent agrees with the finding.

3. The kitchen areas were sanitary, and the menus indicate a variety of well-

balanced meals.

Response: The respondent agrees with the finding.

4. We observed an abundance of programs for the wards, including substance abuse, life skills, work skills, aggression replacement training, goal setting, and a couple of girls- only programs.

Response: The respondent agrees with the finding.

5. We were told that the local community is involved in providing bible study and church services. The Juvenile Services Council conducts various activities and parties monthly, especially during holidays.

Response: The respondent agrees with the finding.

6. Both facilities operate a school program with one principal who oversees Placerville and South Lake Tahoe teachers on staff. The curriculum is tied in to public schools, but specific needs of each ward are incorporated into the study plan. School is in session every day for *all* wards even if incarcerated for only one day.

Response: The respondent agrees with the finding.

7. Maintaining adequate female staff had been a problem, primarily at the South Lake Tahoe facility. Recent aggressive recruitment efforts have been effective in mitigating that problem.

Response: The respondent agrees with the finding.

8. In the Placerville facility, the south exercise area is not used due to drainage problems. There are cracks in the asphalt, the surface is uneven, and it is not covered. This causes the usable north area to be over-crowded.

Response: The respondent agrees with the finding.

9. The Placerville facility does not have a “sally port” (separate entrance for new wards). The public front door of the building is the only accommodation for all entrants. This lack of a separate entrance for new wards creates potential confidentiality and safety concerns.

Response: The respondent agrees with the finding.

Grand Jury Evaluation of Findings

We were impressed with the school principal and program manager. We commend the El Dorado County Probation Department for its wide array of schooling and behavior programs for the wards. We liked their stated goal for the kids: "Don't Come Back"!

Grand Jury Recommendations:

1. Because of its age, the Placerville facility should be evaluated for replacement or extensive refurbishment.

Response: The recommendation has been implemented. The County contracted with Vanir Construction Management for a detailed assessment of all county-owned facilities including the Placerville Juvenile Hall. The 2013-14 Facilities Capital Improvement Plan was presented to the Board of Supervisors on October 28, 2013. The condition assessment report for the Placerville Juvenile Hall indicates a high deferred maintenance to replacement ratio. Deferred maintenance needs are estimated at \$1,858,637, and replacement cost at \$3,760,000. Similar to the Grand Jury's recommendation, Vanir Construction suggests the "County should evaluate how this facility currently meets needs. If the building is not meeting current and future needs, then the county should look to relocate or replace this building." However, given competing facility replacement priorities, relocation of this facility is not feasible at this time. On January 27, 2014 the Board again considered the Facilities Capital Improvement Plan, approving in concept years two through five of the deferred maintenance plans, and also approved the priority of facility replacements as such 1) Sheriff Administration, 2) El Dorado Center and 3) District Attorney's office.

2. The surface of the south exercise area at the Placerville facility should be repaired and an overhead cover installed.

Response: The recommendation has not yet been implemented but will be implemented in the future. This repair and others identified in the Facilities Improvement Plan will be completed according to the approved schedule of priorities and available resources.

3. A “sally port” (separate entrance for new wards) should be added to the Placerville facility.

Response: The recommendation will not be implemented because it is not reasonable. The Placerville Juvenile Hall has fire, safety, structural, and electrical deferred maintenance needs that must be addressed before the county can consider this improvement.

**EL DORADO COUNTY GRAND JURY 2013-
2014**

**REPORT NUMBER 13/14-
06**

**Board of Supervisors Permit Fee Waivers and
Refunds**

Reason For Report

The Grand Jury became aware of the Board of Supervisor's practice of waiving some permit fees that are otherwise required by the Board's own policies and ordinances. Those same fees are paid by other payers in similar circumstances.

Background

Board of Supervisors Resolution Number 180-2007, dated 7/10/2007, establishes a building fee schedule that provides specific fees. It gives the Director of Development Services the ability to authorize the refund of any fee erroneously paid or when no permit work is performed.

Board of Supervisors Policy Number B-2, Fee Waiving, revised 2/7/1989, amends policies and procedures regarding consideration of requests for waiver of County fees, permit charges and other administrative costs. It authorizes the Chief Administrative Officer (CAO) to waive permit fees if the CAO makes one of six specific findings.

Board of Supervisors Resolution Number 45-2008, dated 2/12/2008, declares property owners affected by the Angora fire eligible for Permit Fee Waivers.

Article XVI, section 6 of the California Constitution prohibits a gift of public money to an individual without public purpose.

Methodology

The Grand Jury interviewed members of the Board of Supervisors and county staff. The Grand Jury reviewed:

- Board of Supervisors Resolution Number 180-2007.
- Board of Supervisors Policy Number B-2.
- Resolution Number 45-2008.

- A Board of Supervisors meeting agenda Item 11-1161 in which the Board approved the refund of grading permit and asbestos dust mitigation fees.
- A Board of Supervisors Board meeting agenda Item 12-1103 in which the Board approved the waiver of any and all permit fees for needed improvements to wheelchair and handicap access to a home.
- A List of Building Permits with Waived Fees for Years 2009 through October 3, 2013 provided by the County's IT department.
- Article XVI, section 6 of the California Constitution.

Discussion

A list of permit fee waivers for the five year period 2009 through October 3, 2013 was reviewed. Almost all were waived by the County Administrative Officer pursuant to the specific provisions of El Dorado County Fee Waiving Policy B-2 with three exceptions.

1. A waived fee for Permit Number 203375 grading and asbestos dust mitigation.
2. A waived fee for Permit Number 209320 for construction of a wheelchair access ramp following the catastrophic injury suffered by the home owner's teenage son.
3. Fees for homes damaged or destroyed in the Angora fire of 2007.

The waivers appear to have been granted without an attempt to identify and reimburse permit fees paid by other owners for grading permits, homes remodeled to accommodate the needs of a family member incapacitated by a catastrophic injury or properties destroyed by a fire other than the 2007 Angora fire. Similarly situated property owners were not treated in a commensurate manner.

The Board of Supervisors reimbursed permit fees in each of these situations without stating the public purpose that made it appropriate to do so.

Article XVI, section 6 of the California Constitution prohibits any "gift" of public money to an individual. Expenditures of public funds must have a public purpose. (75 Ops.Cal.Atty.Gen. 20) However, under the public purpose doctrine, public funds may be expended only if a direct and substantial public purpose is served by the expenditure, and private individuals are benefitted only as an incident to the promotion of the public purpose. (California Housing Finance Authority v. Elliott (1976) 17 Cal.3d 575, 583.)

Findings

1. Permit fees were required and paid for a Grading Permit and asbestos mitigation. The Board authorized reimbursement of the already paid fees. They were subsequently reimbursed.

Response: The respondent agrees with the finding.

2. Permit fees were required for a wheel chair ramp to be added to a home after the owner's teenage son was critically injured. The Board authorized waiver of these fees.

Response: The respondent agrees with the finding.

3. The Board has approved waiver of permit fees for owners of property burned in the Angora fire of 2007. Neither Resolution No. 180-2007 nor Policy B-2 nor any other policy authorized refund of these fees. No public purpose was stated for the refund of these fees.

Response: The respondent disagrees partially with the finding. The Board of Supervisors waived permit fees for replacement of structures previously approved but destroyed by the catastrophic wildfire. The County continued to collect building fees from fire victims who were expanding their previously approved structures.

4. The Grand Jury found no evidence that the Board sought out or provided relief to others in similar circumstances for grading of property, property lost in fire or the remodeling of a home made necessary by a family member's critical injury.

Response: The respondent disagrees partially with the finding. Policy B-2 leaves the discretion to pursue a fee waiver up to the individual applicants. Most projects will not fall under the narrow exception criteria outlined in Policy B-2, and it would not be a reasonable use of public resources to individually research each project for fee waiver eligibility.

5. The Grand Jury finds that reimbursement of these fees was a gift of public funds in violation of Article XVI of the California Constitution.

Response: The respondent disagrees with the finding. The Board of Supervisors believes that the fee waivers provided meet the definition of public purpose. The Angora Fire destroyed over 250 homes and devastated many families. It was in the best interest of those families and the community in general to hasten the reconstruction of homes and lives. Property owners had already paid permit fees when the homes were originally constructed. As noted, the County continued to collect building fees for expansion projects.

Recommendation

1. The Grand Jury recommends that the Board of Supervisors no longer waive or reimburse permit fees unless they are specifically allowed by a Board Policy, California Constitution or State statute. Waving fees in an ad hoc manner gives the impression of collusion and favoritism.

Response: The recommendation has been implemented. The Board of Supervisors believes that the identified fee waivers are consistent with Board discretionary authority

to waive fees because the waivers were in the best interest of the public. While reasonable people can disagree whether these specific circumstances fall within the confines of Policy B-2, policies established by the Board of Supervisors provide general guidance, and should not be construed to limit the Board's lawful authority to consider unique situations that have an overall public benefit. In general, Policy B-2 has worked, but the Board may consider revising it from time to time to better express the types of public purposes for which fee waivers are appropriate.