

**MONTEREY  
COUNTY  
CIVIL  
GRAND  
JURY**

**2009  
YEAR-END  
FINAL  
REPORT**

**JANUARY 11, 2010**



Front cover photo  
courtesy of  
Sonia Cook  
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# OFFICIAL MAP OF MONTEREY COUNTY 1898 California

Compiled by  
**LOU G. HARE**, COUNTY SURVEYOR  
FROM  
THE PUBLIC RECORDS, COAST AND GEODETIC SURVEYS, GOVERNMENT  
SURVEYS OF PUBLIC LANDS AND PRIVATE SURVEYS.

APPROVED AND DECLARED TO BE THE OFFICIAL  
MAP OF MONTEREY COUNTY, CALIFORNIA, THIS  
3<sup>RD</sup> DAY OF MAY, 1898.

*Chairman Sup. 2<sup>nd</sup> Dist.*  
J. H. ... 1<sup>st</sup> "  
... 3<sup>rd</sup> "  
... 4<sup>th</sup> "  
... 5<sup>th</sup> "

PUBLISHED BY  
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**Explanations**

- Trails
- Roads
- Railroads
- Irrigation Canals
- County Boundary

# Monterey County Civil Grand Jury

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P. O. Box 414  
Salinas, CA 93902  
☎831/775-5400, ext. 3014

January 11, 2010

The Honorable Adrienne M. Grover  
Presiding Judge, Superior Court of California  
County of Monterey  
240 Church Street  
Salinas, CA 93901

Dear Judge Grover:

Pursuant to California Penal Code Section 933, the 2009 Monterey County Civil Grand Jury proudly presents this Final Report to the Court and the citizens of Monterey County. The Grand Jury reviewed issues raised by citizen complaints and concerns, including those of the members. A total of thirty-one complaints were received, of those seventeen were investigated. As a result of the investigations, several changes have already been made. The remaining fourteen complaints were determined to be beyond the jurisdiction of the Grand Jury. Seven of those were forwarded to either the District Attorney or the County Counsel. Out of the total complaints received, one-third were from inmates at Salinas Valley State Prison or the Correctional Training Facility in Soledad.

Following the example set by the 2008 Civil Grand Jury, this report is also printed in an efficient, two-sided, reader-friendly format. In addition, the report will be distributed on CD and posted on the County's website. A further improvement on the report's electronic format will be hypertexting and cross-referencing, enabling the reader to jump to cited web sites, to jump from the Table of Contents to a particular report, or to jump from a specific word or acronym to the Glossary.

For the first time, a compilation of the responses to the previous Grand Jury's Findings and Recommendations was published, entitled *Government Agency Responses to the 2008 Final Report*. This publication was distributed to county libraries and the media, and posted on the county's web site. The responses from the required agencies were presented verbatim and grouped by report.

During its term, the Grand Jury interviewed numerous officials and citizens from special districts, cities, and county departments. Those interviewed were open, forthcoming, and a tremendous help in the investigations. The jurors toured the state prisons and the Monterey Regional Water Pollution Control Agency. The knowledge gained by each member of this Grand Jury through interviews, tours, and research was extraordinary.

The number of reports is not indicative of the tremendous amount of time and effort that was spent by each Grand Jury member. They are true representatives of the citizens of this county. Exceptional care was taken to insure that members with perceived or potential conflicts of interest or bias, with respect to the issues in question, abstained from participation. The 2009 Civil Grand Jury members' dedication and commitment in producing this worthwhile Final Report is laudable. They worked cohesively together with enthusiasm and good humor. Every one of them is to be commended.

We extend our sincere appreciation to court staff, Elizabeth Fuentez and Nona Medina, for their professional and knowledgeable help and advice, without which our tasks would have been much more difficult. The Grand Jury also wishes to express our appreciation to the Office of the District Attorney, the County Counsel, and you for your guidance through the year. Thank you for the honor of serving as foreperson of this Grand Jury and the opportunity to see democracy in action and at its best.

Respectfully yours,

Darlene N. Billstrom  
Foreperson

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## MEMBERS OF THE 2009 MONTEREY COUNTY CIVIL GRAND JURY

Darlene Billstrom, Foreperson	Pacific Grove
Jack Jones, Foreperson Pro Tem	Del Rey Oaks
Rejinther Dosange, Secretary	Monterey
Flora Anderson	Monterey
Ronald Baldwin	Salinas
Larry Bussard	Salinas
Chuck Burwell	Corral de Tierra
Jerry Gallego	Prunedale
Rosalie Gray	Salinas
Bonnie Lamb	Aromas
Joe Sanchez	Gonzales
Rosalie Sanchez	Gonzales
Ken Shyvers	Carmel
Richard Smith	Prunedale
Robert Smith	Salinas
Donald Tettlebach	Corral de Tierra
Joanne Velman	Pacific Grove
Mike Ventimiglia	Del Rey Oaks
David Willoughby	Monterey

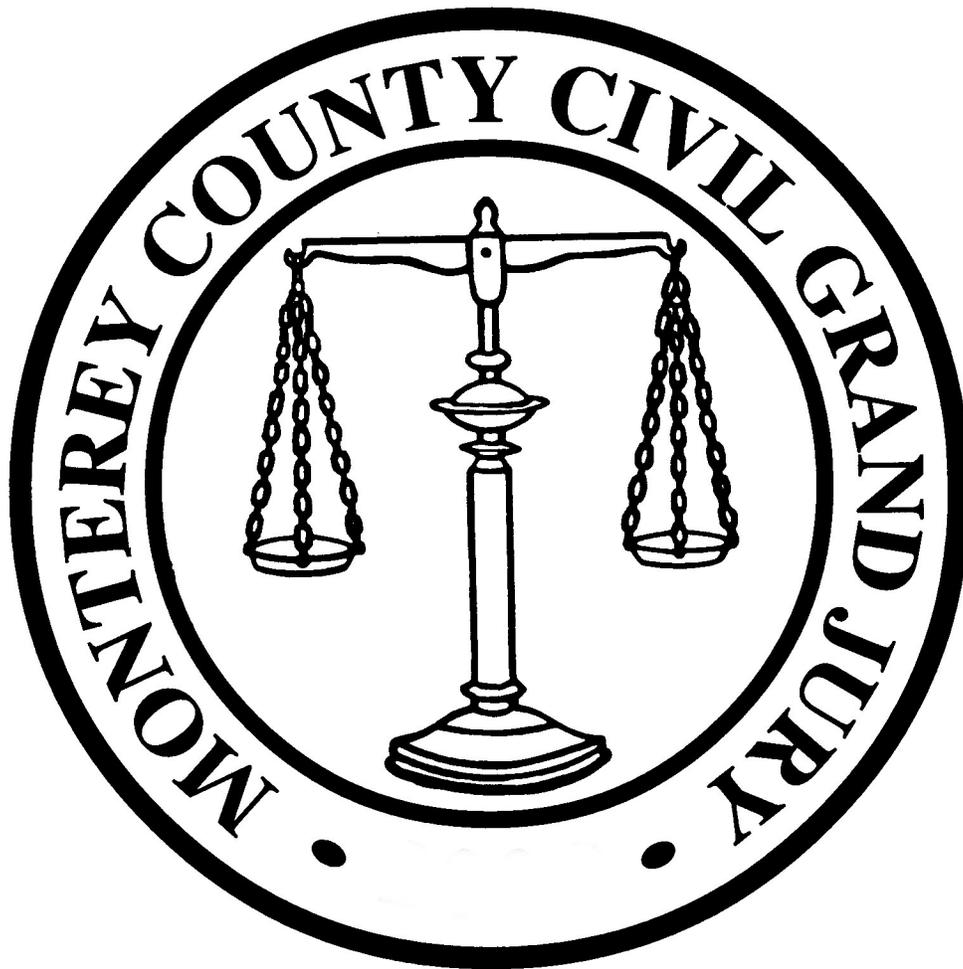


**Top Row, L - R:** Larry Bussard, Mike Ventimiglia, Jack Jones, Ken Shyvers. **Second Row (L-R):** David Willoughby, Richard Smith, Jerry Gallego, Ronald Baldwin, Joe Sanchez, Joanne Velman. **Bottom Row (L-R):** Rejinther Dosange, Rosalie Sanchez, Flora Anderson, Darlene Billstrom, Bonnie Lamb, Rosalie Gray. **Not Pictured:** Chuck Burwell, Robert Smith, Donald Tettlebach

# 2009 MONTEREY COUNTY CIVIL GRAND JURY

## MISSION STATEMENT

The mission of the 2009 Monterey County Civil Grand Jury is to conduct independent inquiries and to respond to citizen complaints concerning any governing agency, municipality, or special district within Monterey County. The reports of the Grand Jury will provide a clear picture of the functioning of the organizations. Recommendations for improvement will be made, and commendations will be offered when effectiveness, efficiency, or excellence is found.



# CIVIL GRAND JURY MISSION AND RESPONSE REQUIREMENTS

The primary mission of a civil grand jury in the State of California is to examine county and city governments, as well as districts and other offices, in order to ensure that the responsibilities of these entities are conducted lawfully and efficiently. The civil grand jury is also responsible for recommending measures for improving the functioning and accountability of these organizations, which are intended to serve the public interest.

## JURY SELECTION

Each year, citizens of the county who apply for civil grand jury service are invited to an orientation session for an overview of the process. The court then interviews them, and approximately 40 names are forwarded for inclusion in the annual civil grand jury lottery. During the lottery, 19 panel members are selected, with the remaining to serve as alternates. Those selected to serve are sworn in and instructed in their charge by the presiding judge. Civil grand jurors take an oath of confidentiality regarding any civil grand jury matters.

## INVESTIGATIONS

Each civil grand jury sets its own rules of procedure and creates committees to investigate and create reports. California Penal Code section 925 states: *“The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in ex officio capacity as officers of the districts.”* Additionally, Section 919 provides that: *“The grand jury shall inquire into the condition and management of the public prisons within the county,”* and *“The grand jury shall inquire into willful or corrupt misconduct in office of public officers of every description within the county.”*

The public may submit directly to the Monterey County Civil Grand Jury complaints requesting that it investigate issues of concern regarding public agencies or officials in Monterey County. The public may request complaint forms by contacting the office of the Monterey County Civil Grand Jury at (831) 775-5400, ext. 3014, or through the Grand Jury’s website address at [www.monterey.courts.ca.gov/GrandJury](http://www.monterey.courts.ca.gov/GrandJury). Grand juries conduct proceedings behind closed doors, as required by law, primarily for the protection of people who file complaints or who testify during investigations. All who appear as witnesses or communicate in writing with a grand jury are protected by strict rules of confidentiality, for which violators are subject to legal sanction.

## REPORTS

Section 933(a) of the California Penal Code declares: *“Each grand jury shall submit...a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year.”* The civil grand jury summarizes its findings and makes recommendations in a public report, completed at the end of its yearlong term. Each report is presented to the appropriate department or agency.

Section 933(b) declares: *“One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.”*

Each report is distributed to:

- Public officials
- Libraries
- The news media
- Any entity that is the subject of any of the reports

The public may also view each year’s final report through the Monterey County Civil Grand Jury’s website at [www.monterey.courts.ca.gov/GrandJury](http://www.monterey.courts.ca.gov/GrandJury)

## **CONTENT OF RESPONSES**

The response requirements are contained in California Penal Code section 933.05, which is set forth in full at the conclusion of each of the individual reports in this volume.

## **TIMELINE OF RESPONSES**

Section 933(c) declares:

*“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 recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility, pursuant to section 914.1, shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls.... All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury.”*

## **ADDRESS FOR DELIVERY OF RESPONSES**

The Honorable Adrienne Grover  
Presiding Judge of the Superior Court  
County of Monterey  
240 Church Street  
Salinas, CA 93901

# **NATIVIDAD MEDICAL CENTER and MONTEREY COUNTY HEALTH DEPARTMENT IMPROVEMENT INITIATIVES**

*“A house divided against itself cannot stand.”*

— Abraham Lincoln

## **PURPOSE OF THE INVESTIGATION**

The 2009 Monterey County Civil Grand Jury (Grand Jury) investigated the progress of the Integrated Improvement Initiatives (Initiatives) presented to the Monterey County Board of Supervisors (BOS) regarding integration of the Natividad Medical Center (NMC) and Monterey County Health Department (MCHD).

## **BACKGROUND FOR THE INVESTIGATION**

In other parts of California, safety-net hospitals, i.e., hospitals that provide care regardless of the ability to pay, such as NMC have integrated with the county health department. A program for such integration was presented to the BOS for the first time in December 2008. As a step toward integration, NMC and the MCHD developed the following six essential Initiatives to provide a more efficient working relationship:

1. Obstetrical Patient Continuum of Care
2. Emergency Department Patient Care Information Exchange
3. Redesign of the Medically Indigent Adult Program
4. Medical Staff Coordination in the Areas of Organizational Structure and Membership, Physician Recruitment and Compensation
5. Improve Methodology of Patient Information Integration
6. Consolidated Management of Monterey County Ambulatory Clinics

## **INVESTIGATIVE METHODOLOGY**

- Interviewed MCHD and NMC staff, and a representative from the Natividad Medical Foundation
- Reviewed the Initiatives presented to the BOS by the Chief Executive Officer (CEO) of NMC and the Director of MCHD

- Reviewed reports to Board of Supervisors on Integrated Healthcare System: December 2008, March 2009, July 2009, August 2009
- Researched Monterey County and other web sites

## INFORMATION GATHERED FROM THE INVESTIGATION

The Grand Jury investigated the progress made on the six Initiatives between the NMC and the MCHD. The Core Team was composed of NMC's CEO, and NMC's assistant administrator, MCHD's director, and MCHD's outpatient services director. After several months of meetings, the group came to an understanding and signed an agreement to achieve "*fundamental improvements in the quality of care provided within the County's overall health care delivery system.*"<sup>1</sup> The Core Team was scheduled to meet weekly to review progress on the Initiatives. The first meetings to be scheduled did not take place as planned; however, currently the Core Team is meeting weekly. NMC and MCHD have failed to develop a common vision for the integrated health system for Monterey County.

### Six Integrated Improvement Initiatives

#### Initiative #1: Obstetrical Patient Continuum of Care

**Goal:** To provide comprehensive and coordinated obstetrical services from pregnancy through labor, delivery, and post-partum care, including referring infants for pediatric care. This team was to meet monthly and expand focus to the following three areas:

- **Sharing Patient Health Information:** Approval was given to purchase and install a system from a private contractor, Questys,<sup>2</sup> designed to scan patient data from the seven MCHD Clinics and NMC, in order to make the information gathered commonly and immediately available to medical staff at all facilities. Implementation was expected by August 31, 2009. As of October 2009 work is still in progress.



*Natividad Medical Center*

<sup>1</sup> The joint report was presented to the BOS on March 17, 2009

<sup>2</sup> Although not investigated, questions have been raised about Questys' continuing viability. See Appendix A.

- Vaginal Birth After Caesarian (VBAC): A pre-operational process was agreed upon. All County Comprehensive Perinatal Services Program workers were to be instructed in the pre-operational process on August 25, 2009.
- Ante-Natal Stress Testing: The team was to improve the current referral and reporting system.

### **Initiative #2: Emergency Department Patient Care Information Exchange**

**Goal:** To improve the exchange of clinical information between the NMC's Emergency Department and the MCHD clinics, in order to make patient information commonly and immediately available to physicians and other clinicians throughout the system. Implementation was expected by September 30, 2009.

### **Initiative #3: Redesign of the Medical Indigent Adult (MIA) Program**

**Goal:** To examine the current coverage plan for low-income uninsured, including regulatory requirements, current benefits package, and other options for patients not currently covered by the MIA program. This team was to meet monthly, ending with a town hall session of program stakeholders in the summer of 2009.

### **Initiative #4: Medical Staff Coordination in the Areas of Organizational Structure and Membership, Physician Recruitment and Compensation**

**Goal:** To develop a standardized contract for physician employment in both NMC and MCHD, and to create a formal mechanism to allow MCHD physicians to participate in the NMC medical staff organization. A progress report was to be completed by September 2009.



*Monterey County Health Department*

### **Initiative #5: Improve Methodology of Patient Information Integration**

**Goal:** To efficiently exchange patient data across all Monterey County health services. This multi-phase project starts with installing a comprehensive Electronic Health Record System (EHR) in NMC and MCHD clinics. The clinics and NMC have installed or have plans to install various EHR systems most appropriate for their needs. The follow-on phase begins the exchange of information between the systems using EHRs through the secure Continuity of Care Document standard. At the same time, NMC and MCHD are developing a Master Patient Index (MPI), intended to gather and cross-reference basic patient demographic data from the existing systems. MPI is a short-term solution that will track the patient's progress through the clinics and NMC. Also, a number of NMC clinical systems that enhance patient care will eventually be interfaced with EHR.

### **Initiative #6: Consolidated Management of Monterey County Ambulatory Clinics**

**Goal:** To evaluate the existing Federally Qualified Health Centers (FQHC) and the NMC provider-based clinics to determine whether there is an economic advantage to Monterey County in maintaining the hospital-based medical specialty clinics or making them similar to FQHC Clinics.

### **Investigative Summary**

The Grand Jury was told that the Core Team is currently meeting weekly; however, progress is slow and team cooperation is sporadic. The main focus is on Initiative #5, the installation and integration of the EHR. The EHR is complex and includes NMC's new Information Technology (IT) system, MCHD's IT system, and the Monterey County's IT system. As a result, the other Initiatives are lagging in implementation. Some progress has been made in the area of sharing patient obstetrical information in Initiative #1.

Another issue concerns patients who work day jobs. They cannot access MCHD's clinics, because the clinics' hours of operation are from 8:00 a.m. to 5:00 p.m.

In the current system, MCHD emphasizes preventive care, whereas NMC offers acute medical care. In California, there are 15 public safety-net hospitals, some of which have integrated the local county hospital and health department. Combining all medical care under one system promotes comprehensive patient care and maximizes cost efficiency. The MCHD believes whoever oversees the combined group needs to have a broad view of the patients' needs, both preventive and acute. NMC and MCHD support an integrated model; however, they have not demonstrated their commitment. Integration proposals have been presented to the BOS four times: in December 2008, March 2009, July 2009, and August 2009. As yet, little has materialized.

## **FINDINGS OF THE INVESTIGATION**

- F1.1.** The six Initiatives are not on track; timelines are not being met.
- F1.2.** Accountability for and commitment to integrating the medical departments of Natividad Medical Center and the Monterey County Health Department are lacking.
- F1.3.** The complexity of cross-platform electronic records solutions is hindering progress.

**F1.4.** The Monterey County Health Department clinics' hours of operation are too limited.

**F1.5.** Each team working on an Initiative needs to be result-driven.

## **RECOMMENDATIONS OF THE GRAND JURY**

**R1.1.** Set and meet realistic deadlines. [Related Finding: 1.1]

**R1.2.** Decide on and direct an optimum integration plan. [Related Finding: 1.2]

**R1.3.** Invest more resources into Initiative #5, the integration of patient information between Natividad Medical Center and the Monterey County Health Department, to complete the task quickly. [Related Finding: 1.3]

**R1.4.** Explore options to extend or stagger the Monterey County Health Department clinics' hours of operation. [Related Finding: 1.4]

**R1.5.** Create result-driven, focused work groups for each Initiative. [Related Finding: 1.5]

## **REQUIRED RESPONSES**

**Monterey County Board of Supervisors:**  
All Findings and Recommendations

Responses must comply with the following:

### **CALIFORNIA PENAL CODE SECTION 933.05**

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

## APPENDIX A: QUESTYS

The Questys company was purchased by VillageEDOCS in 2008. This was the fourth acquisition by VillageEDOCS since 2004. According to *Financial Times*' market data, VillageEDOCS currently employs 57 people, including six directors and officers.

VillageEDOCS is traded as Open BuyBack (OBB) discountable securities, which is a funding mechanism for short-term liquidity. OBB is only used in Nigerian financial markets.

The VillageEDOCS symbol is VEDO.OBB, and the value has traded at a 52-week high of three cents, currently trading at a penny per share. According to its Securities and Exchange Commission (SEC) filing, VillageEDOCS has lost money since its inception.

From the SEC Form 10-K filing for fiscal year ending December, 2008 for VillageEDOCS:

*“We believe that sustainable profitability is achievable; however, we have a history of losses. While QSI, GSI, MVI, and TBS each reported net income for 2008, this income was not sufficient to offset interest expense and corporate overhead. If we are not successful in sustaining and increasing operating profits from our three operating segments, or in reducing expenses of the holding company as a percentage of revenue, we may not achieve profitability on a consolidated basis.*

*The Report of Independent Registered Public Accounting Firm on our December 31, 2008 consolidated financial statements includes an explanatory paragraph stating that the recurring losses incurred from operations and a working capital deficiency raise substantial doubt about our ability to continue as a going concern.”*



# COUNTYWIDE EMERGENCY MEDICAL SERVICES

## PURPOSE OF THE INVESTIGATION

The 2009 Monterey County Civil Grand Jury (Grand Jury) investigated whether the Emergency Medical Services Agency (EMSA), a Monterey County department, is providing the intended services from the funds collected under Countywide Paramedic Emergency Medical Services System (“Measure A, 1988”).

## SUMMARY

Monterey County voters approved funding EMSA for Monterey County in November 1988, to provide the oversight, education, and training necessary to continually make significant improvements in the emergency response system. To ensure the advancement of pre-hospital care, delivery of quality patient care, and the implementation of innovative education programs, EMSA needs to work collaboratively with various health, hospital, fire, and police agencies to accomplish these goals. The Monterey County Board of Supervisors (BOS) created advisory committees to work with EMSA to foster collaboration.

The Grand Jury has found that EMSA relationships with fire departments, educators, and the EMS Advisory Council have deteriorated as a result of not collaborating on issues that fit the needs of the people. EMSA has focused primarily on oversight, ambulance contracts, and registering EMT



certificates, leaving out the core basic needs of equipment, training, and continuing education of emergency personnel. This puts the community at risk of receiving inconsistent and substandard care.

The Grand Jury was informed that the BOS is aware of the strained relationship between the fire departments and EMSA. The BOS is also aware of the dysfunctional relationship between the EMS Advisory Council and EMSA. The BOS needs to acknowledge these problems and take immediate corrective action. Rebuilding a positive forum for the exchange of ideas and solutions between the EMSA and EMS Advisory Council would be a great first step.

## INVESTIGATIVE METHODOLOGY

- Interviewed EMSA Director; fire chiefs; member of the Emergency Medical Services (EMS) Council; retired California Department of Forestry and Fire Protection (CalFire) Fire Chief; past EMS trainers; Monterey Peninsula College (MPC) staff; EMSA Finance Manager; Auditor/Controller of Monterey County
- Researched documents on the EMSA web site; Monterey County and EMSA documents and financial data; EMS Council minutes and agendas; California Code of Regulations; *EMS Taskforce 2007*; proposition ballot measures; *County of Monterey Emergency Medical Services Agency 2008 Annual Report*; media
- Reviewed EMS web site

## BACKGROUND FOR THE INVESTIGATION

In November 1988, more than two-thirds of voters approved local ballot “Measure A, 1988”, which authorized the Monterey County BOS to establish a \$12.00 per unit benefit assessment on real property to support a countywide system of paramedic emergency medical services. The BOS then established County Service Area 74 (CSA 74) to administer these funds. “Measure A, 1988” funds pay for the EMSA, ambulance contract subsidies, a training program and equipment for EMS medical first-responders<sup>1</sup> and emergency medical technicians (EMTs). “Measure A, 1988” also allows for local jurisdictions to establish zones, in which a supplemental assessment of up to \$5.00 to fund ‘enhanced EMS’ may be implemented. The City of Salinas, the City of Monterey, the Mid-Carmel Valley Fire Protection District, and the North Monterey County Fire Protection District enacted supplemental assessments.

In November 1996, California voters approved Proposition 218, amending the state Constitution to provide that no property-related “...*fee or charge may be imposed for general government services including...police, fire, ambulance, or library services available to the public at large in substantially the same manner as it is to property owners.*” Proposition 218 allows a special tax to be assessed for such purposes if approved by a two-thirds majority.

In February 1999, the Monterey County Fire Chiefs Association (Fire Chiefs Association) met for the purpose of discussing EMS goals and tax measure support. The consensus was that the fire service should be recognized as a stakeholder in EMS, and that the fire service agencies should participate in the policy-making regarding service levels and funding issues.

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<sup>1</sup> The term ‘first-responder,’ as used in this report, refers to medical personnel trained in basic life support.

In preparation for the March 7, 2000 election to ratify continued collection of “Measure A, 1988” assessments, county and city managers and fire chiefs met in November 1999 to resolve many ballot language issues. These included:

- How EMS funds were being spent
- The size, function and responsiveness of the EMSA
- The training of first-responders and EMTs
- The need for effective communication among emergency agencies

At the election, 70.7% of the voters approved a measure to change CSA 74 from a ‘benefit assessment’ to a ‘special tax’ district. The BOS, after holding a public hearing, continued the CSA 74 assessment at the maximum allowable rate, \$12.00 per unit.

The special tax for CSA 74<sup>2</sup> is assessed in accordance with the Monterey County land use designations. The basic unit is a single-family dwelling. Other types of land use are assessed either as a percentage or multiple of that basic unit. CSA 74 revenue does not change substantially from year-to-year. Present annual revenues are approximately \$1,600,000. The BOS has the authority to reduce or cease “Measure A, 1988” collections. As a special tax, increases would require a two-thirds vote before becoming effective.

Since 1989, “Measure A, 1988” funds have paid for:

- Countywide paramedic ambulance coverage
- A coordinated EMS system that provides accountability to the people
- The purchase of medical equipment and training for first-responders and EMTs
- Life-saving emergency medical instructions for 911 callers
- A paramedic program supervised by board-certified emergency physicians
- Necessary staffing and support to the EMSA

## **INFORMATION GATHERED FROM THE INVESTIGATION**

### **EMSA Budget**

Of the 1.6 million dollar annual revenues, \$545,033 was spent on first-responder/EMT training in fiscal year 2007/2008, and \$80,000 on related training equipment. \$1,842,951 was carried over to fiscal year 2008/2009. Year-end balances are carried forward each year resulting in an ever-growing balance. Data for fiscal year 2008/2009 was not available at the time of the Grand Jury’s interviews.

### **First-Responder and EMT Training**

“Measure A, 1988” was presented to the voters as providing paramedics and first-responder/EMT training and training equipment. Training services expected to be and initially provided by EMSA were:

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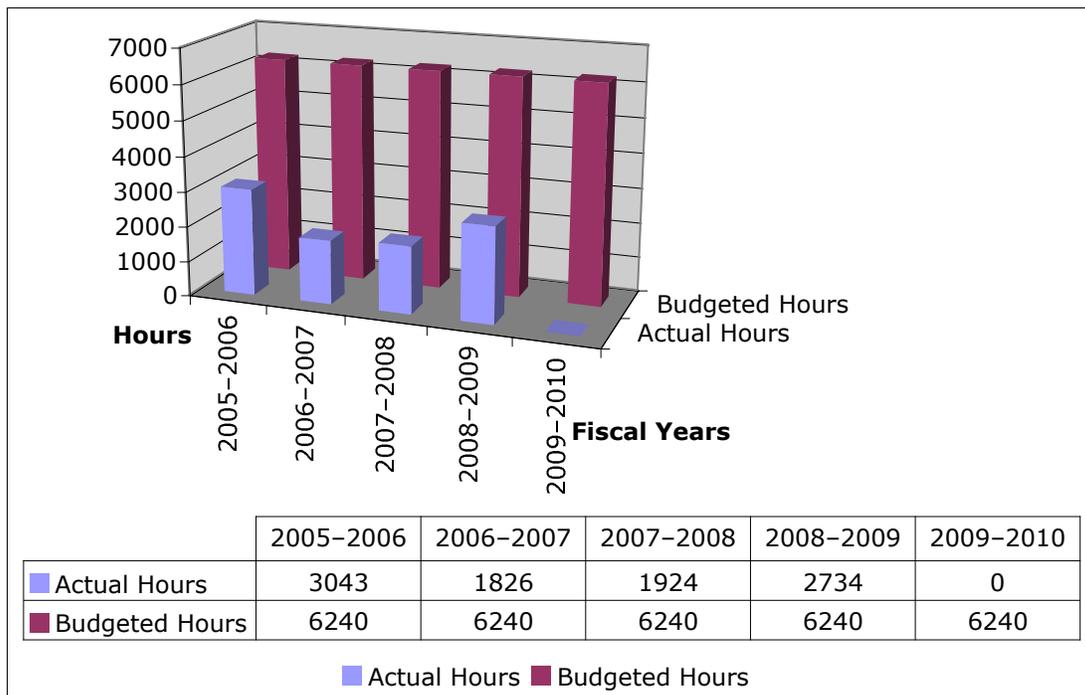
<sup>2</sup> CSA 74 has retained its original designation for accounting and identification purposes.

- First-responder and EMT training through EMSA and community colleges
- Training of fire and emergency in-house instructors
- Skill level assessment
- Provision of training equipment and college instructors
- Cardio-pulmonary resuscitation (CPR) Heart Saver/CPR Health Care

EMSA currently provides only the following training services:

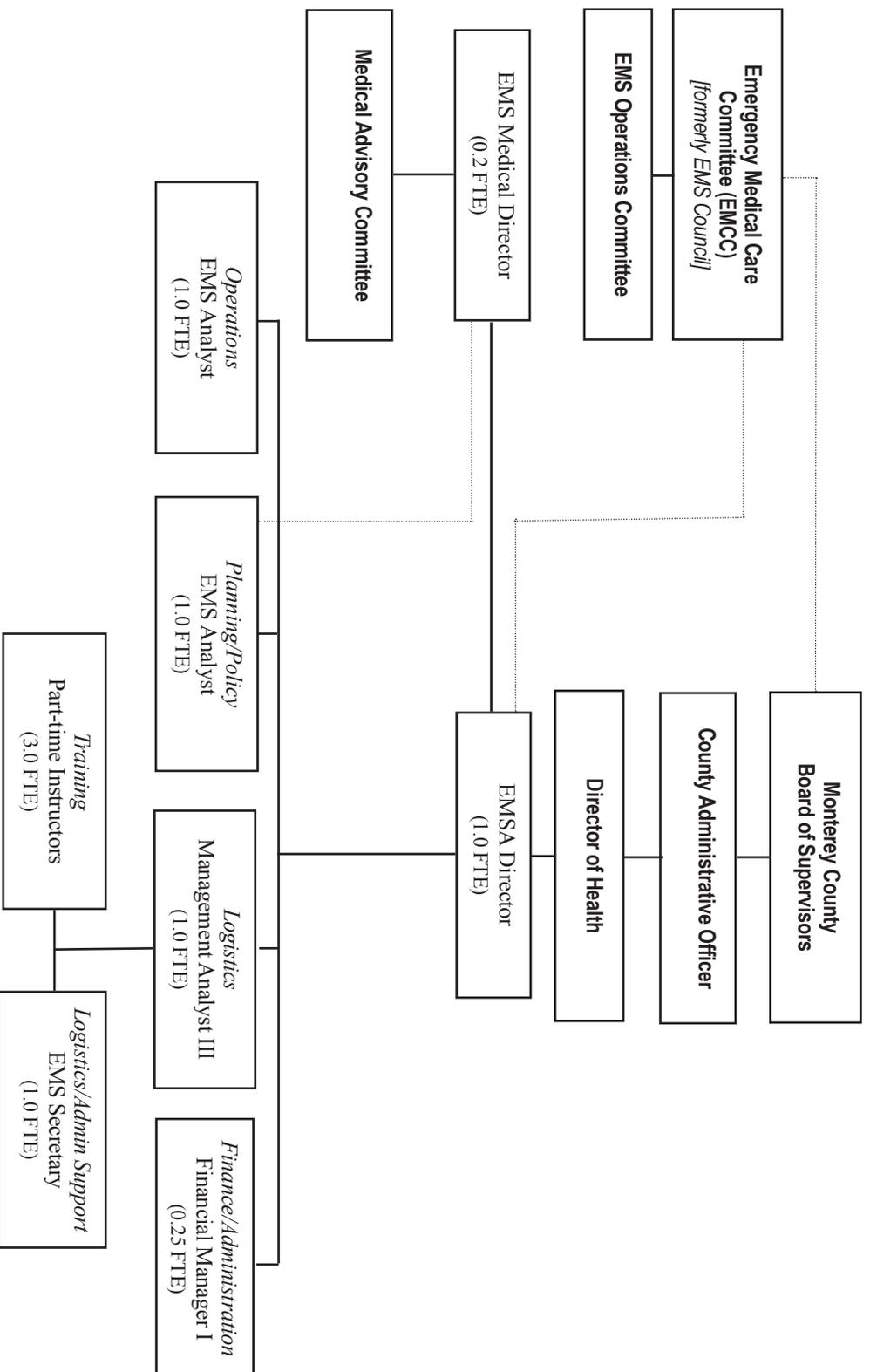
- Occasional continuing education training
- First-responder training to all-volunteer departments
- CPR Heart Saver/CPR Health Care

**Hours of Instruction per Year**



EMSA has not spent all taxes collected, and as a result, among other things, the training of in-house instructors, the acquisition of training equipment, and the quality of the certification process have each significantly suffered. In 1990, 32 part-time instructors were employed by EMSA, today there are only three. Because EMSA-provided training is less available, many local fire and police departments no longer have any in-house instructors. Consequently, the level of training is not uniform throughout Monterey County. Computerized training programs, which cannot provide practice in essential hands-on skills, are a poor substitute. When departments must obtain their hands-on skills training from a variety of uncoordinated providers the result is a lack of standardization.

# MONTEREY COUNTY EMERGENCY MEDICAL SERVICES AGENCY ORGANIZATION



FTE = Full-time Equivalent

11/30/2009

<http://www.co.monterey.ca.us/HEALTH/EMS/Contacts.htm/orgchart.pdf>

According to EMSA's mission statement *"The EMS Agency tests, certifies, and accredits First Responders, Emergency Medical Technicians I's, Emergency Medical Technicians-Paramedics, Mobile Intensive Care Nurses, and Early Defibrillation Technicians. This ensures that such training reflects the medical standards for pre-hospital care established by the local medical community."* The on-line certification process lists the requirements for initial certification and recertification. Also listed are the forms that must be submitted to EMSA.

### **Community Relations**

EMSA has recently placed more emphasis on registering and issuing certificates to first-responders, EMTs, and paramedics. EMSA's reduction in training has not been well received by the local fire departments or MPC, resulting in strained relationships between EMSA and emergency personnel.

In 2008, EMSA cancelled the contract with MPC, providing only one month's notice. MPC continued the program unaided by EMSA and scrambled to hire instructors. EMSA loaned the training equipment for one year, requiring MPC to check the equipment in and out twice each week from a location in Salinas. When EMSA cut off the loan of equipment, MPC purchased its own equipment for \$14,000. EMSA's claim that the equipment was needed for other uses does not appear to be substantiated.

EMSA currently advises fire and emergency departments to obtain training from the 21 California-approved continuing education providers. The responsibility for funding and training has been shifted from EMSA, which holds the "Measure A, 1988" funds, to the fire and emergency departments, which do not. Standardized training in basic life support (BLS) protocols has been lost by this approach.

### **EMS Council**

The EMS Council is appointed by the BOS, with a mandate to advise the BOS and the EMS Director on EMS issues. Members include representatives from the Monterey County Fire Chiefs Association (Fire BLS) and (Fire advanced life support (ALS)), Monterey County Law-Enforcement Chiefs Association, Hospital Council, EMT and paramedics, Monterey Bay City Managers Association, Monterey County Parks Department, emergency physicians, primary EMS provider (currently vacant), and three citizens, plus as an ex-officio member, the manager of the Monterey County Office of Emergency Services. The EMS Council should be the vehicle for any change to the EMS mission; however, this Council's role has been minimized. Currently, the EMS Council has no authority over the EMSA budget. The relationship between the EMS Council and EMSA is dysfunctional. The Grand Jury was told that the BOS is aware of the EMS Council's ineffectiveness, but fixing the problem has been a low priority on the BOS' agenda.

## **Future Areas of Focus for EMSA**

### **Paramedics on Fire Equipment**

The findings of the 2009 Civil Grand Jury have mirrored those of the 1999 Civil Grand Jury. The 1999 Civil Grand Jury recommended that paramedics with drug boxes be placed on rural fire engines, to provide essential care for Monterey County residents in non-urban areas.

For the most part, emergency paramedic service in Monterey County is provided by one contracted ambulance company. However, the Grand Jury was told that the trend throughout the country has

been to move toward placing paramedics on fire engines, i.e., a fire-based paramedic system. In such a system, the fire department provides the ALS assessment, leaving the ambulance contractor to provide transport to the hospitals. A fire-based paramedic system can provide much shorter response time, often in four minutes. In some cases, a fire-based system can deliver fire paramedics on the scene in less than half the time allowed ambulance-contractor-based systems.

Conventional wisdom focuses exclusively on patient transportation issues. However, the most successful patient outcomes result from rapid on-scene medical intervention, rather than mere transport. The fire service is best positioned to arrive on-site quickly to stabilize the patient and prepare for transport. Considering cost, access, timely response, and quality of patient care, the fire service is the optimal choice for providing pre-hospital emergency care services.

If a fire-based paramedic system were in place, the ALS response times would be shorter, and the ambulance contractor could extend rural response times, lowering the cost to the county. The savings gained would free up funds to support a fire-based paramedic program. Fire-based paramedic programs are currently in place at CalFire contracted stations (Carmel Hill Fire Station and Rio Road Fire Station) under the jurisdiction of Carmel Highlands Fire District, Cypress Fire District, and Pebble Beach Community Service District. A similar program is being explored at Salinas Rural Fire District.

A fire-based paramedic program could take the form of a Joint Powers Authority (JPA), similar to the one in use in Santa Cruz County, encompassing the county and all fire districts. The administrator of the JPA decides where to station paramedics throughout the county. The EMS Council should be given the responsibility to create a plan that moves Monterey County in this direction. Wherever possible, the ultimate goal of using existing fire department resources to meet the safety needs of the public, at a responsible cost, should be a top priority.

### **Trauma Center**

There are no trauma centers in Monterey County. Currently all trauma victims are air-lifted via helicopter to Santa Clara Valley Medical Center, Regional Medical Center in San Jose, or other hospitals on request.

A trauma center provides comprehensive medical services to patients suffering traumatic injuries requiring complex and multi-disciplinary treatment, including surgery, in order to give the victim the best possible chance for survival. Trauma centers are ranked from Level I to Level IV, Level I being the highest level of surgical care. A Level I trauma center is required to have surgeons and anesthesiologists on duty 24 hours per day at the hospital and also to provide education, preventive, and outreach programs.

To support a trauma center, a region must meet the following requirements:

- **A minimum population of 400,000**

Monterey County's population was 408,238 as of 2008. Monterey County has many transients, including tourists, seasonal workers, and motorists along the Highway 101 corridor.



- **A trauma activation volume<sup>3</sup> of more than 400 per year**

In 2008 there were a total of 864 calls for air transports, nearly half were transported by air. Due to inclement weather, 11% were cancelled.<sup>4</sup>

- **At least 1,600 locally-treated trauma patients**

There were 20,775 total ground and air-transported patients in 2008.<sup>5</sup>

In 2008, Monterey County met the regional requirements for a trauma center.

The EMSA maintains that Natividad Medical Center (NMC) would benefit from a Level I trauma center because:

- Most of the patients are traffic accident victims, who are insured.
- NMC has the space available.
- NMC has a helipad.
- NMC has a current residency program for primary-care physicians that could be extended to a specialist residency program, which would provide round-the-clock coverage and affordable labor.
- NMC's reputation would be enhanced by the trauma center.

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<sup>3</sup> Number of patients transported by air

<sup>4</sup> *EMSA 2008 Annual Report*, County of Monterey, p. 33

<sup>5</sup> *Ibid.*, p. 26 and p. 33

NMC's administration maintains that a trauma center would increase the hospital's fixed costs by more than six million dollars per year. NMC said there are not enough major trauma cases to cover that expense, that the population needs to be over 800,000, and that it is hard to recruit trauma surgeons. Nevertheless, NMC administration is willing to examine the possibility of a trauma center.

### **Other Concerns**

The Grand Jury discovered that \$166,325 is being held in a restricted revenue account to pay for an Electronic Patient Care Report System. The funds were earmarked for an electronic system on ambulances to replace manual reporting procedures, but the new system has never been purchased. This account was set up in fiscal year 1994/1995, and has since then not accrued interest. The funds cannot be spent for any other purpose without BOS approval.

## **FINDINGS OF THE INVESTIGATION**

- F2.1.** The Emergency Medical Services Agency has failed to provide the quantity and quality of training intended by "Measure A, 1988" and is not fulfilling its stated mission.
- F2.2.** The Emergency Medical Services Agency is not accountable to the Emergency Medical Services Council, rendering the EMS Council ineffective. The Board of Supervisors has not given priority to remedying this situation.
- F2.3.** The Emergency Medical Services Agency does not have a good working relationship with either Monterey Peninsula College or the public safety agencies.
- F2.4.** The Emergency Medical Services Agency has the funds to expand the training and equipment program.
- F2.5.** Funds in the amount of \$166,325, specifically allocated for the Electronic Patient Care Report System on ambulances, have not been spent nor have the funds accrued any interest for the past 14 years.
- F2.6.** Rapid response times provided by fire-based paramedic programs ensure a better patient survival rate.
- F2.7.** Monterey County meets the requirements for a trauma center.

## **RECOMMENDATIONS OF THE GRAND JURY**

- R2.1.** To ensure uniformity across all Monterey County emergency agencies, the Emergency Medical Services Agency must provide consistent instruction and evaluations of hands-on skills for first-responders and Emergency Medical Technicians. [Related Findings: F2.1 and F2.4]
- R2.2.** The Emergency Medical Services Agency must increase the number of part-time first-responder and Emergency Medical Technician instructors. [Related Findings: F2.1 and F2.4]

- R2.3.** The Board of Supervisors should foster an effective working relationship between the Emergency Medical Services Council and the Emergency Medical Services Agency. [Related Finding: F2.2]
- R2.4.** The Emergency Medical Services Agency must be guided by Emergency Medical Services Council advice. [Related Findings: F2.2]
- R2.5.** Consider adding the Emergency Medical Services Agency director as a voting member of the Emergency Medical Services Council. [Related Finding: F2.2]
- R2.6.** The Emergency Medical Services Agency must improve its working relationships with public safety agencies and community colleges. [Related Finding: F2.3]
- R2.7.** Reallocate the \$166,325 for the Electronic Patient Care Report System for ambulances reserve account or purchase the system. [Related Finding: F2.5]
- R2.8.** Create and implement a plan to transition to a fire-based paramedic system governed by a Joint Powers Authority. [Related Finding: F2.6]
- R2.9.** Investigate the feasibility of establishing a trauma center at Natividad Medical Center. [ Related Finding: F2.7]

## **REQUIRED RESPONSES**

### **Monterey County Board of Supervisors: All Findings and Recommendations**

Responses must comply with the following:

#### **CALIFORNIA PENAL CODE SECTION 933.05**

- (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding.
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for

discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.

- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.



# **HOMELAND SECURITY PROGRAM ANTI-TERRORISM APPROVAL BODY**

## **PURPOSE OF THE INVESTIGATION**

The purpose of the 2009 Civil Grand Jury's (Grand Jury) investigation was to review the procedures and grant process used by the Anti-Terrorism Approval Body (ATAB), formerly called the Grant Approval Authority; determine the amount of funds available; review how those funds are disbursed; and verify whether pertinent information about the use of those funds is accessible to the public.

## **BACKGROUND FOR THE INVESTIGATION**

The federal Homeland Security Grant Program (HSGP) provides funding for planning, organization, equipment, training, exercises, and administrative management. The funds allocated through the program support activities that prevent, protect, and respond to terrorist attacks, major disasters, and other emergencies. Since its inception in 2001, the program has focused on 'first-responders'<sup>1</sup>.

The HSGP was not established merely to grant money with which local agencies can purchase equipment, but rather the program is intended to address a wide spectrum of issues that may be raised by locally-conducted needs and threat assessments. Although the HSGP is a federal grant program, the application and disbursement process is run largely by the states. Funds flow from the federal Homeland Security Agency through the states. The funds are then directed by the states to the counties. Grants received for use in Monterey County are further distributed at the discretion of ATAB in accordance with formulas discussed below. In California, the State Administrative Agent (SAA), an office created by the governor, coordinates applications received from counties, disburses grant funds to the counties, and provides supplemental guidance.

The Grant Administrator (GA), a county employee in the Office of Emergency Services (OES), administers the program at the local level. The GA maintains inventory and issues purchase orders.

## **INVESTIGATIVE METHODOLOGY**

- Reviewed Monterey County budgets and disbursements
- Interviewed the local Homeland Security Program administrator and an ATAB member
- Reviewed and analyzed ATAB documentation
- Researched the California Constitution
- Researched the Ralph M. Brown Act, California Government Code section 54950 et seq.

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<sup>1</sup> The term 'first responder,' as used in this report, refers to those police officers, firefighters, medical personnel, or other individuals who are the first persons to arrive on-scene and in the early stages of an incident are responsible for the protection and preservation of life, property, evidence, and the environment.

- Reviewed *The Brown Act – Open Meetings for Local Legislative Bodies*, California Attorney General’s Office, 2003
- Reviewed Monterey County Auditor-Controller and OES web sites

## **INFORMATION GATHERED FROM THE INVESTIGATION**

State Guidelines call for ATAB’s membership to be comprised of the following positions:

- County Public Health Officer
- County Fire Chief
- Municipal Fire Chief
- County Sheriff
- Municipal Police Chief

Neither the term of office nor the number of terms that any ATAB member may serve have been established, defined, or written into any policy. Similarly, there is no policy for rotating who fills the County Fire Chief, Municipal Fire Chief, or Municipal Police Chief positions from among eligible Monterey County agencies. ATAB has no bylaws or other comprehensive written operating procedures of its own.

ATAB has two subcommittees — the Training and Exercises Subcommittee and the Operability Subcommittee. The Training and Exercises Subcommittee consists of approximately 15 individuals. This subcommittee makes recommendations to ATAB on funding appropriate training. In the past the Operability Subcommittee met only sporadically, but it is now meeting monthly. Neither subcommittee has bylaws, but ATAB plans to better define how the subcommittees function (e.g., who shall serve, what is their term of office?).

ATAB meets at least once a year to review, discuss, and vote on proposals. Any recommendation to approve a grant request may not be made without the affirmative vote of at least four of the five ATAB members. ATAB then forwards its recommendations to the Monterey County Board of Supervisors for approval. After receiving the locally-approved proposals, the SAA bundles them with those of other California counties and forwards the collected applications to the federal government.

HSGP grants are allocated in the following proportions:

- 20% to law enforcement agencies
- 20% to fire agencies
- 20% to be divided between fire agencies, law enforcement agencies, and emergency medical services agencies
- 40% to be used as determined by ATAB

In order to qualify for an HSGP grant, any proposal must meet the following criteria:

- The capability to be obtained must be available for use within an entire region, must remain for a sustained period of time, and must ensure participation in applicable regional drills, training, and exercises.

- The applicant agency must be located within the region to be served by the capability to be obtained.
- The capability must enhance or meet a specific goal or objective established by ATAB.

It is difficult for the smaller local agencies to demonstrate that new capabilities (which they might be able to implement if funding was available) would provide a region-wide benefit of an enduring nature. For that reason, small agencies suffer in the competition for HSGP funds and may ultimately be awarded little or no money from the program.

The manager of the OES and the GA attend the initial portion of the annual meeting in which grant proposals are presented to ATAB. They are directed to leave when discussion and voting by ATAB members commences. Once ATAB members have reached a decision, they call the GA back into the meeting. The GA usually announces ATAB's decisions by notifying the local public safety agencies from which the ATAB-recommended proposals were originally received, but not the media.

With the exception of the subcommittee meetings, all ATAB meetings are closed to attendance by the public. Even with respect to subcommittee meetings, agendas are not posted in advance and public comment is not taken. In response to an inquiry from the Grand Jury regarding the applicability of the Ralph M. Brown Act's (the Brown Act)<sup>2</sup> open-meeting requirements to ATAB, County Counsel did not supply a definitive answer.

Article 1 of California's Constitution sets forth a declaration of the rights of the people of this state.<sup>3</sup> The people have the right to know how public business is being conducted.

In response to the Grand Jury's inquiry about the possible applicability of open-meeting laws to ATAB, the California Attorney General's office sent a copy of a comprehensive manual, authored in 2003, entitled *The Brown Act – Open Meetings for Local Legislative Bodies*. A review of that publication causes the Grand Jury to conclude that ATAB should conduct its meetings in the spirit of the Brown Act. It is noteworthy that: "*The fact that an agency is created by state or federal law, rather than local ordinance, does not mean that the agency is not essentially local in nature.*"<sup>4</sup> Similarly, the Brown Act applies not only to purely legislative local bodies, but also to those that perform primarily executive duties.<sup>5</sup> "*Any board, commission, committee or other body of a local agency created by charter, ordinance, resolution or formal action of a legislative body is itself a legislative body.*"<sup>6</sup>

The Grand Jury examined each of the exceptions to the Brown Act's open-meeting requirements without locating any that apply to ATAB's meetings. The Brown Act does permit local agencies to meet in closed session with the sheriff, chief of police, and persons involved in security functions, but only "*... on matters posing a threat to the security of public buildings, a threat to the security of essential public services, ... or a threat to the public's right of access to public services or public facilities.*"<sup>7</sup> The public security exception does not seem to apply to ATAB's grant applications and fund distribution activities or meetings.

<sup>2</sup> California Government Code section 54950 et seq.

<sup>3</sup> See Appendix A

<sup>4</sup> *The Brown Act – Open Meetings for Local Legislative Bodies*, Office of the Attorney General, p. 3

<sup>5</sup> *Ibid.*, p. 4

<sup>6</sup> *Ibid.*, p. 5

<sup>7</sup> Government Code section 54957 (a)

As the chart below demonstrates, the amount of money being applied for and spent through ATAB is hardly insignificant.

<b>GRANTS RECEIVED</b>			
<b>Year</b>	<b>Amount</b>	<b>Total</b>	<b>Comment</b>
2001	\$ 168,684	\$ 168,684	
2002	273,293	273,293	
2003	400,567 982,167	1,382,734	
2004	1,599,604	1,599,604	
2005	1,163,422	1,163,422	
2006	810,431	810,431	
2007	819,238 186,297	1,005,535	Additional for TENS (Telephone Emergency Number System)
2008	978,800	978,800	
2009	947,114	947,114	Re-allocated from FY2007 & 2008 \$121,234 = \$1,068,348
<b>Total Grant \$</b>		<b>\$8,329,617</b>	

ATAB's management and administration costs, which include travel expenses and a portion of the GA's salary, are covered by a charge of 3% against the total of each grant received from the HSGP. ATAB members themselves are not separately paid through the program. Monterey County advances the costs for the approved proposals, subsequently being reimbursed by the SAA.

## **FINDINGS OF THE INVESTIGATION**

- F3.1.** The Anti-Terrorism Approval Body does not operate transparently in the spirit of California's open-meeting laws. The Anti-Terrorism Approval Body's meetings are closed to the public. Although the Anti-Terrorism Approval Body's subcommittee meetings may be open, agendas are not being posted in advance, public comment is not being taken, and other aspects of the open-meeting laws are not being honored.
- F3.2.** Discussion and voting on the grant proposals is conducted in the absence of not only the public, but also the Grant Administrator who is charged with the local administration of the program.
- F3.3.** Once proposals are adopted, the Grant Administrator notifies participating agencies, but not the media.
- F3.4.** The Anti-Terrorism Approval Body and its subcommittees do not have documented by-laws or written local operating procedures.
- F3.5.** Small public entities are at a disadvantage in receiving grants because their projects often do not have regional scope.

## RECOMMENDATIONS OF THE GRAND JURY

- R3.1.** Open the Anti-Terrorism Approval Body meetings to public attendance in the same manner required for agencies subject to the Ralph M. Brown Act. Members of the public may wish to make comments to the Anti-Terrorism Approval Body. [Related Findings: 3.1 and 3.2]
- R3.2.** Post agendas for the Anti-Terrorism Approval Body meetings in the same manner required for agencies subject to the Ralph M. Brown Act. [Related Findings: 3.1 and 3.2]
- R3.3.** Inform the media of proposals adopted and associated grant amounts. [Related Finding: 3.3]
- R3.4.** Update the Office of Emergency Services website, listing proposals and awards by agency. Also list the Anti-Terrorism Approval Body members by name, title, and associated agency. [Related Finding: 3.3]
- R3.5.** Create bylaws and written operational procedures for the Anti-Terrorism Approval Body and its subcommittees. Publish them on the Office of Emergency Services website. [Related Finding: 3.4]
- R3.6.** Encourage regional proposals that allow small public entities to join forces on projects for their mutual benefit. [Related Finding: 3.5]

## REQUIRED RESPONSES

### **Monterey County Board of Supervisors:**

All Findings and Recommendations

### **Sheriff of Monterey County:**

All Findings and Recommendations

Responses must comply with the following:

### CALIFORNIA PENAL CODE SECTION 933.05

- (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding.
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

## APPENDIX A: California Constitution, Article I, Section 3

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.<sup>1</sup>

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<sup>1</sup> Section 3 was substantially expanded by the vote of the electorate on November 2, 2004 in passing Proposition 59.



# SOLEDAD CORRECTIONAL TRAINING FACILITY

## PURPOSE OF THE INVESTIGATION

California Penal Code section 919(b) requires that the 2009 Monterey County Civil Grand Jury (Grand Jury) “... *inquire into the condition and management of the public prisons within the county.*” The focus of the Grand Jury’s inquiry into the Soledad Correctional Training Facility (CTF) was on three questions:

- How secure is the facility?
- How safe are the staff members?
- How safe are the inmates?

The Grand Jury inquired into not only the current status of CTF, but also looked into its history of operations in order to assess the security of the facility and the safety of both staff and inmates (e.g., are the rates of escape, injuries, assaults, or threats increasing, decreasing, or remaining stable?).



*Soledad Correctional Training Facility*

If you ask a resident of Monterey County whether they have any concerns about the prisons within the county, the response you would most likely receive is: “*Do they keep the inmates from escaping?*” The next response would likely be: “*I have family and friends working there and would like to know if they are safe.*” The fact that there are over 6,000 inmates inside this facility assures that there would be concern about the safety of the inmates.

This inquiry attempted to answer these questions. The first step was to contact the warden and his staff for an interview. The next step was to tour the facility to see how secure the prison was. The Grand Jury then contacted staff members and interviewed them regarding their safety. Lastly, the Grand Jury interviewed inmates regarding their safety.

## **BACKGROUND FOR THE INVESTIGATION**

CTF is a three-facility complex, each functioning independently of the others. South Facility houses Level I inmates and provides minimum custody workers to support CTF’s overall operations.<sup>1</sup> Central Facility is a training and work-oriented facility that provides comprehensive academic, vocational, and industrial programs. Central Facility houses Level II inmates and also includes the institution’s Administrative Segregation Unit, where inmates whose behavior threatens other inmates or staff are placed. North Facility is a training and work-oriented facility that provides comprehensive academic, vocational, and industrial programs. North Facility houses Level III and Level II inmates. At the time of the Civil Grand Jury’s last visit there were 6,167 inmates incarcerated at the facility. This is over twice the original design capacity of CTF. At the time of the Grand Jury’s last visit, CTF employed a total of 1,713 staff, of whom 1,244 were peace officers and 469 were non-sworn personnel. All correctional officers (COs), and counselors are sworn peace officers. Clerical personnel and all other staff members are considered support and are non-sworn.

## **INVESTIGATIVE METHODOLOGY**

- Interviews and conversations with CTF management, staff and inmates
- Tour of CTF
- Review of *California Code of Regulations, Title 15 - Crime Prevention and Corrections*
- Review of prior Monterey County Civil Grand Jury final reports
- Review of California Department of Corrections and Rehabilitation (CDCR) newsletter, *The Turnaround Lifeline California Health Care Service*, 2/10/2009
- Review of CDCR, *Correctional Training Facility*, “In Service Training Bulletin,” 4/2009

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<sup>1</sup> Inmates are classified into Levels I through IV based on factors such as sentence length, work history, age, education and prior incarcerations. Level I requires the least supervision, Level IV the most.

## INFORMATION GATHERED FROM THE INVESTIGATION

### Security of the Facility

CTF is the sixth oldest prison in California. The facility is surrounded by double chain link fences, each with razor wire on top. The ground between the paired fences is covered with white rock to enhance visibility. There are guard towers around this perimeter. Each CO stationed in a tower is armed with two weapons, a Mini 14 rifle and a 40mm less-than-lethal weapon capable of firing projectiles or gas canisters. COs also patrol the area surrounding the prison.

Within CTF are three yards. The Level I inmates, housed in South Yard, always have a set release date. Some of the Level I inmates are housed in dormitories (i.e., large rooms with bunk beds). A single fence and four guard towers surround this yard. Level II inmates, housed in Central and North Yards, enjoy the possibility of parole. Over 2,000 Level II-lifers are incarcerated within CTF, which is one of the largest such populations in California. Single and double fencing surrounds Central and North Yards. Level III inmates are likely never to be paroled and require the most security. There are more correctional officers armed with two weapons each in Level III. The staff/inmate ratio is highest in the Level III areas, and Level II areas have more COs than Level I areas.

### Escapes

According to CTF staff, there have been no escapes, i.e., events in which an inmate breaks-out or away from confinement or custody, in recent history. One inmate attempted an escape in 2008. The statistics requested on escapes and attempted escapes for the last five years were not received. In contrast, Salinas Valley State Prison provided its statistics when requested by the Grand Jury.

Inmates present the greatest risk of escape when they are being transported, such as to court or to a hospital. A ‘walkaway’ occurs when an inmate who was performing a job outside the facility, such as working at the rodeo or air show, just walks off and does not return to confinement at the end of his job assignment. CTF has had very few walkaways.

CTF’s in-house staff investigates escapes, attempted escapes, and walkaways. An investigation is also conducted by no fewer than three separate teams from outside the facility. CDCR will conduct independent investigations to determine what happened and whether policy was followed. If policy was not followed, those responsible face disciplinary action. Anytime an inmate is not accounted for within the prison, an emergency count of all inmates is taken. At least four counts are taken of all inmates in the facility during each shift. High-risk inmates are counted more often. At least two additional counts are made in the dormitories.

*“Each warden and superintendent must have in effect at all times a plan of operations for the reporting of escapes, and for the pursuit and apprehension of escapees.”*<sup>2</sup> CTF’s Escape Pursuit Plan includes posting COs at specified checkpoints. Nearby residents are contacted either by phone or in person. An escape bulletin is distributed to surrounding law enforcement agencies and local media outlets within an hour. It can take that much time to confirm that an inmate is actually missing or has escaped. CTF’s team is responsible for searching in and around the prison in order to apprehend the escapee.

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<sup>2</sup> 15 California Code of Regulations section 3296

## Unauthorized Entry

CTF is secure against unauthorized entry. Persons not having proper identification are not admitted. All visitors and vendors are screened, put through metal detectors, and checked for contraband. Those requesting visits to inmates must be on the inmate's visiting card. Each visitor and vendor must pass a background check. All visitors and vendors are continuously monitored while in the facility. Everyone in the facility can be stopped and must display identification upon request.

## Cell Phones

Use of cell phones by inmates is a major concern. In one month the staff confiscated 57 cell phones. Inmates can use cell phones to take photos of the prison, photograph the staff and their identification (for forgery or retaliation), and plan escapes. Possession of a cell phone in the facility is a crime. So is smuggling a cell phone into the facility. The staff attempts to track down those to whom the phones are registered, however it is difficult. The staff attempts to combat the cell phone issue just as they do other smuggled contraband.

The staff mentioned the idea of making the facility a dead zone for cell phones but the problems associated with that would be:

1. Staff would not have state-issued cell phone use.
2. The Federal Aviation Administration would not allow a dead zone.
3. The close proximity to Highway 101 would knock out cell phone service for those close to the facility on the highway.

## Safety of the Staff

The Grand Jury interviewed ten CTF staff members, including a captain, a lieutenant, COs, a registered nurse (RN), a painter, a cook, and a psychological technician. The following information was obtained from answers to questions focused on the safety of their working environment.

The staff reported that the structure and design of the facility is adequate for the employees' safety. Some staff members, while at their workstations, would like to be able to better see the inmates.

Generally, the staff said that CTF's procedures adequately protected them. The staff is given both alarms and radios to be used if help is necessary. Different levels of response are triggered by different alarm codes. Some non-sworn staff members wanted safety vests, as the COs were issued, and some training by CTF in self-defense. COs receive 16 weeks of training at the academy, followed by continuing training at CTF to ensure their safety and the safety of others.

Some staff members, such as RNs, have a CO standing by when treating inmates. One staff member related an incident in which she *"had to talk one inmate down."* As an employee working in the facility you always need to be *"aware of where you are."*

The only staff members to have been assaulted by inmates were the COs. A detailed investigation is conducted when such an incident occurs, and cases are referred to the District Attorney for prosecution. Notes received from inmates forewarning of assaults are taken very seriously and result in an in-depth investigation and threat assessment being made.

The staff believes that the largest factor in keeping the staff safe is the availability of lethal and less-than-lethal weaponry. They related that a fence alone is not enough to keep any inmate in

prison. Without the protection of lethal force available to the officers in the guard towers, one officer with only a baton and chemical spray could not safely occupy a yard with 1,300 inmates.

Administration advised that healthcare services personnel are only authorized to provide basic or emergency first aid to staff until an ambulance arrives. One staff member related that CTF's medical staff cannot treat anyone other than inmates. Thus, staff felt that emergency medical care for them may be delayed.

Lowered staff levels have some staff members concerned about the amount of overtime worked, because of the resulting fatigue and diminished alertness. For safety reasons, COs can work only a maximum of two overtime shifts in consecutive days. Also, there are not enough bilingual staff to effectively communicate with inmates. Nevertheless, the consensus is that CTF is doing what needs to be done to keep the staff safe.

## **Safety of the Inmates**

### **Staff View of Inmate Safety**

Inmates typically are housed two per cell. COs are stationed in the housing units continuously. If an inmate gets into trouble, he only needs to call out to a CO for help. Security checks are performed periodically throughout each shift by looking into the cells. Random cell searches, counting, and security checks keep the COs in close proximity to the inmates. There are also some cameras in the facility. Sometimes inmates request to be moved for their own protection. These requests are accommodated when possible.

### **Inmate View of Inmate Safety**

The structure of the facility is consistent with the safety of the inmates. The cells, day rooms, and design of the prison pose only a few safety issues for the inmates. The primary concern regarding inmate safety is the overcrowding of CTF, which is over 200% of design capacity.

When inmates are injured, they are taken for medical help either within CTF or, if necessary, outside. When an inmate needs to be moved to CTF's medical facility, an electric cart is used. It is difficult to get the cart through some parts of the facility, resulting in delay in transportation. An inmate opined that these delays could be minimized if staff practiced with the cart. Inmates were all in agreement that if they were injured and needed medical attention, the staff would make sure they got it.

### **Threats, Assaults, and Medical Assistance**

Threats, assaults, and even homicides have occurred at CTF, but none of the inmates that were interviewed admitted to being injured by other inmates. Inmates are assaulted over drugs, gambling debts, and for a wide variety of other reasons. If an inmate has a problem, he can ask prison staff that he be put into protective custody. CTF was unable to supply specific statistics on threats and assaults.

According to inmates, the staff does a good job of handling inmates with mental problems who could be a danger to others. The staff also conceals an inmate's criminal history from other inmates, because those who have committed sex crimes would be preyed upon by other inmates. Maintaining inmate stability helps keep the rate of assaults down. Whenever there is a large increase in the inmate population, especially if the new inmates are young, the likelihood of assaults increases.

Suggestions received from inmates included the following:

- Control the overcrowding and reduce the number of inmates in the dining hall at any given time.
- Promote stability through prison programs that teach inmates skills.
- Provide education, as basic as teaching an inmate to read and write.
- Provide inmates with jobs within the prison.
- Train for faster staff response to inmate injuries.
- Continue the Inmate Advisory Committees that meet with staff to discuss problems that arise.
- Make the rounds conducted by the warden more apparent.
- Inquire into chemical spraying on farmland surrounding the facility.
- Control the drugs and other contraband coming into the facility.
- Implement a grievance process that addresses safety issues.
- Expand the practice of pairing younger inmates with older inmates who can lead by example.

## **FINDINGS OF THE INVESTIGATION**

- F4.1.** The design of the facility is extremely secure in protecting against escapes.
- F4.2.** The procedures at CTF are effective to safeguard against escapes from the facility.
- F4.3.** The risk of escape is highest when inmates are taken outside the facility for medical treatment, court or other mandated appointments.
- F4.4.** Adequate measures to prevent unauthorized entry are in place; however, vehicle searches for contraband are not done because the prison grounds' entry-point gate house is not staffed.
- F4.5.** Staff members feel safe working in the facility.
- F4.6.** Medical staff can only treat prison staff in an emergency and are limited to stabilizing the injured until transport arrives.
- F4.7.** The unlawful possession of cell phones by inmates poses a serious risk to the safety of staff and increases the risk of escapes.
- F4.8.** Injured or ill inmates are attended to in a timely manner.
- F4.9.** The primary concern impacting the safety of inmates is overcrowding.
- F4.10.** CTF staff was unable to supply requested statistics on assaults, threats, and escapes.

## COMMENDATIONS BY THE GRAND JURY

The Grand Jury commends the staff members for their cooperation in coordinating tours of the facility and in setting up interviews with line staff and inmates. They should also be commended for doing an excellent job in securing inmates and reducing potential violence toward staff and inmates in such an old and overcrowded facility.

## RECOMMENDATIONS OF THE GRAND JURY

- R4.1** Continue to seek legislation making cell phone possession by inmates a felony. [Related Finding: F4.7]
- R4.2** Continue to meet with staff on safety related issues. [Related Finding: F4.5]
- R4.3** Reduce overcrowding of inmates. [Related Finding: F4.9]
- R4.4** Staff the prison grounds' entry-point gate house and search every vehicle for contraband. [Related Finding: F4.4 and F4.7]
- R4.5** Implement a system to track statistics on assaults, threats, and escapes. [Related Finding: F4.10]

## REQUIRED RESPONSES

**Warden of the Soledad Correctional Training Facility:**  
All Findings and Recommendations

Responses must comply with the following:

### CALIFORNIA PENAL CODE SECTION 933.05

- (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding.
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.

- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

# SALINAS VALLEY STATE PRISON

## PURPOSE OF THE INVESTIGATION

California Penal Code section 919(b) states: *“The grand jury shall inquire into the condition and management of the public prisons within the county.”*

The 2009 Monterey County Civil Grand Jury’s (Grand Jury) investigation of the Salinas Valley State Prison (SVSP) concentrated on the safety and security of the prison. These were the issues the Grand Jury felt were of interest and concern to all residents of Monterey County. The Grand Jury interviewed the warden and his staff, toured the prison, and interviewed the inmates. The Grand Jury’s investigation focused on three questions:

- How secure is SVSP?
- How safe are SVSP’s staff members?
- How safe are SVSP’s inmates?



*Salinas Valley State Prison*

## **BACKGROUND FOR THE INVESTIGATION**

SVSP was opened in 1996, run by the California Department of Corrections and Rehabilitation (CDCR) as a maximum security prison designed to house Levels I, III, and IV inmates in five separate facilities.<sup>1</sup> Inmates are classified according to a point system — Level I, 0–18 points; Level II, 19–27 points; Level III, 28–51 points; and Level IV, 52 points or more. Facilities A and B house Level III and IV inmates. Facilities C and D house Level IV inmates only. Two of the housing units in Facility D are mental health units operated by the California Department of Mental Health (DMH). Facility E houses Level I inmates. There are approximately 4,200 inmates at the prison and 1,700 staff. There are 1,035 sworn peace officers and 665 non-sworn support personnel. It is important to understand the security of the prison, how successful it is in preventing escapes, and the safety of the staff and inmates. Of equal importance is determining whether injuries, assaults, or threats are increasing or decreasing.

SVSP has an emergency room, pharmacy, dental facility, and a 22 bed hospital. It also has four units that are operated by DMH. The hospital is fully staffed and is able to handle most of the medical needs of the inmates, including some long-term care. There are two pharmacies, one in the prison hospital and the other in the DMH facility. The dental facility provides all the dental care that inmates need. Any inmates whose medical needs can not be met at the prison are taken to local hospitals or are transferred to other state facilities.

In addition to the hospital, all individual facilities have their own medical and dental clinics to deal with day-to-day, routine medical and dental needs.

## **INVESTIGATIVE METHODOLOGY**

- Interviews with staff and management
- Interviews with inmates
- Tours of the prison relating to security
- Review of 2008 Civil Grand Jury Final Report
- Review of the SVSP web site
- Review of *California Code of Regulations, Title 15- Crime Prevention and Corrections*
- Review processes for inmate interviews and grievance procedures.

## **INFORMATION GATHERED FROM THE INVESTIGATION**

### **Security of the Prison**

#### **Perimeter Security**

SVSP's outside perimeter is surrounded by guard towers and two cyclone fences with razor wire. The entire perimeter fence is electrified. Only the two entrance towers are staffed by armed personnel unless there has been a breach in security, in which case all towers are staffed by armed personnel.

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<sup>1</sup> Inmates are classified into Levels I through IV based on factors such as sentence length, work history, age, education and prior incarcerations. Level I requires the least supervision, Level IV the most.

One entrance is for personnel, and the other is for vehicles. All personnel and vehicles must have proper identification to make entry. Each correctional officer (CO) is armed with a Mini 14 Rifle and a 40mm less-than-lethal weapon that fires non-lethal projectiles or gas. Outside the perimeter, armed guards patrol the entire area surrounding the prison 24 hours per day. Inside the perimeter is an area called 'no-man's-land,' which is the area between the perimeter and the housing facilities. Within each facility is additional security. Each facility has a partition wall surrounding the entire area topped by one continuously-staffed guard control tower. Facilities C and D also have cyclone fencing with razor wire. The only area that is not guarded continuously is the activity yard, which is only staffed between 6:00 a.m. and 10:00 p.m., because no inmates are in any yards at night.

### **Facilities A through E**

Within SVSP are five groups of housing facilities, referred to as Facilities A through E. Facilities A and B are high security facilities each with five housing units. Each unit has 100 cells. With two inmates per cell, the maximum capacity of each facility is 1,000 inmates. These units are open with no partitions, and the CO is able to view the unit in a 270° arc.

Facility A houses Level IV inmates, who have the highest threat potential. Most are associated with various gangs and disruptive groups, making them very difficult to program. The term 'program' refers to an inmate's behavior and how he adjusts to prison. The prison also has educational and vocational programs in which inmates can participate.

Facility B houses Level III inmates. Most of these inmates are gang drop-outs, guilty of sex crimes, or inmates who are at risk of being sexually preyed upon by other inmates. There are few problems in this facility and these inmates program very well.

Facility C is high security with eight housing units, that contain 64 cells each. With two inmates per cell, the maximum capacity of the facility is 1,024 inmates. This unit is divided into three pods for more security and control, and the CO is able to view a 180° arc. Most of the inmates are lifers. Although programs for anger management are available, the prison administration stated that these prisoners are impossible to program and are handcuffed anytime they are moved. Facility C also has a unit for the Enhanced Out-Patient Program (EOP). This unit is for inmates with medical needs that do not fall under the province of the DMH. Inmates in the EOP are seen by medical doctors, psychiatrists, psychologists, and therapists on a regular basis. The medical staff felt these inmates can be controlled with the proper medication.

Facility D is a high security general population facility with eight units. Facility D's maximum capacity is 879 inmates. Two of the units have been modified for psychiatric purposes and are operated by the DMH, independently from SVSP. DMH's regulations are similar or the same, in most cases, to those of the CDCR. DMH has its own staff, supplemented with a limited number of COs from CDCR. This program services primarily Level IV inmates, who have mental disorders and are unable to function within the prison environment. Additional medical housing is being converted in Facility C to accommodate the rising demand for more DMH beds. General population inmates currently housed in what will become DMH beds will be transferred to other prisons.

Two dormitories, capable of housing 150 inmates each, are in the minimum security Facility E. The maximum capacity of this facility is 300 inmates. This facility houses Level I inmates who may be released during the day to do supervised work inside or outside the facility or inmates awaiting permanent release. There is a single cyclone fence around the perimeter with no razor wire or guard towers. The warden or his chief deputy must approve all inmates in this facility.

## **Security from Intrusion**

The prison is secure from those entering from the outside. Staff is checked daily for proper identification when entering or exiting. All visitors are screened in advance and are subject to search any time they are in SVSP. All vendors deliver to the prison at an outside delivery area, from which prison personnel distribute the goods inside the perimeter. The warden describes SVSP as a “*city within a city.*”

## **Escapes**

The warden and his staff report that there have been no ‘escapes’ from SVSP. To SVSP the word ‘escape’ means an event in which the “*correctional staff does not maintain the custody and control of the people that they have been charged to control within the perimeter fence.*” ‘Walkaways’ are minimum-security inmates who work outside the prison such as at the rodeo, air show, or as part of a road crew and just walk away from their jobs. During the last five years there have been four walkaways and one attempted escape. All but one were subsequently apprehended and placed in tighter security. Escapees and walkaways are prosecuted by the District Attorney (DA). Transportation to court or hospitals presents a unique set of escape concerns. The staff operates under specific rules and strict guidelines concerning transportation of inmates.

If an escape or attempted escape occurs, the SVSP staff investigates the incident, and an internal affairs team from Sacramento further investigates and determines whether proper procedures were followed. If policy was not followed, disciplinary action will be taken. Counts of inmates are taken on a regular basis. There are no fewer than five counts per day. High risk inmates are counted more often.

If an escape occurs, the prison has a plan. The entire prison goes into an immediate lock-down. The staff sets up an Emergency Operation Center, and the warden and deputy warden are notified and respond immediately. The escapee’s cell is searched in order to obtain any information regarding his escape. Special response teams are posted at observation points and search the nearby area. Members of the staff contact residents who live near the prison and issue an escape bulletin to law enforcement agencies and the media. This is intended to be completed within an hour after the escape occurs. As a follow-up, a team comes from Sacramento to conduct an investigation.

## **Lock-downs**

Lock-downs occur when a serious incident happens, and the inmates are confined to their cells. The entire prison is locked-down when an escape or attempted escape is made, or when a serious incident occurs such as a riot or a stabbing. A partial lock-down occurs when an incident happens within a single facility. All inmates within that facility are put on a modified program. During this program they are confined to their cells until an investigation is completed. Most incidents are cleared within 72 hours, and the inmates are able to return to their regular program. If the incident cannot be resolved within that time, a special investigative team arrives from Sacramento to investigate.

## **Cell Phones**

Cell phones are a major concern to the warden and his staff. The warden is working with other wardens in the country on legislation to make it a felony for an inmate to possess a cell phone. Currently possession of a cell phone by an inmate is only a misdemeanor. The phones are smuggled

into the prison through packages, visitors, and prison staff. Inmates having cell phones create a security risk because they can communicate among themselves and with people outside, plan escapes, and plan assaults against other inmates and prison staff. There have been instances when staff has been attacked outside the prison. The staff attempts to track down to whom the phones are registered, but this is very difficult. It is felt by COs that the prison does not have enough staff to properly address this problem. Staffing the gate house and searching all vehicles coming into the prison would cut down the amount of phones coming into the prison. Since anyone can drive into the prison complex unchecked, phones have just been thrown over the fence. The same would apply to drugs and other contraband. There has been discussion about making the prison a cell phone dead zone, but it was determined that this is not feasible due to the following reasons: staff would not have cell phone use, the Federal Aviation Administration would not allow it; there could be potential interference with emergency communications; and, it would be an inconvenience for drivers on Highway 101 and other legitimate users.

### **Safety and Security Audit**

The warden reported that each year the prison has a Safety and Security Audit. The audit is performed by CDCR staff from other prisons in the system. In 2009, the auditors inspected 272 areas in the prison. SVSP completely complied in 250 of those areas and attained a total score of 93%.

### **Safety of the Staff**

All COs, counselors, and medical technician assistants (MTAs) are sworn police officers. All other staff is considered support and is non-sworn. Nine staff members were interviewed, namely a correctional lieutenant and sergeant, hospital administrator, nursing supervisor, DMH supervisor, teacher, carpenter, records technician, and counselor.

The majority of the staff feels the security at SVSP is sufficient. They are mindful of the dangers around them and realize that they can be harmed at any time. Many feel security has to do with using common sense, constantly being aware of their surroundings, and exercising reason to defuse potential confrontations. The staff noted that the administrators are always trying to improve security. For example, a design flaw in the library, which obscured the staff's view of inmates, was brought to the attention of the administrators. The problem was remedied immediately.

All COs and counselors wear safety vests, and also carry chemical spray and batons. MTAs working in the DMH facility wear safety vests but do not carry pepper spray or batons, and are trained in Prevention Management of Assaultive Behavior. This enables them to recognize signs of escalation in an inmate's behavior. The MTAs believe that communication is the key to dealing with inmates and that the baton and pepper spray escalate rather than calm situations down. Moreover, the use of those tools is inconsistent with the MTAs' code of ethics.

All staff have a whistle and most wear a personal alarm that operates only in the area in which they work. They report that when an alarm is sounded the response by the COs is within two to three seconds. When the Grand Jury was touring the prison an alarm sounded, and the response was quick and massive; the inmates were flat on the ground and the jurors were up against the wall. Staff that work in more than one area (e.g., maintenance personnel) have a whistle, but no alarm. They don't see this as a safety issue, and indicate they are not a target. They usually work in pairs and do not use inmates as helpers. Their main concern is tool control. Tools are checked in and out

each day, and checked an additional three times during the work day. The majority of non-sworn staff feels that vests are not warranted, and would just hinder them in their work.

### Newly Hired Staff and Training

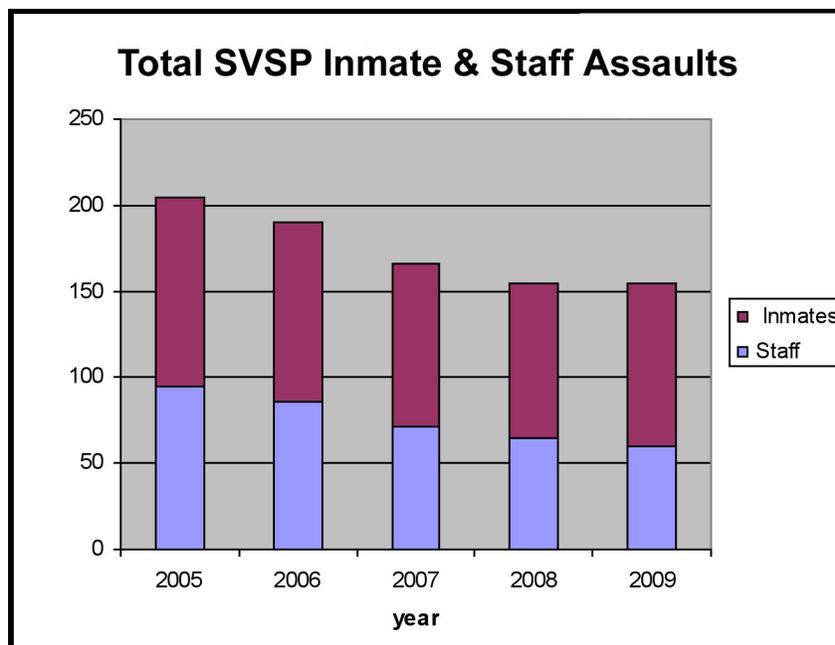
When new staff are hired they go through an orientation process. This includes learning all standard operation procedures of the prison, including SVSP's disaster preparedness plan. This plan is for fire, earthquake, and floods and must be reviewed annually by all staff. In case of a major incident, the prison is self-sufficient for several days and has its own generator. In the event of a power outage, the generator comes on within 10 seconds. The generator is tested the same time each month.

After this process is completed, new staff members are put into the working environment. COs are immediately assigned to a position. It is felt that after completing a 16-week training at the academy they are fully trained and able to fill any position. The MTAs, medical staff, and teachers have a longer orientation and have mentors assigned, who shadow them for one to two weeks. Ongoing training is important to all staff, with mandatory refresher courses required every year.

### Assaults

Safety of the staff and inmates is a high priority at SVSP. Assaults range from simple incidents (pushing, shoving, spitting or touching a person in any way), to more serious incidents (fights, stabbings, or riots). In 2007, an inmate was stabbed to death. SVSP also experienced a riot on Thanksgiving Day in 1998, which involved almost 300 inmates.

None of the staff interviewed had been assaulted, except for one who had been spit on. If an assault does occur, the inmate is put in a segregation facility and a detailed investigation is conducted. The results are referred to the DA. The COs feel their training, safety vest, equipment, and the weaponry are a big deterrent to assaults. Also, staff searches inmates for weapons up to six times a day, as well as inmates' cells and the outside yards.



The non-sworn staff was asked if they thought some training in self-defense would be helpful. Some thought it would, but the majority did not agree, saying it would only give them a false sense of security and could escalate the situation. They feel treating inmates with respect and the spoken word is the best defense.

### **Budget and Morale Concerns**

All staff felt the current state budget cuts greatly affect morale and can affect safety. Many not only worry about pay cuts, but also the possibility of losing their jobs. Lay-off notices were given to 30% of clerical workers and 20% of maintenance workers. The supervisory staff is well aware of the low morale in the prison and is constantly thinking of ways to improve it.

The medical staff reports that with the mandatory furlough days<sup>2</sup>, patient scheduling is a “nightmare.” They are constantly short of staff and unable to give the medical care needed for the inmates. There is also a concern that furlough days will result in loss of staff due to reduced hours, resulting in the need to pay overtime to the remaining, already overworked, staff. For safety reasons, COs can work only a maximum of two overtime shifts in consecutive days. Because safety is the top priority, when staffing is short, programs are the first to be cut. The loss of programs leaves inmates confined in their cells with a lot of idle time, which creates tension in the prison. This is particularly hard on the instructors, who are evaluated on their performance, because they are not given the opportunity to achieve their goals.

As a result of litigation in federal court by inmates,<sup>3</sup> an independent medical receiver was appointed to oversee medical treatment in all CDCR prisons. The SVSP medical staff indicated that the pendulum had swung too far in favor of inmates, who now get better medical care than people on the outside. The staff believes that the current medical receiver is more fiscally responsible than his predecessor, although the attorneys for the inmates still wield a great deal of power. For example, when a doctor doesn’t feel that a prescription is warranted, the inmate patient can file a grievance to force the doctor to give a prescription. Staff feels there is a massive amount of manipulation in the system. They also feel that too many frivolous lawsuits are harming the prison system.

### **Safety of the Inmates**

All inmates interviewed were high security Level IV. All had been in the prison system for ten years or more and at SVSP for at least five years. Two out of the three inmates have no chance of parole. All felt safe in their cells and had no issues with the safety and security of the building. One inmate said to stay out of trouble, “*Keep busy, and mind your own business.*” More programs and vocational training would be helpful, but they understand that because of the state budget cuts this will not happen. To quote one inmate, “*I am in here because of my own actions, and I have to rehabilitate myself.*”

### **Toilets and Shower Facilities**

One inmate complained about the toilets and shower facilities. The toilet has a timer, allowing it to be flushed only twice every five minutes. If more flushes than that are attempted, the toilet will not operate and a plumber must reset it. This usually takes more than an hour. He also stated that during lockdowns the showers are not cleaned at all.

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<sup>2</sup> At the time of the investigation State employees were required to take three furlough days each month.

<sup>3</sup> For example, *Coleman v. Wilson* 912 F.Supp. 1282 (E.D. Cal. 1995) and *Plata v. Davis* 329 F.3d 1101 (9th Cir. 2003)

## **Threats and Attacks**

None of the inmates interviewed had ever been threatened or attacked at this prison. One inmate had been stabbed four times in another prison, and for that reason he was transferred to SVSP. He felt the medical care he received from those attacks was sufficient but gave an example of an inmate that had to wait a week to receive care for a broken arm. Inmates get very upset when they do not get prompt response to a medical problem. Since being at SVSP, he has not had any problems. He feels that there are never enough COs in the yard and reported up to a dozen fights a week. The inmates often try to divert the attention of the COs before starting fights. More careful background checks on the inmates, which he called ‘enemy checks,’ before placement would reduce the frequency of fights. Many of these attacks are associated with drugs and drug dealing.

Inmates send notes to COs warning of impending attacks on other inmates or staff. These are referred to as ‘kites’. When a kite is received, an immediate lockdown results and a thorough investigation is initiated before normal programming is resumed. Staff is cautious to preserve anonymity.

## **New Inmate Programing**

To assure safety and proper classification, newly arrived inmates are housed in an orientation center. The staff interviews them and reviews their custody point level, prior escape attempts, gang affiliations, and history of confrontation with other inmates. During these interviews, everything that the inmate says is taken very seriously. Inmates are also screened by DMH. This process usually takes from five to ten days.

## **Inmate Grievances**

Specific questions were asked about the grievance process. An inmate can file a grievance when he feels that his rights have been violated. The process is instituted within the prison, and, if not resolved on site, the grievance is then channeled through CDCR’s office in Sacramento. Each stage can take up to 30 days to complete.

Two out of the three inmates interviewed said that they would not file a grievance. One inmate thought the system worked ‘OK’ when he used it for a broken arm, but thinks it could be better. One suggestion would be to have a better tracking system. When an inmate files a grievance, he is supposed to get a log number to keep track of it. Some claim that they never receive one and, when they ask, are told they have to refile. This vicious circle results in no progress. One of the inmates felt that by using the process, an inmate could be considered a ‘snitch.’ Most agreed that, if an issue did come up, it usually could be resolved by either contacting the staff or by working it out amongst themselves.

## **Anonymity in Grand Jury Interviews**

The Grand Jury had planned to interview a number of inmates. The third inmate interviewed was noticeably nervous and uncomfortable. When asked for an explanation, staff stated that it is difficult to get Level IV inmates to talk because of the danger of being viewed by other inmates as a ‘snitch.’ After hearing this information and for the safety of the inmates, the Grand Jury decided to immediately cease interviewing the inmates.

Later, at the interviews conducted at Soledad Correctional Training Facility (CTF), the inmates were brought, with their entire files, to an isolated interview room for what appeared to the rest of

the prison population to be a parole hearing. This procedure protected their anonymity. Inmates interviewed at CTF did not display nervousness or discomfort.

## **Other Matters**

### **Visitor Parking**

The Grand Jury observed that the visitor parking on the outside of the prison constitutes a safety problem. Visitors spend the night parked on the shoulder of the freeway off-ramp, close to the train tracks. They park there in order to hold their place in line until the prison visitor parking lots open in the morning. The warden and his staff are aware of this problem and are working to create an appointment system. A follow-up conversation with the warden confirmed that this process is moving forward.



*Parking on the freeway off-ramp, railroad tracks are on the left*

### **Prescription Drug Saving Program**

While touring the pharmacy facility, the Grand Jury was made aware of an innovative, cost-saving prescription drug program. It is a method of recycling unused medication. Medication is

returned to the pharmacy in two ways. First, medication which is given to inmates in their cells for self-medication, but is not used, is returned. This medication, by law, cannot be re-administered. It is sent to Guaranteed Returns, a company which determines if the medication is potentially creditable or waste. Medication is sent to Guaranteed Returns monthly, for example over forty cartons were returned in August 2009. Second, medication which is administered by and is continuously within the sight of a nurse, but is not taken, is returned to the pharmacy for reuse.

Figures provided to the Grand Jury showed a savings of \$268,363 in July and \$263,239 in August from this reuse. At this rate, the savings for the year will be over three million dollars. This amount is returned to the state treasury. The pharmacist says the program is successful because the entire medical team is on board with the pharmacy's zero waste policy. This program is being instituted in other prisons in the state.

### **In-Cell Meal Service**

The Grand Jury received a complaint concerning the serving of cold meals to disabled inmates. The law requires that an inmate receive three meals a day, two of which shall be served hot.<sup>4</sup> If an inmate is disabled or mobility impaired, he is to be cell-fed. According to the complainant, meals are being served cold, electrically-heated carts are not being used, items are missing from trays and sack lunches, a pre-typed list of cell-fed inmates is not maintained and, in some extreme cases, cell-fed inmates do not receive meals at all. The Grand Jury contacted the warden and requested a meeting with him and the appropriate staff, an observation of the evening meal service, and interviews with inmates not pre-selected by prison staff.

On the day of the Grand Jury's visit Facility A was on modified lock-down. During lock-downs, all inmates are cell-fed. The Grand Jury initially met with the staff and reviewed the complaints. The staff explained the cell-feeding process. They also explained that the large electric carts are used for keeping trays of bulk food warm, not for single inmate feeding. The food temperature is maintained between 140 and 190 degrees. The Grand Jury inquired about the pre-typed list for feeding disabled inmates. The staff stated there is no such requirement. Although the staff did not provide the Grand Jury with the exact number of cell-fed inmates, the estimate they gave was far below the number stated in the complaint.

The staff stated that when an inmate receives a sack lunch, the inmate checks to make sure all the items are included. If items are missing, the situation is brought to the attention of the CO, and the missing items are provided. The staff adamantly denied the allegation that the more popular foods are sometimes missing. The staff also denied that there were any occasions in which an inmate received no food at all.

The Grand Jury observed the serving of the evening meal. All food was warm to hot. Due to sanitary precautions, observation had to be made from a distance. The staff produced a chart on which is recorded the temperature of both hot and cold food. The temperature of the food is checked hourly and was well within proper temperature range. The menu for inmates is created and monitored by a dietitian. The total calories per day range from 2,200 to 2,800. The meals are slow cooked, and are low in salt, making them acceptable for most inmates. Inmates do not get special diets unless they are at the medical facility or under the care of a doctor. However, inmates with diabetes get an additional snack to control their blood sugar.

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<sup>4</sup>Title 15, California Code of Regulations section 3050 (a) (2)

The Grand Jury interviewed approximately 15 inmates and asked them the following questions: How is the food? Is it served hot? Are there items missing from trays and sack lunches? Both able and disabled inmates were interviewed. The complainant interviewed stated that the food was never hot and that the hot carts were never plugged in. Two inmates in the same cell variously replied that the food was cold and hot. The majority of the inmates said the meals were warm, not hot, especially the breakfasts. One inmate, who had liver disease, and another with Crohn's disease felt they should have special diets. Others complained that the produce was warm and usually wilted. One inmate, who had filed a grievance about substandard produce, showed a member of the Grand Jury his plate of wilted lettuce. The inmates stated sometimes there are items missing from their sack lunches, which are not always replaced. A Grand Jury member asked if the inmates check their sacks when they receive them. The inmates stated they do not know at the time of pick up what is supposed to be in the lunch, because the menu is posted in a different area. When the inmates discover shortages and complain, the COs do not fix the problem.

As a follow-up note to this report, a post-visit letter was received from the complainant. He stated, because of the lock-down, the Grand Jury did not get an accurate picture of how disabled inmates are cell-fed. Due to time constraints, the Grand Jury could not continue to investigate.

## **FINDINGS OF THE INVESTIGATION**

- F5.1.** The prison is adequately secured against escapes. The prison has a pursuit plan if an escape occurs.
- F5.2.** There has not been an escape from Salinas Valley State Prison. Five 'walkaways' have occurred; four were apprehended. The greatest risk of escapes is during transport to outside facilities.
- F5.3.** The prison is secure from those entering from the outside; however, cars are not searched for cell phones and other contraband because the gate house is not staffed.
- F5.4.** Cell phone use by inmates poses a serious threat to the safety and security of the prison.
- F5.5.** Over the last five years the combined number of assaults on inmates and staff have ranged from approximately 150 to 200 per year.
- F5.6.** Segregation of new inmates promotes safety.
- F5.7.** Salinas Valley State Prison provides exemplary medical care to inmates.
- F5.8.** The lack of a visitor appointment schedule leads to an unsafe parking situation outside the prison.
- F5.9.** Salinas Valley State Prison received a rating of 93% in the safety and security audit.
- F5.10.** The people working at Salinas Valley State Prison are adequately protected, have appropriate safety equipment, and receive proper orientation and on-going training.
- F5.11.** State budget cuts have resulted in a negative impact upon morale and may affect safety.

- F5.12.** More vocational and educational programs are needed for inmates.
- F5.13.** Even though Salinas Valley State Prison follows the state-mandated grievance process, inmate perception is that grievances fall through the cracks.
- F5.14.** The inmates incarcerated at Salinas Valley State Prison are adequately protected.
- F5.15.** The anonymity of inmates being interviewed by the Grand Jury could be better protected by employing the procedures used at Soledad Correctional Training Facility.
- F5.16.** Although it appears that disabled inmates generally receive hot meals, some inmates disagree. Occasionally there is food missing from the sack lunches.
- F5.17.** The generator is tested at the same predictable time each month.

## **COMMENDATIONS BY THE GRAND JURY**

The Grand Jury commends Salinas Valley State Prison warden and the entire staff for their dedication to protecting the public and inmates at the prison. The Grand Jury appreciates the openness and cooperation extended during the many interviews and visits.

The Grand Jury commends the warden and staff for receiving a score of 93% on its safety and security audit.

The Grand Jury commends the SVSP Pharmacy for its prescription drug cost-saving program.

## **RECOMMENDATIONS OF THE GRAND JURY**

- R5.1.** Continue the effort to prevent inmates from obtaining cell phones. Additionally, lobby the legislature to make it a felony for an inmate to possess and/or use a cell phone. [Related Findings: F5.3 and F5.4]
- R5.2.** Develop an appointment schedule for visitors to remedy the unsafe outside parking situation. [Related Finding: F5.8]
- R5.3.** Continue to work with staff to overcome the negative effects on morale resulting from the budget cuts. [Related Finding: F5.11]
- R5.4.** Add more vocational and educational programs when funding becomes available. [Related Finding: F5.12]
- R5.5.** Ensure that the established procedures in the grievance process are followed. [Related Finding: F5.13]
- R5.6.** Review and revise procedures to protect the anonymity of inmates being interviewed by the Grand Jury. [Related Finding: F5.15]
- R5.7.** Monitor the in-cell feeding process for inmates, especially the disabled, to ensure that inmates receive two hot meals per day. [Related Finding: F5.16]

- R5.8.** Post daily menus where they may be seen before inmates pick up their sack lunches, so that inmates can immediately identify and report missing items. [Related Finding: F5.16]
- R5.9.** Staff the gate house and search every vehicle coming into the prison complex for contraband. [Related Finding: F5.3]
- R5.10.** Randomize the monthly testing of the generator. [Related Finding: F5.17]

## **REQUIRED RESPONSES**

### **Warden of the Salinas Valley State Prison: All Findings and Recommendations**

Responses must comply with the following:

#### **CALIFORNIA PENAL CODE SECTION 933.05**

- (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:
- (1) The respondent agrees with the finding.
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:
- (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
  - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.



Subsequent to the writing of this report, but before its publication and issuance, the State Water Resources Control Board issued a cease and desist order requiring California American Water to reduce its pumping from the Carmel River. This amplifies the need to take the actions recommended in this report.

## WATER PROBLEMS IN MONTEREY COUNTY A LONG HISTORY OF INACTION

*“The water came in a thirty-year cycle. There would be five or six wet and wonderful years when there might be nineteen to twenty-five inches of rain, and the land would shout with grass. Then would come six or seven pretty good years of twelve to sixteen inches of rain. And then the dry years would come...”*

*“And it never failed that during the dry years the people forgot about the rich years, and during the wet years they lost all memory of the dry years. It was always that way.”*

— John Steinbeck, *East of Eden*, 1952

### PURPOSE OF THE INVESTIGATION

The 2009 Civil Grand Jury (Grand Jury) investigated water problems in Monterey County in order to inform the community about the status of available water resources in the county, proposed solutions to sustain the availability of water, and examples of the challenges confronting implementation of these solutions.



### SUMMARY

Water is critical to the economic and physical health of Monterey County. Water has forever been in short supply. Drop-in-the-bucket solutions, alone, are not enough.

Monterey County interest groups, agencies, and the public have not cooperated in solving the long-standing water shortages. Cooperation is crucial to the success of the multiple, integrated projects required to fix the problems. A joint powers authority is the best way to foster cooperation and provide a fair way of sharing power.

Monterey County is faced with over-pumping of the Carmel River, seawater intrusion, water contamination, and severe water shortages. Old, leaky distribution systems further aggravate the problem. Conservation and use of recycled water are only partial solutions.

Desalination is a key to making more water available. The Monterey Regional Water Supply Program is the most cost-effective and environmentally responsible of the desalination proposals. Monterey County must also have additional infrastructure for storage, distribution, and treatment.

Most voters have refused to approve investing money in large-scale, new projects. Some people complain that there is too much talk and not enough action. This must change!

## **BACKGROUND FOR THE INVESTIGATION**

A history of chronic water shortages in Monterey County includes over-pumping of the Carmel River, Pajaro Valley Groundwater Basin (Pajaro Basin), Salinas Valley Groundwater Basin (Salinas Basin), and Seaside Groundwater Basin (Seaside Basin), resulting in seawater intrusion and inadequate water supply. The full scope of water topics at the county and state level is complex. It was not possible to fully investigate water conditions in all parts of Monterey County. This report is current through September 2009.

## **INVESTIGATIVE METHODOLOGY**

- Interviews with the management of
  - Monterey County Water Resources Agency (MCWRA)
  - Marina Coast Water District (MCWD)
  - Monterey Peninsula Water Management District (MPWMD)
  - Monterey Regional Water Pollution Control Agency (MRWPCA)
  - California American Water (CalAm)
  - Pajaro Valley Water Management Agency (PVWMA)
  - Monterey County Farm Bureau
  - Pajaro/Sunny Mesa Community Services District
- Interviews with a member of the Monterey County Board of Supervisors (BOS), a member of the California Assembly, and a representative from LandWatch
- Attended public meetings held by the California Public Utilities Commission (PUC) focused on the Draft Environmental Impact Report (DEIR) as it pertained to three plans: Coastal Water Project (CWP) Moss Landing proposal, CWP North Marina proposal, and the Monterey Regional Water Supply Program (Regional Project), and at which other proposals and comments were discussed
- Attended a special meeting of the MRWPCA and the Ad Hoc Water Committee held in Seaside on July 9, 2009
- Attended a public meeting on north Monterey County water issues and solutions held in Castroville on July 29, 2009
- Visited the site of the Sand City desalination plant

- Toured MRWPCA facility
- Reviewed the Memorandum of Understanding (MOU) between the MCWD and MRWPCA; the two MOUs between MRWPCA, MCWD, and MCWRA
- Reviewed the Hybrid Regional Plan developed by LandWatch
- Reviewed letters to the editor and editorials of local newspapers on the subject of water in Monterey County
- Reviewed MCWD publications including *Water for Monterey County: Project Update*, June 2009 and the *Monterey Regional Water Supply Project (Phase 1 Project)*
- Researched desalination plants in California and other parts of the world
- Reviewed Monterey County Health Department web pages
- Reviewed web sites pertaining to Monterey County water issues, including Regional Water Project, [www.waterformontereycounty.org](http://www.waterformontereycounty.org)
- Reviewed previous 25 years of Monterey County Civil Grand Jury reports
- Researched water conservation in Monterey County
- Reviewed DEIR for California Coastal Water Projects
- Reviewed the Draft Cease and Desist Order, January 15, 2008, State Water Resources Control Board (SWRCB)
- Reviewed the ruling of Administrative Law Judge, issued July 21, 2009, delaying PUC decision until May 2010
- Reviewed testimony of witnesses at a PUC meetings
- Reviewed Water for Monterey County Coalition, “Draft Meeting Notes, Sixteenth Meeting,” August 6, 2008

## **INFORMATION GATHERED FROM THE INVESTIGATION**

### **Water Impact on Monterey County**

#### **Agriculture and Water**

The Salinas Valley is the most productive agricultural region in the world. Monterey County’s agriculture is a multi-billion dollar business, yielding 3.8 billion dollars in 2008, and with 42 crops that each produced a value of more than one million dollars. Although agriculture uses about 90% of the water in the Salinas Valley and 80% in north Monterey County, water usage has remained the same, while crop production has dramatically increased over the last 25 years. During droughts, for many crops, 30% less water means 30% less harvest. On August 7, 2009, due to drought conditions, the federal government declared Monterey County and other California counties agriculture disaster areas in order to provide low-cost loans to impacted farmers.

#### **North Monterey County Issues**

Portions of north Monterey County, such as Granite Ridge, are experiencing severe water shortages and serious water quality problems. Over 4,400 people in north Monterey County are affected by

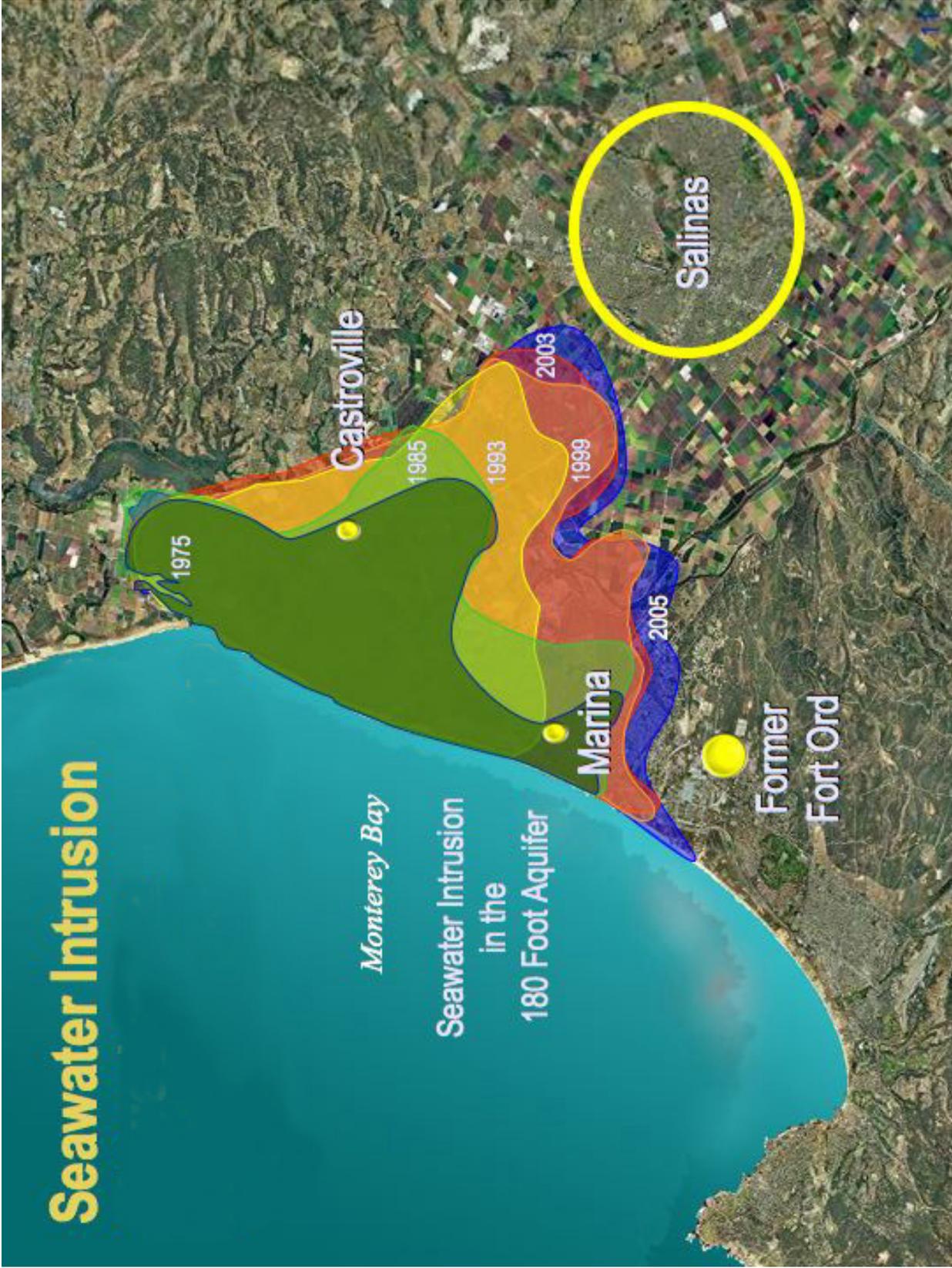


Diagram courtesy of Marina Coast Water District

contamination near or exceeding the maximum allowable levels of pollutants. This estimate is most likely understated because some residents do not report contamination in their private wells, due to concern that disclosure to the Monterey County Health Department could reduce their property values.

Because of the natural granite formation in the Granite Ridge area, arsenic levels exceed federal standards. Arsenic can lead to cancer, circulatory, and neurological damage. About 1,550 people are living in the area affected. Arsenic removal is difficult and requires a complex and costly treatment system run by certified professionals. Nitrates also exceed federal standards in at least 22 of the water systems in north Monterey County and can cause a wide variety of serious health problems.

Water systems serving over 100 users are monitored by the state. Smaller systems must periodically be monitored by the county. The water quality of single-connection wells is largely unregulated. Because of this, county reports do not include people at risk from single-connection wells.

As a result of poor water quality and quantity, some residents have potable water trucked in at a cost to them of approximately \$300/month, or they purchase bottled water. Some wells in north Monterey County are running dry. Homeowner insurance rates in north Monterey County have been increased due to the lack of an adequate and consistent water supply for fire suppression. The Health Department continues to urge support for a regional water system consolidation project to address water problems in the Granite Ridge area.

Not everyone in north Monterey County has water quality problems. There are water companies in north Monterey County that provide potable water to their customers. Each water company has a responsibility to provide a yearly Consumer Confidence Report to its customers stating the results of regular testing for harmful chemicals.

### **Storage**

Due to the seasonal availability of water, storage is an essential part of a solution to a year-round water supply. San Antonio and Nacimiento Reservoirs are the two primary reservoirs for Monterey County. The dams on the Carmel River are nearing the end of their useful lives. Some small storage facilities exist today for current water distributors, but not on a regional scale with reliable water distribution. The MRWPCA has storage ponds for treated wastewater. These existing facilities are not by themselves sufficient to meet Monterey County's storage needs.

### **Seawater Intrusion**

Seawater intrusion is the infiltration of salt water into fresh water aquifers. In Monterey County, seawater intrusion has been impacting domestic and agricultural water supplies for decades. Too much water has been pumped from the aquifers for agriculture and domestic use, causing seawater intrusion. The graphic on the previous page shows where seawater has intruded in the county.

### **Unaccounted for Water**

Unaccounted for water (UAW) occurs in water systems at an average rate of 10% nationwide<sup>1</sup>. CalAm has a local water loss rate that has grown from 11.2% in 2003 to 13.3% in 2007. When responding to a CalAm proposal for a rate increase, an administrative law judge recommended:

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<sup>1</sup> Sources of UAW include fire fighting flows, leaks, meter inaccuracies, and water thefts.

*“...an 8.5% allowance for unaccounted for water, which would represent a significant shift in Cal-Am’s operations and move Cal-Am much closer to the Monterey Peninsula Water Management District’s goal of 7%. While we agree that Cal-Am’s performance on unaccounted for water must improve significantly, moving from 11.59% to 8.5% is too sharp of a change. We find that 10% is the industry average, and we require that level as a significant improvement for the main Monterey system. The Bishop and Chular [sic] Subsystems are currently at 10%, so we will reduce these two systems to 9%. For other subsystems, which vary from 16.16% to 21%, we will require that Cal-Am improve the system operations to cut in half the difference between the subsystem current unaccounted for water level and the industry average of 10%.”<sup>2</sup>*

In summer 2009, CalAm started a program to reduce leaks. The plan includes replacing older pipes in CalAm’s local system, installing an acoustic monitoring system that detects leaks and sends alerts, and hiring consultants to analyze the current distribution system.

### **Tourism and Water**

Tourism in Monterey County in 2007 was a 2.1 billion dollar business. Hotels, restaurants, visitor-serving facilities, and special events need water. The hospitality industry has aggressively pursued water conservation: the Monterey Bay Aquarium has a small desalination plant; golf courses use recycled water; and hotels and restaurants conserve water, as well as promote water conservation. Even with these exemplary conservation levels, the Monterey Peninsula has inadequate supplies during a drought. Some proposals for hotels included small desalination plants, but were denied due to environmental concerns. Furthermore, a 1989 Monterey County ordinance requires that desalination plants be publicly owned.

### **History of Water in Monterey County**

Monterey County’s water crisis has been a frequent subject of inquiry and investigation by past civil grand juries. Within the last 20 years the MPWMD and its operations have been looked into by the 1989, 1990, 1991, 1992, 1998, 1999, 2002, and 2005 Civil Grand Juries. The activities and facilities of the MCWRA and its predecessor, the Monterey County Flood Control and Water Conservation District (MCFCWCD), were addressed by the 1990, 1991, 1994, 1998, and 1999 Civil Grand Juries. The problems of water shortages, lack of adequate storage capacity, seawater intrusion, and well water quality have been investigated over and over again, resulting in civil grand juries offering comments and suggestions relating to numerous water projects to a wide range of agencies and entities. Although there has been some genuine progress in analyzing and planning projects, all too often mere lip service has been paid to the findings and recommendations of past civil grand juries by the responding parties. The implementation of physical solutions to the problems remains conspicuously absent.

The 1991 Civil Grand Jury stated: *“Since the 1960s, there have been many studies on water in Monterey County, innumerable recommendations made, and millions of dollars spent, but not a single project has reached construction stage.”*

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<sup>2</sup> Quote from section 6.1.11 of May 7, 2009 published comment by Division of Ratepayers Advocates of the California Public Utilities Commission

As was noted in the 1992 Civil Grand Jury's report concerning MPWMD: "*Apparent lack of visible results during the 15-year life of the District have disenchanted the public, caused opposition to the District's collection of charges, and even raised demands for its abolishment....*"

More than a decade ago, the 1998 Civil Grand Jury put matters quite succinctly: "*Time is quickly running out for a solution to the water problem.*" The water problems have not improved since then, so the time for action is long overdue.

## **Early History**

The earliest known users of water in Monterey County were the Ohlone Indians.<sup>3</sup> The Ohlones planted and harvested only what they needed. They planted in desirable areas in such a manner that the same plants thrived from year to year in the same location. They did not control water, as would happen later; water was used for fishing, bathing, drinking, and ritual ceremonies. The Ohlone land management system worked for them and would be under-appreciated by Europeans.

The Spanish administration enforced strict water laws and set up a land classification system based on fresh water accessibility. The crux of Spanish policy was that water was for the common good. After the Mexican government took over in 1822, water policy remained unchanged and water continued to be strictly controlled.

Monterey's fresh water supply was seasonal. During the rainy season, water flowed in small creeks and brooks, the largest of which flowed into El Estero. In November 1792, Captain George Vancouver observed that the Presidio "...does not appear to be much benefited by its vicinity to fresh water, since in the dry season it must be brought from a considerable distance..."<sup>4</sup> Personnel garrisoned at the Presidio were assigned to import water until a network of open-air ditches to divert water could be constructed. As the population spiked, some of the finest agricultural land was granted to settlers. The American concept of Manifest Destiny would challenge and undermine the Spanish/Mexican values as the region transitioned into a society based on individual rights, including water ownership, and a cash-based economy. Water ownership and usage became an increasingly contentious issue as water shifted from communal to private control. Water was a commodity that would allow the region to expand economically and agriculturally.

Explosions in population and development have stretched Monterey County's water supply nearly to the breaking point. Today's water issues remain much the same as those that confronted the Spaniards but with the additional challenges of seawater intrusion and the introduction of pesticides and toxins into the water supply.

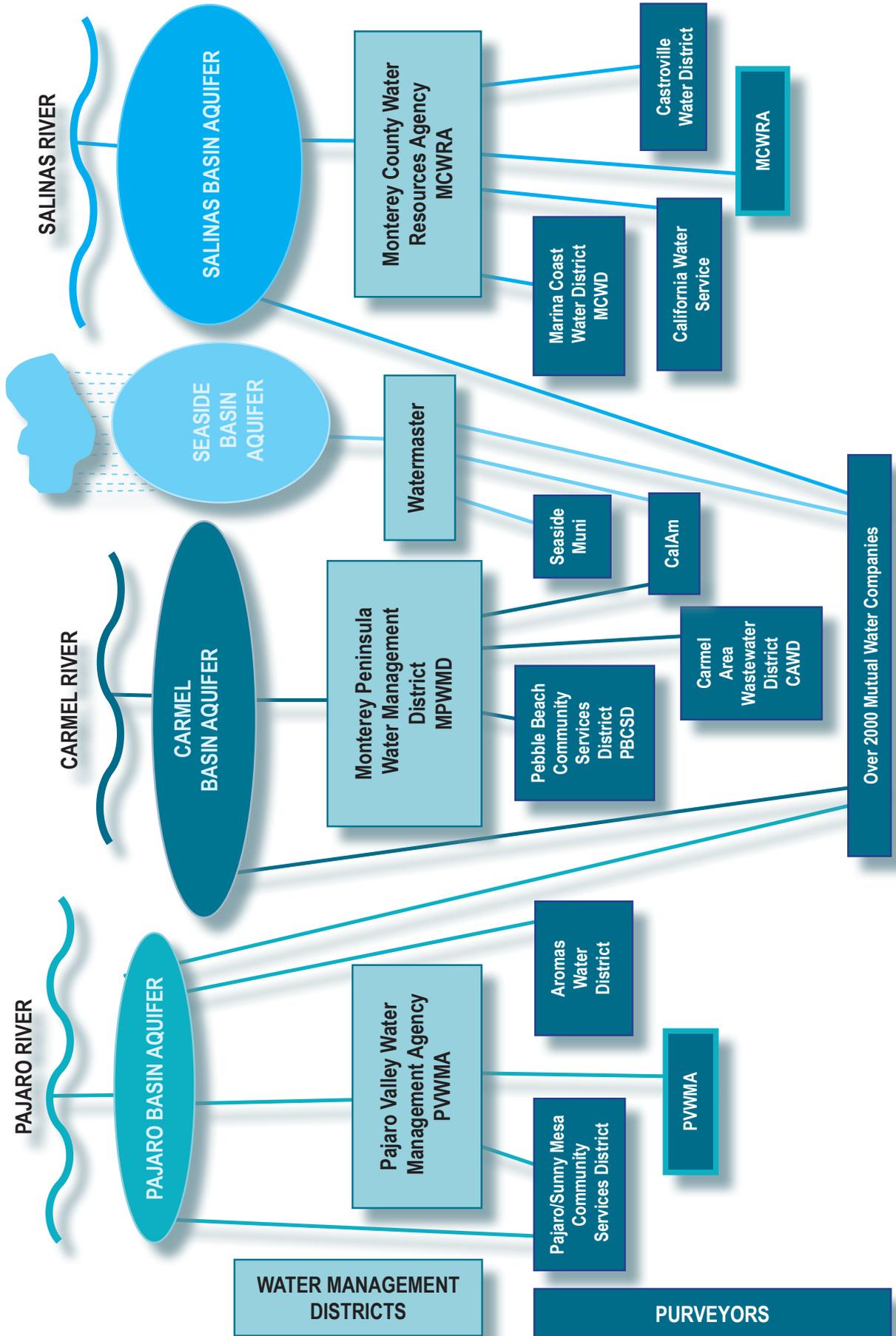
The population and demands on the water resources increased exponentially. The supply of water did not. The numerous water-governing agencies that were established in the twentieth century are described next.

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<sup>3</sup> See description of Ohlone Indians and early Spanish influence attached as Appendix A.

<sup>4</sup> Vancouver, George, *The Voyage of George Vancouver 1791-1795*

# MONTEREY COUNTY WATER WORKS



## **Monterey County Water Works**

### **Monterey County Water Resources Agency (MCWRA)**

The original owner/operator of the Nacimiento and San Antonio Reservoirs, MCFCWCD, was created by the State Legislature in 1947 (Chapter 699 of the Statutes of 1947). MCFCWCD was replaced by MCWRA in 1991. MCWRA and its predecessor agency have been attempting to satisfy the water needs of the Salinas Valley since 1948.

Seawater intrusion was first documented in the 1930s. The Nacimiento Reservoir was completed in 1957 with a lake storage capacity of 377,900 acre feet (AF). The San Antonio Reservoir was completed in 1967 with a lake storage capacity of 335,000 AF. The principal purpose of the reservoirs was to provide for flood control as well as to recharge the groundwater basin of the Salinas Valley, reducing the impact of pumping from coastal areas. However, the growth in agricultural water use outstripped the recharge capability and seawater intrusion remains a problem.

### **Monterey Regional Water Pollution Control Agency (MRWPCA)**

In the beginning, every community had its own sewage treatment plant. Most of the coastal communities were discharging into the bay — in some cases as little as 300 feet off shore. The Clean Water Act of 1972 effectively stopped that practice. Achieving cooperation among the communities was a challenge, because some were reluctant to participate. By the late 1980s all the coastal municipalities and agencies with sewage treatment responsibility were participants in MRWPCA.

Offering economies of scale and concentration of expertise, MRWPCA was created to operate one regional plant. The facility was funded by federal and state grants and is one of the largest sewage treatment installations in the world. MRWPCA not only treats sewage, but generates purified, treated recycled water that irrigates crops as a part of the MCWRA Castroville Seawater Intrusion Project (CSIP), discussed on page 72. The plant went on-line in 1989 to serve thirteen communities. A successful Joint Powers Authority (JPA) was created with eleven members: representatives from BOS, City of Salinas, Boronda County Sanitation District, Castroville Community Services District, City of Del Rey Oaks, City of Monterey, City of Pacific Grove, City of Sand City, City of Seaside, MCWD, Moss Landing County Sanitation District, and the U. S. Army as an ex-officio member. Each city appoints a member to the board, who is usually an elected official of that community.

JPA's, which include representation from affected areas, cross municipal boundaries to solve regional problems, taking advantage of economies of scale and efficiency. An added benefit of JPA's is enhanced funding opportunities. MRWPCA demonstrates the results that can be achieved when expertise, facilities, and expenses are pooled to solve a regional need in a cost-effective way. The consumer price index has risen faster than the infrequent MRWPCA rate increases. MRWPCA operates a world-class facility that serves as a model in its field.

In June 2000, MRWPCA entered into an 'Agreement for Assistance in Implementing a Grease Source Control Program' with the City of Pacific Grove to eliminate restaurant-related sewage spills that flowed into Monterey Bay. This pilot program was so successful that similar programs are now required throughout California.

The MRWPCA plant runs continuously. Current production is 22,000 acre feet per year (AFY), equivalent to 20 million gallons per day (MGD) with a maximum production of 33,000 AFY. However, production of recycled water is dependent upon the amount of influent received. Due to water conservation, inflows to the plant over the last decade have not increased, despite population growth.

Discharge is made through the MRWPCA's 2.5-mile long outfall pipe, built before Monterey Bay became a national marine sanctuary. The outfall pipe terminates in fingers, some of which are currently capped, and has a maximum capacity of 75 MGD.

### **Monterey Peninsula Water Management District (MPWMD)**

MPWMD was formed by the State Legislature in 1978 (Chapter 527 of the Statutes of 1977) and ratified by the public at the same time that Proposition 13 passed. It is a local agency with regional responsibilities. Its primary goal was to establish a regional water-rationing plan. A secondary goal was to augment the water supply to eliminate the need for future water rationing.

### **California American Water (CalAm)**

Monterey Peninsula water comes from two sources. Three-quarters of CalAm's water comes from wells along the Carmel River; one-fourth of the water is pumped from coastal wells drawing from the Seaside Basin. CalAm distributes 85% of the Monterey Peninsula's water; the other 15% is distributed through privately owned wells and small water purveyors. On the Monterey Peninsula, domestic use accounts for 95% of CalAm's delivered water.

The San Clemente Dam on the Carmel River was built in 1921 to serve the Carmel River watershed, surrounding communities, and the Hotel Del Monte. The dam originally diverted 55% of the Carmel River and held 1,425 AF. It now holds less than 125 AF because of silt buildup.<sup>5</sup>



*San Clemente Dam*

<sup>5</sup> [www.scc.ca.gov/webmaster/ftp/pdf/sccbb/0809bb/0809Board03A\\_San\\_Clemente\\_Dam\\_Removal\\_Ex2.pdf](http://www.scc.ca.gov/webmaster/ftp/pdf/sccbb/0809bb/0809Board03A_San_Clemente_Dam_Removal_Ex2.pdf)

San Clemente Dam is accumulating new silt at a rate of 16.5 AFY according to an Environmental Impact Report prepared for the California Department of Water Resources in January 2008.<sup>6</sup> The dam has been deemed unsafe because of the potential for earthquake damage, causing mudflow down the Carmel River Valley. CalAm proposed two projects to make the dam safe: put more concrete in front of the dam at a cost of 50 million dollars, or divert the river at a cost of 80 million dollars. Consideration was not given to dredging the reservoir as it is prohibitively expensive to move two million cubic yards of sediment. CalAm originally offered 50 million dollars to the state and federal governments to fix the problem; however, nothing was done by the government agencies. CalAm is reconsidering its options.

The Los Padres Dam was built in 1949 to hold 3,000 AF for use by the sardine canning industry. Over the years this reservoir has become inundated with silt. Various sources estimated that the remaining capacity is under 1,200 AF.

The Carmel River's average unimpaired flow is approximately 70,000 AFY. The highest flow rate occurs from November to April. In 1983, the annual flow was measured at 321,000 AF. In 1977, the driest year, flow was recorded at 3,000 AF. Because of the lack of storage, high flows cannot be captured. Voters have been unwilling to pay for construction of new storage facilities, such as reservoirs.

#### **Seaside Groundwater Basin Watermaster (Watermaster)**

The Seaside Basin storage capacity is approximately 50,000 AF and, so far, has no seawater intrusion. Underlying the Seaside Basin is an impervious shelf that goes one mile out from the shore under the sea floor. The Seaside Groundwater Basin Watermaster (Watermaster) is charged with determining the water rights within the Seaside Basin, studying the basin's storage capacity, and monitoring for seawater intrusion. The Watermaster has a nine member board: MPWMD has two votes; CalAm has two votes; Seaside, Sand City, Monterey, Monterey County, and Del Rey Oaks have one vote each. Pumping must be reduced to match the yearly rainfall recharge rate of 3,000 AFY. The purveyors were pumping 5,600 AFY. The two largest purveyors, CalAm and Seaside Municipal Water System (Seaside Muni), must bear the reduction. Users of small, independent wells have a right to use the water with no reduction.

#### **Marina Coast Water District (MCWD)**

MCWD was formed in 1960 to provide water to residents within the then existing Marina Fire District boundaries. In 2001, the U. S. Army transferred its Fort Ord water and wastewater systems to MCWD. The Marina and Ord Community water systems were connected by August 2005. The primary source of Marina water is from wells located in the Salinas Basin. The groundwater from these wells is treated to ensure safe water quality.

#### **Pajaro Valley Water Management Agency (PVWMA)**

In 1984, the state established a special district of 110 square miles overseen by the PVWMA. The Pajaro River flows from Gilroy to Monterey Bay, and the Pajaro Basin geography includes parts of Monterey, San Benito, Santa Clara, and Santa Cruz counties. The goals of PVWMA are to supply groundwater for agricultural use and stop seawater intrusion.

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<sup>6</sup> [www.sjd.water.ca.gov/publications/env\\_science/sanclemente/volume1.pdf](http://www.sjd.water.ca.gov/publications/env_science/sanclemente/volume1.pdf)

As a result of a settlement in a case challenging the propriety of its assessments under Proposition 218, PVWMA lost half of its funding. The water charge of \$160/AF was reduced to \$80/AF, and PVWMA was required to refund 13 million dollars. Because of the restrictions of Proposition 218, PVWMA cannot solve its funding issues by implementing a countywide tax. The coastal wells of the Pajaro Basin are experiencing seawater intrusion. Agriculture on the coast would benefit from a project that limited or eliminated seawater intrusion. However, inland farmers feel they would not benefit from such a project because their wells are not contaminated, and so they cannot be assessed and would be unlikely to approve a new tax.

### **Other Participants**

Other participants in the system are the numerous purveyors. The major water suppliers in the Salinas Valley are MCWD, Castroville Water District, California Water Service, and MCWRA (a management district and a purveyor of enormous amounts of water to Salinas Valley agriculture). The main purveyors of the Seaside Basin are CalAm and Seaside Municipal Water System (Seaside Muni). The major purveyors serving the Monterey Peninsula are CalAm, Pebble Beach Community Services District (PBCSD), and Carmel Area Wastewater District (CAWD). The Pajaro Basin purveyors are: Pajaro/Sunny Mesa Community Services District, Aromas, and PVWMD. Further, there are over 2000 mutual (i.e., private) water companies that distribute water to households, commercial entities, and agriculture in Monterey County.

### **Proposed and Current Water Activities**

Multiple projects and activities play a role in providing water to agriculture, tourism, businesses, and residents in a sustainable way. California's recurring drought emergencies require that we attack the problems in every way possible to manage water resources. Some projects are operational, others are underway, and others are still in a planning phase.

In 1995, the State Water Resources Control Board (SWRCB) became concerned with the over-pumping of the Carmel River, and issued Order 95-10 to CalAm to limit pumping of the Carmel River. By May 2008, the SWRCB was not satisfied with progress, and issued a draft cease-and-desist order to CalAm to accelerate the reduction of pumping.

### **California Coastal Water Projects**

Three significant proposals have been developed and submitted to the PUC under the category of coastal water projects.<sup>7</sup> Of these, CalAm developed two, and another was developed by a coalition of local water agencies:

1. CalAm's Coastal Water Project (CWP) Moss Landing: 11,000 AFY desalination plant using the existing outfall pipe from the Moss Landing Power Plant
2. CalAm's CWP North Marina: 12,500 AFY desalination plant using new facilities, including slant wells at North Marina
3. Monterey Regional Water Supply Program (Regional Project): 10,000 AFY desalination plant with other components that would supply a total of 15,200 AFY

Desalination refers to any of several processes that remove excess salt and other minerals from water for human consumption or irrigation. Today, many successful desalination plants exist

<sup>7</sup> [www.cwp-eir.com/docs.html](http://www.cwp-eir.com/docs.html)

around the world, including several in California. Where other potable water sources are not available, desalinated water can increase the supply of water for residents, tourists, business, and agriculture. Most of the modern interest in desalination is focused on developing cost-effective ways of providing fresh water for domestic use in regions where the availability of fresh water is limited. Although desalinated water is expensive because of the additional processing and energy needed, more California coastal locations are investing in desalination projects to augment water supplies.

#### **CWP Moss Landing**

Responsible Agency: **CalAm**

Status: **Planning**

CalAm proposed an 11,000 AFY desalination plant adjacent to the existing Moss Landing Power Plant with open-water intakes. The discharged brine would be mixed with the cooling plant water and exit via the existing outfall pipeline, which extends 1,000 feet off shore. Two aboveground tanks will hold 1.5 million gallons each. The desalinated water would be stored in the Terminal Reservoir (steel storage tank), which would also be a receiving point for the Aquifer Storage and Recovery (ASR) water. ASR is discussed further on page 71.

#### **CWP North Marina**

Responsible Agency: **CalAm**

Status: **Planning**

CalAm's other proposal calls for a new 12,500 AFY desalination plant at North Marina on a 200-acre parcel adjacent to the MRWPCA's facility. The intake water would come from a series of slant wells extending beneath the beach at Reservation Road. Six wells would be drilled at a 20-degree angle off horizontal, providing a maximum intake flow of approximately 3,000 gallons per minute (GPM) per well. Brine would be discharged into the MRWPCA outfall pipe, which extends approximately 2.5 miles off shore. The Terminal Reservoir and ASR facilities are the same as those described in the CWP Moss Landing Plant project.

#### **Monterey Regional Water Supply Program (Regional Project)**

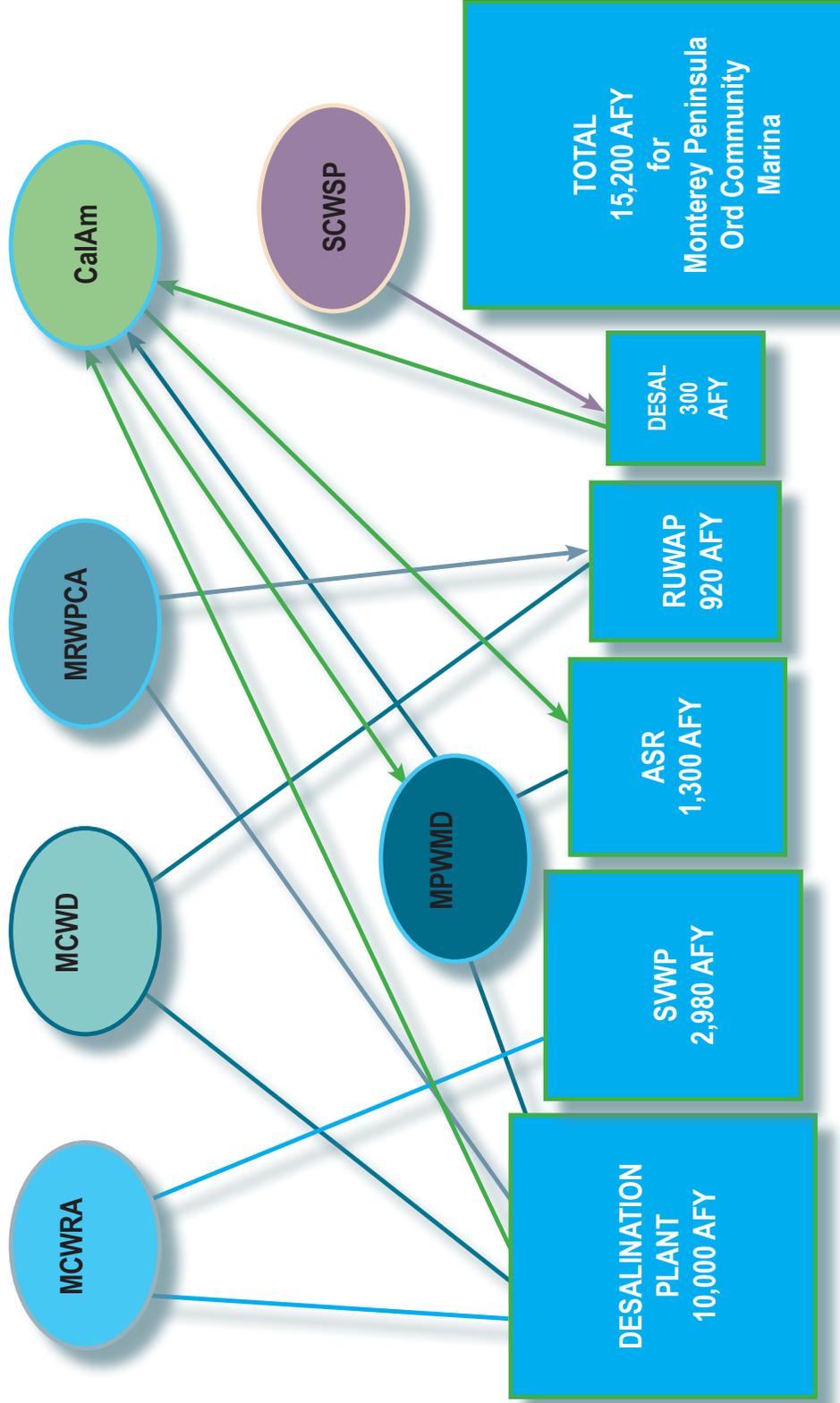
Responsible Agency: **MCWD, MCWRA, MRWPCA**

Status: **Planning**

A third proposal, called the Regional Project was developed by MCWD, working with MCWRA, MRWPCA, and a coalition of local cities and agencies. The Regional Project will be implemented in two phases. The initial phase includes a new, publicly owned, expandable desalination plant producing 10,000 AFY of potable water from seawater and brackish water. The Regional Project includes some components that have been approved and are already underway by local agencies:

- Regional Urban Wastewater Augmentation Project (RUWAP) — 920 AFY
- ASR — 1,300 AFY
- Salinas Valley Water Project (SVWP) — 2,980 AFY
- Sand City Water Supply Project — 300 AFY

# THE REGIONAL PROJECT



**AGENCIES:** MCWRA = Monterey County Water Resources Agency; MCWD = Marina Coast Water District; MPWMD = Monterey Peninsula Water Management District; MRWPCA = Monterey Regional Water Pollution Control Agency; CalAm = California American Water

**PROJECTS:** SWWP = Salinas Valley Water Project; ASR = Aquifer Storage and Recovery; RUWAP = Regional Urban Wastewater Augmentation Project; SCWSP = Sand City Water Supply Project;

This total of 15,200 AFY<sup>8</sup> will meet the immediate needs of the Monterey Peninsula, the Ord Community, and Marina.

The second phase of the Regional Project would extend water delivery to Moss Landing, Castroville, and unincorporated areas of north Monterey County and could include:

- Local cisterns and percolation ponds supplying 200 AFY
- Additional wells in north Monterey County to tap high quality, low cost water from the Salinas Basin — 5,900 AFY
- Expansion of the Phase 1 SVWP — 2,000 AFY
- Expansion of the Phase 1 desalination facility — 4,400 AFY



*Illustration courtesy of Marina Coast Water District*

<sup>8</sup> Includes 10,000 AFY desalination plant

- Groundwater replenishment of the Seaside Basin with advanced treated (reverse osmosis) recycled water and Salinas industrial wastewater — up to 6,700 AFY
- Expansion of the Phase 1 RUWAP project — up to 3,000 AFY
- Expansion of the Castroville Seawater Intrusion Project (CSIP) — up to 9,000 AFY

Other aspects of the program are ongoing conservation, storm water reuse in the City of Pacific Grove, and drilling a new well to provide water to the Prunedale area. The final selection of Phase Two components and capacities will be determined after additional evaluation of cost-effectiveness, technical and implementation issues, and environmental impacts.

The Regional Project will use the existing 2.5-mile outfall pipeline jointly operated by MCWD and MRWPCA. Because this project will consume significant energy, there are a number of proposals to obtain renewable energy supplies:

- Monterey Regional Waste Management District’s cogeneration system powered by land-fill gas, e.g. methane (existing)
- Nacimiento hydroelectric (existing)
- Biomass to energy power plant (proposed)
- Solar power (proposed)
- Wind turbines (proposed)

Commenting to the PUC on the relative economic merits of the three coastal water project proposals, an expert stated:

*“...the Regional alternative appears to be preferable to the other alternatives in several important respects. ...1) the least-cost supply source to meet existing and expected regional water demand; 2) the most environmentally attractive new water supply; and 3) the most reliable new water supply.”*<sup>9</sup>

The testimony characterized the Regional Project as the most cost-effective water source, because it takes advantage of economies of scale. It will be less costly to build a single desalination facility that is sized for regional demands rather than constructing multiple, smaller facilities.

*“...the Regional alternative’s annualized costs are one million, three hundred thousand dollars lower than the North Marina project and one million, nine hundred thousand dollars lower than the Moss Landing project... assuming the same production levels (10,500 AFY).”*<sup>10</sup>

When asked about the environmental aspects, further reference was made to the DEIR, which found both the CWP North Marina and the Regional Project superior to the CWP Moss Landing proposal. The Regional Project can be built more quickly than the North Marina plant, resulting in earlier reductions in CalAm’s draw from the Carmel River and overdraft of the Seaside Basin and additional environmental benefits.

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<sup>9</sup> Revised Direct Testimony to the PUC, August 20, 2009

<sup>10</sup> Ibid.

*“The need to meet a regional demand for water makes a regional facility attractive because of the opportunity to optimize regional water supplies. The Regional alternative also presents the potential for reduced environmental impacts, more rapid completion, and reduced transaction costs.”<sup>11</sup>*

### **Regional Urban Wastewater Augmentation Project (RUWAP)**

Responsible Agencies: **MRWPCA and MCWD**

Status: **Planning**

If implemented, RUWAP will be a joint project between MRWPCA and MCWD to provide additional infrastructure for distributing recycled water to golf courses and other appropriate uses, which will reduce demand for potable water in the areas served by those agencies.

### **Aquifer Storage and Recovery (ASR)**

Responsible Agency: **MPWMD and CalAm**

Status: **Underway**

This system takes water from the Carmel River in high flow winter months, and injects it into the Seaside Basin for temporary storage until needed during dry months. ASR is a key component of the Regional Project and the two CalAm CWP proposals. ASR technology has been successfully proven for safe storage of water in the United States and Australia. The dual-purpose pumps can inject or recover water. The wells have been installed and tested. When the CalAm pipeline from the Carmel River is completed, the wells will pump up to 3,000 gallons per minute. The water will be treated at the CalAm facilities before entering the aquifer.

### **Salinas Valley Water Project (SVWP)**

Responsible Agency: **MCWRA**

Status: **Underway**

The goal of this project is to stem seawater intrusion into the Salinas Basin, to restore a proper hydrological balance, and to provide flood protection. The SVWP consists of two physical components. Modification of the spillway at Nacimiento Dam to allow greater control of water release has been completed. Construction of the Salinas River Diversion Facility (SRDF) is near completion. The SRDF is a sturdy, inflatable rubber dam that will regulate river flows in the Salinas River channel, enhance percolation, and eventually supply river water to the Salinas Valley Reclamation Plant (SVRP) for blending with purified recycled water. Water will be delivered to agricultural users via CSIP (see below) pipes.

### **Sand City Desalination Plant**

Responsible Agency: **MPWMD and CalAm**

Status: **Underway**

This plant may produce 300 AFY using the reverse osmosis desalination technique. It is scheduled to go online in October 2009, operated by CalAm. Sand City's current needs are 94 AFY. In the short-term, CalAm will use the excess capacity to offset its overdraft of the Carmel River.

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<sup>11</sup> Ibid.

Eventually, as development and redevelopment occur in Sand City, the excess capacity will no longer be available to offset CalAm's overdraft.

**Castroville Seawater Intrusion Project and Salinas Valley Reclamation Plant (CSIP/SVRP)**

Responsible Agency: **MRWPCA and MCWRA**

Status: **Complete**

These two interrelated water recycling and distribution projects were both developed in 1998. They currently distribute a blend of recycled water and local groundwater to approximately 12,000 acres of agricultural land surrounding Castroville. The SVRP, a tertiary part of the regional treatment plant, has processed over 123,000 AF of water. The treated water is distributed through CSIP. Each water user in the CSIP system can regulate the flow of delivered water. The system also allows metering of the volume of water used at each site.



*Irregated Salinas Valley crops*

### **The Granite Ridge Water Supply Project**

Responsible Agency: **MCWRA**

Status: **Planning**

The project would include construction of two wells in the vicinity of Manzanita Park to provide water to local residents. The July 2009 plans include a looped pipeline that would deliver potable water from the wells to adversely impacted neighborhoods along the following roads: San Miguel Canyon, Echo Valley, Tustin, Moro, Valle Pacifico, and Langley Canyon.

The anticipated project cost is 27 million dollars. Homeowners served by the project would be assessed for half the cost, or \$800 yearly for about 27 years. Further progress is on hold until state or federal grant funding is received.

### **Pajaro Valley Water Treatment Facility**

Responsible Agency: **PVWMA**

Status: **Complete**

A recycled water project was recently completed for 92 million dollars, funded by state grants. This facility provides 4,000 AFY of treated, recycled water for irrigation and groundwater replenishment to customers of the PVWMA. The current overdraft of the Pajaro Basin is 25,000 to 30,000 AFY. Agriculture uses about 80% of the water. The objective of this facility is to reduce the overdraft in order to help stem seawater intrusion.

### **Monterey Peninsula Groundwater Replenishment Project**

Responsible Agency: **MRWPCA**

Status: **Planning**

The Monterey Peninsula Groundwater Replenishment Project is still in the concept phase. The objective of this project is to store excess water from MRWPCA's tertiary treatment plant by percolation into the Seaside Basin.

### **Conservation**

Responsible Agency: **All residents of Monterey County**

Status: **Ongoing**

In the short term, water conservation on the Monterey Peninsula has contributed positively to the water supply. Monterey Peninsula residents use an average 70 gallons per person per day compared to the overall California rate of 192 gallons per person per day. In addition to low-flow faucets, shower heads, toilets, and energy-efficient appliances; drip irrigation, cisterns, and xeriscape landscaping also conserve water. Agriculture, a primary Monterey County industry, conserves by using drip irrigation.

# Regional Project Provides Needed Water at Lower Cost

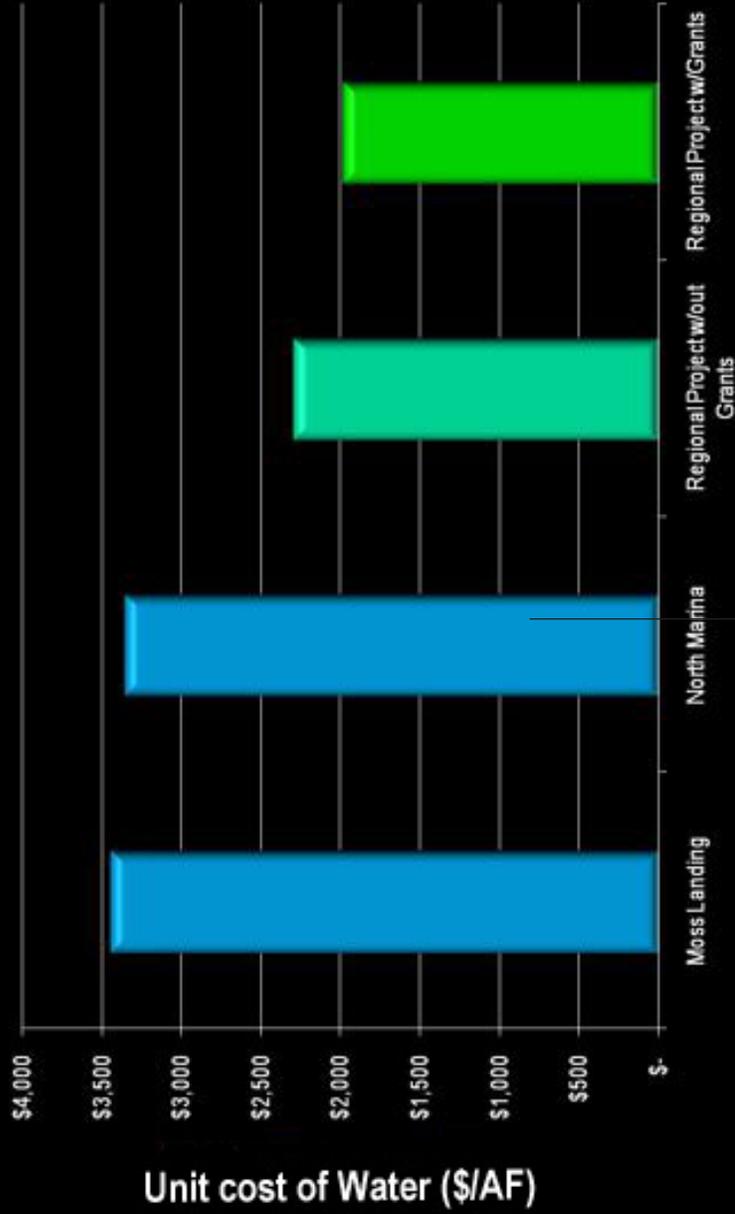


Chart courtesy of Marina Coast Water District

## Costs and Consequences

### Water Costs

New water projects will increase the cost of water. The public perception in some areas is that there is an unlimited supply of water. Satisfying Monterey County's demand for water will increase costs for those served by the projects. Competition for water is becoming critical and environmental degradation is serious. In the past, the public has refused to invest enough money to build adequate new facilities.

Profit to shareholders is not part of the customer costs for water from publicly owned facilities. The Regional Project will also benefit from lower operating costs because of its use of renewable energy.

### Inaction Today Leads to Decades of Delay

Water projects take decades to complete, given the competing public and private interests and multiplicity of agencies and processes involved. The urgent need for a prompt decision was made evident through the following statements made by an administrative law judge and residents who attended public meetings:

- *"We are cognizant both of the need to move forward with all deliberate speed and to ensure that we have a complete record in order to resolve this complex proceeding [of choosing the best water project proposal]."*<sup>12</sup>
- *"We need to avoid the Groundhog Day<sup>13</sup> syndrome" where solutions are proposed, evaluated, and decisions drag on for years, and "nothing gets done."*<sup>14</sup>
- At the June PUC meeting another Pacific Grove resident pleaded not to have her grandchildren experience the 1977 drought cycle, when citizens reused bath water for multiple baths and then for priming toilet flushes.
- At the July 29 Water Summit meeting in Castroville attended by 120 north Monterey County water users, a 73 year-old resident who has followed water issues for years, stated *"I'm hearing the same thing 'It's happening' and 'we're taking care of it,' but nothing gets done."*

## FINDINGS OF THE INVESTIGATION

**F6.1.** An effective solution can be provided only through implementation of multiple, integrated projects. Monterey County water users, purveyors, and regulatory agencies need to cooperate in water supply projects, in water recycling efforts, and in water conservation programs to create and preserve a sufficient supply of water.

**F6.2.** Joint Powers Authorities have demonstrated effectiveness in solving regional problems.

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<sup>12</sup> Comments by an administrative law judge and commissioner at July 24, 2009 San Francisco meeting

<sup>13</sup> 1993 movie "Groundhog Day," in which the protagonist is doomed to live the same day over and over

<sup>14</sup> By Pacific Grove resident at the June 2009 PUC public comment meeting in Monterey

- F6.3.** Additional infrastructure for distributing recycled water will free potable water for other uses.
- F6.4.** Monterey County’s water supply, derived exclusively from local sources, is completely independent from the California state water delivery system. Having a sufficient supply of local water available year-round is critical to the long-term economic viability of Monterey County’s agriculture, tourism, and industries, and the welfare of residents.
- F6.5.** There is currently not enough water storage to allow the capture of excess winter flow for use during dry periods.
- F6.6.** Seawater intrusion threatens domestic and agricultural water supplies.
- F6.7.** There are three significant desalination proposals under consideration by the California Public Utilities Commission. The Regional Project can achieve the most benefit, at the lowest cost, with the fewest environmental impacts.
- F6.8.** Over pumping of the Carmel River must eventually cease in order to comply with State Water Resources Control Board Order 95-10.
- F6.9.** Monterey County is faced with areas in which water contaminants exceed federal guidelines and areas plagued by severe water shortages.
- F6.10.** Citizens of Monterey County have expressed concerns that the water organizations continue to talk, analyze, and propose, but very little actually gets accomplished. *“There’s been too much talk and not enough action.”*<sup>15</sup>
- F6.11.** Current rates of leakage from CalAm’s distribution systems exceed State averages and contribute to the water shortage problem.

## **RECOMMENDATIONS OF THE GRAND JURY**

- R6.1.** Water agencies must do all that they can to expedite a decision by the California Public Utilities Commission for implementation of the Regional Project to address water supply, storage, and seawater intrusion problems. [Related Findings: F6.1, F6.5 – F6.8, and F6.10]
- R6.2.** Form a Joint Powers Authority composed of appropriate Monterey County entities to manage the Regional Project. [Related Findings: F6.1 and F6.2]
- R6.3.** Develop additional water storage capacity sufficient to provide a safe year-round supply of water for Monterey County. [Related Findings: F6.4, F6.5, and F6.8]
- R6.4.** Implement the Regional Urban Wastewater Augmentation Project to provide additional recycled water for use on golf courses and public landscaping. [Related Findings: F6.1 and F6.3]

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<sup>15</sup> Expressed at the July 13 PUC meeting in Monterey for public comment on the coastal water proposals

- R6.5.** Develop a water distribution system for north Monterey County. Although north Monterey County is not part of the initial phase of the Regional Project, we urge coordination of regional solutions to provide a basic reliable infrastructure in the near future. [Related Findings: F6.1, F6.4, F6.6, F6.9, and F6.10]
- R6.6.** The approved project should be constructed as rapidly as possible once the California Public Utilities Commission has made its decision. [Related Findings: F6.1, F6.8, and F6.10]
- R6.7.** Monterey County water purveyors must inspect, maintain, and repair water pipeline distribution systems so that the rate of unaccounted water is brought down to or below the national average. [Related Finding: F6.11]

## **REQUIRED RESPONSES**

### **Monterey County Board of Supervisors:**

Findings: F6.1 – F6.10

Recommendations: R6.1 – R6.6

### **Marina Coast Water District:**

Findings: F6.1 – F6.2, F6.4 – F6.8, and F6.10

Recommendations: R6.1 – R6.3, and R6.6

### **Monterey Peninsula Water Management District:**

Findings: F6.1, F6.2, F6.4 – F6.8, F6.10, and F6.11

Recommendations: R6.1 – R6.4, R6.6, and R6.7

### **Monterey Regional Waste Management District:**

Finding: F6.7

### **Monterey Regional Water Pollution Control Agency:**

Findings: F6.1 – F6.7, and F6.10

Recommendations: R6.1 – R6.5, and R6.6

### **Pajaro Valley Water Management Agency:**

Findings: F6.1, F6.2, F6.4 – F6.6, F6.9, and F6.10

Recommendations: R6.1 – R6.3, R6.5, and R6.6

### **City Council of Sand City:**

Findings: F6.1, F6.2, F6.4 – F6.8, and F6.10

Recommendations: R6.1 – R6.3, and R6.6

### **Pajaro/Sunny Mesa Community Services District:**

Findings: F6.1, F6.2, F6.4 – F6.10

Recommendations: R6.1 – R6.3, R6.5, and R6.6

### **City Council of Seaside**

with regard to

#### **Seaside Municipal Water System:**

Findings: F6.1, F6.4 – F6.6, and F6.8

Recommendations: F6.1 and F6.3

Responses must comply with the following:

### CALIFORNIA PENAL CODE SECTION 933.05

- (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:
  - 1) The respondent agrees with the finding.
  - 2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - 1) The recommendation has been implemented, with a summary regarding the implemented action.
  - 2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - 3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
  - 4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

### **REQUESTED RESPONSES**

#### **California American Water:**

Findings: F6.1, F6.4 – F6.8, F6.10, and F6.11

Recommendations: R6.1, R6.3, R6.6, and R6.7

## APPENDIX A: EARLY HISTORY

### The Ohlone

According to Ohlone legend, water covered everything except the top of the highest mountain. Eagle wanted more land and varieties of life forms. He plucked a feather from his head and gave it to Hawk asking him to dive as deeply as he could into the water to find Earth. As Hawk dove, the feather grew in length until he found Earth. When he returned to the mountaintop, the weather changed and the water receded. For millennia prior to the arrival of Europeans in the New World, native peoples planted and harvested only what they needed and replaced what had been used. They planted in desirable areas in such a manner that the same plants thrived from year to year in the same location. They did not control water, as would happen later; water was used for fishing, bathing, drinking, and ritual ceremonies. The indigenous people were semi-nomadic; they maintained permanent villages where the elderly and others, who were unable to migrate, remained behind while those individuals able to migrate were ordered to do so during the hunting/gathering season. The Ohlone land management system worked for them and would be underappreciated by Europeans.

### The Spanish Era

The Spanish arrived by overland and established missions at locations approximately one day's journey by horseback along the route of the original El Camino Real (present day Highway 101). They established presidios at four locations along the coast with suitable harbors, one of which was Monterey. They settled in areas near rivers and streams with abundant plant life. These areas were already populated by indigenous peoples whom they could, hopefully, convert to Christianity and conscript into their labor force. Due to flood/drought cycles, some settlements had to move, as was the case of San Carlos Borromeo's relocation from the Monterey Presidio to some four miles south, where "*water flows the whole year through.*" The Spanish understood the aridity of the land, and the distant Crown maintained firm control over land grants and water rights. Official policy acknowledged that fresh water resources were limited and had to be sufficient for multiple uses, the most important being human consumption; and, also that everyone needed access. The official watchword was *bien procomunal* (for the common good), i.e., no exclusivity, no monopolies. Land was classified accordingly: arable land with an assured water supply; arable land dependent on rainfall or moisture; and land suitable for grazing. The *ayuntamiento* (local government) executed the policies and was empowered to levy strict fines for waste or pollution. The padres acted as the Crown's trustees and were assigned to train the Indians as agriculturists and herdsmen in the process of 'civilizing' and converting them.

By the end of the 18th Century, two strikingly different life styles/economic systems emerged in the Monterey/Carmel region. As the provincial capital of Alta California, Monterey became an important regional government center. The population, overwhelmingly of Spanish descent, quickly adopted an urban life style — very few Indians lived in town. Initially, the settlement was centered near the Presidio and was responsible for the military defense of the entire region. Given its proximity to the bay, Monterey also became a port-of-call for ships from all over the world and the major trade center both for international commerce and local retail. Monterey's fresh water supply was seasonal, limited to water flowing in small creeks and brooks during the rainy season, the largest of which flowed into El Estero. Captain George Vancouver, who sailed

into Monterey Bay and visited the area in 1792, observed that the Presidio “*does not appear to be much benefited by its vicinity to fresh water, since in the dry season it must be brought from a considerable distance...*”<sup>1</sup> Personnel garrisoned at the Presidio were assigned to import water until a network of open-air ditches to divert flows could be constructed. Carmel, on the other hand, had Rio Carmelo, which Vancouver described as a “*small brook*” with a depth of flow that is “*about knee-deep.*”<sup>2</sup> It is important to note that Vancouver’s visit was in November, at the end of the dry season and the beginning of the wet season. The mission was under the trusteeship and protection of the padres, who were charged with religious activities and education. In addition, the mission was also the hub of the region’s industrial base, responsible for tanning, weaving, manufacturing soap and tallow, raising livestock, and crop farming. These activities were conducted under the directorship of the padres, while the large Indian population, either in residence or living in nearby communities, supplied the labor force. The padres maintained firm control over the water supply.

### **The Mexican Era/Secularization**

In March of 1822, news of Mexico’s independence from Spain reached Alta California. The Mexican period, also known as Secularization, began and ushered in new laws and a different administration. Secularization was disastrous for the mission, due to the ‘emancipation’ of the Indians. The official rationale was that the new policy would allow them to become urbanized and, thus, ‘civilized.’ Indians who elected to remain at the mission were subject to severe punishment; some fled and tried to return to their traditional system, which no longer existed. Whatever their choice, the Indians’ life styles were thrown into confusion and the mission fell into serious disrepair. Given the remoteness of the region and, depending on circumstances or whoever happened to be in power, many of the laws under the Mexican administration were either casually enforced with a wink and a nod or simply ignored. Water policies, however, were another story. They remained unchanged from the Spanish administration, were strictly enforced, and continued to exist for the common good.

### **Manifest Destiny, Encroachment, Irrigation Movement**

Water policies notwithstanding, under the Mexican administration laws governing international commerce and immigration became considerably more flexible. The Mexicans’ attitude toward free trade was far more liberal than it had been under the Spanish, and Monterey Bay was visited by ships bringing goods and visitors from all parts of the world. Hordes of immigrants/settlers, most of whom arrived over land from the United States, were welcomed as they brought increased tax revenues, expanded businesses, commerce, production, and even a livelier social life. Little did the Mexican administration realize the ‘foreigners’ were about to take control.

Monterey’s population spiked and some of the finest agricultural land was granted to settlers. Immense land grants were subdivided into smaller parcels, not necessarily with access to water. Monterey’s urban design appeared to the newcomers as ‘organic’ and uncontrolled by either the *commandante* at the presidio or the local *alcalde* (mayor). The only limitation was, apparently, not to interfere with another person’s property. The American policy of Manifest Destiny challenged and undermined the Spanish/Mexican values as the region transitioned into a society based on individual rights, including water ownership, and a cash-based economy. Carmel maintained its

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<sup>1</sup> Vancouver, George, *The Voyage of George Vancouver 1791-1795*.

<sup>2</sup> *Ibid.*

rural life style but, like Monterey, was subdivided into increasingly smaller parcels. Ownership and use of water would become increasingly contentious as the focus shifted away from water as a resource and for the common good to a commodity, which would allow the region to grow economically and agriculturally.

In the late 1800's, the federal government's Irrigation Movement policy became a major component of California's statewide water policy as the issue focused on transportation of water from water-rich regions in the north to water-poor regions in the south. In a sense, Monterey would become a microcosm of this policy with the County's determination to remain independent of the state system. At the time, the buzzwords for irrigation were 'reclamation' and 'homemaking.' 'Reclaimed' arid lands were intended to encourage settlement and make homesteads available for family farms. Family farms would not become particularly important in western agriculture due to the availability of large tracts of cheap land, which could be purchased by growers and, eventually, would result in agribusiness. Reclamation construction projects peaked from the Depression years until some thirty years after World War II, by which time many were becoming cost ineffective and/or unsustainable. By the mid-1990's, reclamation had been redefined to "*manage, develop, and protect water in an environmentally and economically sound manner in the interest of the American public.*"<sup>3</sup>

### **Along Came the Railroad, Salinas, and the Twentieth Century**

The Salinas Valley, 100 miles long, some ten miles wide, and consisting of approximately 1,000 square miles through which flowed the Salinas River, remained largely undeveloped and was home to free-roaming livestock herds and fields of wild mustard. The Americans deemed the Salinas Valley unsuitable for growing wheat. Eventually the question arose that if wild mustard grew so abundantly, why not crops? Incorporated in 1874, the new Salinas City had a hotel with meeting rooms used for conventions and elections. Salinas became the liveliest town in Monterey County. It was a stop along the recently constructed Southern Pacific Railroad's terminus at Soledad, and a number of small towns sprang up along the railroad route. South of Soledad the great expanse of Monterey County remained largely undeveloped, except for grazing livestock.

### **What Lies Ahead?**

Explosions in growth, population, and development have stretched Monterey County's fragile environmental resources, especially water, nearly to the breaking point. Water issues remain much the same as those that confronted the Spaniards but with the additional challenges of seawater intrusion and the introduction of modern pesticides and toxins into the water system. Historians indicate that a factor in the eventual collapse of ancient civilizations that relied on distribution of water was lack of management skills and expertise to meet the environmental challenges. Is Monterey County following in their footsteps?

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<sup>3</sup> U.S. Department of the Interior, "The Bureau of Reclamation—A Very Brief History," [www.usbr.gov/history/bohlist.html](http://www.usbr.gov/history/bohlist.html). (Accessed August 31, 2009.)



# CHUALAR UNION ELEMENTARY SCHOOL DISTRICT PERSONNEL PRACTICES FOR CLASSIFIED EMPLOYEES

## PURPOSE OF THE INVESTIGATION

The California Education Code provides a process to assure that reductions and layoffs of classified employees are done fairly. The 2009 Monterey County Civil Grand Jury (Grand Jury) looked into allegations that Chualar Union Elementary School District (CUESD) violated the rights of classified employees.

## BACKGROUND FOR THE INVESTIGATION

CUESD hires classified employees, i.e., secretarial, transportation, maintenance, food service and other non-teaching positions. CUESD is a single school district serving kindergarten through eighth grades. The CUESD Board of Education is composed of five elected community members. The superintendent is also the school principal. Due to budget reductions, CUESD reduced its staff.

## INVESTIGATIVE METHODOLOGY

- Interviewed the District Superintendent and CUESD staff
- Reviewed California Education Code sections 45117 and 45298<sup>1</sup>
- Reviewed the Master Agreement between the CUESD and California School Employee Association (CSEA) Chapter #695 (Master Agreement)<sup>2</sup>
- Reviewed *Tucker v. Grossmont Union High School District* (2008) 168 Cal. App.4<sup>th</sup> 640
- Reviewed the 2007/2008 Chualar School Board Agenda/Minutes

## INFORMATION GATHERED FROM THE INVESTIGATION

The Grand Jury collected documentation to review the hiring and rehiring practices of CUESD. After reviewing the CUESD 2007/2008 Board agenda and minutes, the Grand Jury examined the exhibits and attachments to the agendas in order to confirm that reductions in staff hours and job eliminations took place. Previous classified employee job descriptions were compared to newly revised job descriptions of the lead custodian, migrant services advisor/school secretary I, and school secretary II/migrant services advocate positions.

The initially provided list of classified employees with hire dates (Classified Seniority List) was reviewed. This list had not been updated since 2005. The employees were not sorted by classification, making it difficult to determine who had more seniority in each classification.

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<sup>1</sup> See Appendix A

<sup>2</sup> See Appendix B

Employees laid off because of lack of funds or work were listed on the Classified 39 Month Rehire List. Those employees are eligible for reemployment for a period of 39 months and have the right to be reemployed in preference to new applicants. The Classified 39 Month Rehire List must contain the employee's name, classification, date of hire, and date of termination or reduction in hours.

The Classified 39 Month Rehire List was incomplete when first presented to the Grand Jury. An interview with the District Superintendent was held in which he provided documentation stating that the district was "*in compliance with the Education Code and Collective Bargaining Agreement, and verified the District treated all its employees fairly.*"<sup>3</sup> Also provided was documentation from the CSEA Field Office Director stating that CUESD abided by the Master Agreement and did not violate any statute. After the interview with the District Superintendent, additional documentation regarding the Classified 39 Month Rehire List was provided, and it still contained discrepancies. The list did not have enough information to determine who had greater seniority for rehire.

The district eliminated or reduced the hours of the supply clerk, cafeteria assistant I, custodian, and payroll clerk positions, because of lack of work or lack of funds. The employees were sent letters informing them that their hours were reduced or eliminated. Some of these letters did not include reemployment right notifications required by Education Code sections 45117 or 45298 and the Master Agreement.

A Side Letter of Agreement 'Reorganization – Custodial and Maintenance & Operations' was signed between CUESD and CSEA related to the impacts and effects of the district's decision to reorganize custodial, maintenance, and operation services and to eliminate the classification of Grounds/Operation/Maintenance.

A new classified position of lead custodian was created. An announcement of the opening of the hiring process for the new position was not posted as required by the Master Agreement and the Education Code, so that all eligible classified employees could apply. An appointment was made to the newly created position without a competitive process.

## **FINDINGS OF THE INVESTIGATION**

- F7.1.** The Classified 39 Month Rehire List was not complete, nor did it contain the information necessary to determine the seniority status for eligibility of vacant or newly created classified employee positions.
- F7.2.** The Classified Seniority List initially provided was not current and reflected 2005 status.
- F7.3.** The Chualar Union Elementary School District reorganized the custodial, maintenance, and operations services by eliminating the classification of grounds/operation/maintenance and created a new classified position of lead custodian.
- F7.4.** A competitive process was not used to fill a newly created position.

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<sup>3</sup> Email from South Bay Field Office, CSEA, April 13, 2009

- F7.5.** The Chualar Union Elementary School District failed to notify some of the reduced-hours and laid-off employees of their rights under Education Code sections 45117 and 45298.
- F7.6.** The Chualar Union Elementary School District did not comply with the Master Agreement.

## **RECOMMENDATIONS OF THE GRAND JURY**

- R7.1.** Create and maintain an accurate Classified 39 Month Rehire List including job classification, date of hire, and date of layoff. [Related Finding: F7.1]
- R7.2.** Create and maintain a Classified Seniority List, which includes job classification and date of hire so that classified employees can see the order of seniority. [Related Finding: F7.2]
- R7.3.** Comply with Education Code sections 45117 and 45298 in connection with future layoffs and rehires. [Related Findings: F7.4 and F7.5]
- R7.4.** Comply with the Master Agreement, which allows all employees the right to apply for newly created positions. [Related Findings: F7.3, F7.4, and F7.6]
- R7.5.** Rehire improperly laid off employees in accordance with the Master Agreement. [Related Findings: F7.4 and F7.6]

## **REQUIRED RESPONSES**

**Board of Education, Chualar Union Elementary School District:**  
All Findings and Recommendations

Responses must comply with the following:

### **CALIFORNIA PENAL CODE SECTION 933.05**

- (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:
- (1) The respondent agrees with the finding.
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:
- (1) The recommendation has been implemented, with a summary regarding the implemented action.

- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

## APPENDIX A: Excerpts from California Education Code

Section 45117.(a) When as a result of the expiration of a specially funded program, classified positions must be eliminated at the end of any school year, and classified employees will be subject to layoff for lack of funds, the employees to be laid off at the end of the school year shall be given written notice on or before April 29 informing them of their layoff effective at the end of the school year and of their displacement rights, if any, and reemployment rights. However, if the termination date of any specially funded program is other than June 30, the notice shall be given not less than 45 days prior to the effective date of their layoff.

(b) When, as a result of a bona fide reduction or elimination of the service being performed by any department, classified employees shall be subject to layoff for lack of work, affected employees shall be given notice of layoff not less than 45 days prior to the effective date of layoff, and informed of their displacement rights, if any, and reemployment rights.

(c) (1) A classified employee may not be laid off if a short-term employee is retained to render a service that the classified employee is qualified to render. This subdivision does not create a 45-day layoff notice requirement for any individual hired as a short-term employee, as defined in Section 45103, for a period not exceeding 45 days.

(2) This subdivision does not apply to the retention of a short-term employee, as defined in Section 45103, who is hired for a period not exceeding 45 days after which the short-term service may not be extended or renewed.

(d) This section does not preclude the governing board of a school district from implementing either of the following actions without providing the notice required by subdivision (a) or (b):

(1) A layoff for a lack of funds in the event of an actual and existing financial inability to pay the salaries of classified employees.

(2) A layoff for a lack of work resulting from causes not foreseeable or preventable by the governing board.

(e) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240).

Section 45298. Persons laid off because of lack of work or lack of funds are eligible to reemployment for a period of 39 months and shall be reemployed in preference to new applicants. In addition, such persons laid off have the right to participate in promotional examinations within the district during the period of 39 months.

Employees who take voluntary demotions or voluntary reductions in assigned time in lieu of layoff or to remain in their present positions rather than be reclassified or reassigned, shall be granted the same rights as persons laid off and shall retain eligibility to be considered for reemployment for an additional period of up to 24 months; provided, that the same tests of fitness under which they qualified for appointment to the class shall still apply. The personnel commission shall make the determination of the specific period eligibility for reemployment on a class-by-class basis. Employees who take voluntary demotions or voluntary reductions in assigned time in lieu of

layoff shall be, at the option of the employee, returned to a position in their former class or to positions with increased assigned time as vacancies become available, and without limitation of time, but if there is a valid reemployment list they shall be ranked on that list in accordance with their proper seniority.

## **APPENDIX B: Excerpts from the Master Agreement Between CUESD and CSEA**

Article XIII Section 13.4 A: *“PROMOTION PROCEDURE: When a new position is created or an existing position becomes vacant, the District shall post the vacancy for no less than six (6) working days on bulletin boards in prominent locations where employees traditionally gather. A copy of notice shall be provided to a CSEA chapter representative. Any employee may apply for promotion to that position by filing a written notice with the District Superintendent.”*

Article XVI section 16.10: *“NOTIFICATION OF RE-EMPLOYMENT OPENING: Such notice shall be sent by certified mail to the last address given the District by the employee and a copy shall be sent to CSEA by the District which will acquit the District of its notification responsibility.”*

Article XVI section 16.2: *“NOTICE OF LAYOFF: The District shall notify the CSEA and affected employees in writing in accordance with Education Code Section 45117.”*

Article XVI section 16.6 : *“RE-EMPLOYMENT RIGHTS: A. Laid off employees are eligible for re-employment in the class from which laid off for a thirty-nine (39) month period and shall be re-employed in the reverse order of layoff. B. Their employment shall take precedence over any type of employment provided for in this agreement.”*

Article XVI section 16.13: *“IMPROPER LAYOFFS: Any employee who is improperly laid off shall be re-employed immediately upon discovery of the error.”*



**NOTE:** This report was issued by the 2009 Monterey County Civil Grand Jury, with the exception of Darlene Billstrom, who had a perceived conflict of interest. This juror was excluded from all parts of the investigation, including interviews, deliberations, and the making and acceptance of this report.

## **PACIFIC GROVE BUILDING AND PLAN CHECK FEES**

### **PURPOSE OF THE INVESTIGATION**

The 2009 Monterey County Civil Grand Jury (Grand Jury) investigated whether the fees charged by the City of Pacific Grove for building permits and plan checks may be excessive.

### **BACKGROUND OF THE INVESTIGATION**

The investigation was based on a complaint regarding the fees charged for plan checks and building permits by the City of Pacific Grove. California law requires public agencies to review plans and issue permits prior to any new construction or remodeling. The complaint alleged that Pacific Grove's fees were excessive compared to nearby municipalities.

### **INVESTIGATIVE METHODOLOGY**

- Interviewed the complainant
- Interviewed the Director of Management and Budget of the City of Pacific Grove
- Interviewed the staff from the cities of Capitola, Monterey, Pacific Grove, Salinas, and the County of Monterey



*Pacific Grove City Hall*

- Reviewed California Attorney General Opinion 92-506, March 9, 1993
- Reviewed Pacific Grove Municipal Code, Chapter 6.02.030

## INFORMATION GATHERED FROM THE INVESTIGATION

The fee comparison was based on a hypothetical structure of 1,400 square feet, with an estimated value of \$350,000. The fees compared included plan checks and building permits only, excluding numerous other potentially applicable fees. The data, collected in June 2009, is summarized in the chart below:

City	Plan Check Fees	Permit Fees	Total	Total % Lower Than Pacific Grove
Capitola	2,333.91	3,590.63	5,924.54	41%
Carmel-by-the-Sea	1,555.94	2,393.75	3,949.69	61%
City of Monterey	2,705.00	3,786.92	6,491.92	36%
Monterey County	1,976.20	3,040.31	5,016.51	50%
Salinas	2,753.04	4,235.45	6,988.49	31%
Pacific Grove	4,324.88	5,766.50	10,091.38	—

Pacific Grove assesses a 15% surcharge on all permits as a Long Range Planning Fee. This surcharge is used to pay for long-range planning services, such as updating the General Plan and Local Coastal Plan requirements. The surcharge is tracked in an account in the City's General Fund.

Pacific Grove also has fees not common to other jurisdictions because of the large number of coastal archaeological sites and historic properties. Pacific Grove has over 1,200 historic buildings. Further, Pacific Grove requires citywide architectural review.

The Grand Jury repeatedly asked Pacific Grove for an itemized cost justification of the building permit and plan check fees. City staff provided only the following: “...*the current building and plan check fees generate enough revenue to pay for only about two-thirds the cost of providing the services.*” The City's Municipal Code Section 6.02.030 defines the ‘costs reasonably borne.’<sup>1</sup>

In response to an inquiry not related to Pacific Grove, the California Attorney General's office issued Opinion No. 92-506, dated March 9, 1993, which establishes guidelines for setting building permit and similar fees. The following conclusions were stated by the Attorney General's office:

- A local agency is prohibited from charging building permit and similar fees, which exceed the estimated reasonable costs of providing the services rendered unless the amounts of the fees are approved by the electorate.

<sup>1</sup> See Appendix A

- A local agency may not charge building permit and similar fees based upon the Uniform Building Code Valuation Tables, which are in excess of the estimated reasonable costs of providing the services rendered unless the amounts of the fees are approved by the electorate.
- If a local agency charges building permit and similar fees based upon the Uniform Building Code Valuation Tables without supporting evidence regarding the relationship between the fees and the services rendered, such fees are invalid to the extent they exceed the reasonable costs of providing the services rendered.<sup>2</sup>

Pacific Grove's building permit and plan check fees were never put on a ballot for approval by the electorate.

## **FINDINGS OF THE INVESTIGATION**

- F8.1.** Pacific Grove did not provide sufficient itemization of the costs of conducting building permit and plan check activities to demonstrate that the fees collected did not exceed those specific expenses. It appears that the City may be including general overhead and costs of other activities not specifically related to plan checks and building inspection functions.
- F8.2.** It is not clear whether Pacific Grove's fee structure is consistent with the guidance in Attorney General Opinion No. 92-506.
- F8.3.** Pacific Grove charges a 15% surcharge on all permits that is not directly related to building and plan check services.
- F8.4.** Pacific Grove's building permit and plan check fees are 31% to 61% higher than those of the public agencies from which data was collected.

## **RECOMMENDATIONS OF THE GRAND JURY**

- R8.1.** Prepare itemized expense breakdowns for building permit and plan check fees, including staff hours, fixed assets, general and department overhead, and debt service cost. [Related Findings: F8.1 and F8.2]
- R8.2.** If requested, provide the expense breakdowns to applicants at the beginning of the permit application process. [Related Findings: F8.1 and F8.2]
- R8.3.** Demonstrate that the building permit and plan check fees are justified, in keeping with Attorney General Opinion No. 92-506. [Related Findings: F8.2 and F8.4]
- R8.4.** Segregate the 15% surcharge into a restricted account for the purpose of updating the General Plan and the Local Coastal Plan. [Related Finding: F8.3]

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<sup>2</sup> See Appendix B

## REQUIRED RESPONSES

### **Pacific Grove City Council:**

All findings and recommendations

The responses should include an itemized permit and plan check fee expense breakdown.

Responses must comply with the following:

### CALIFORNIA PENAL CODE SECTION 933.05

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

## **APPENDIX A: Pacific Grove Municipal Code, Chapter 6.02.030**

“Costs reasonably borne” as used and ordered to be applied in this chapter, are to consist of the following elements:

(a) All applicable direct costs including, but not limited to, salaries, wages, overtime, employee fringe benefits, services and supplies, maintenance and operation expenses, contracted services, special supplies, and any other direct expense incurred.

(b) All applicable indirect costs including, but not restricted to, building maintenance and operations, equipment maintenance and operations, communications expenses, computer costs, printing and reproduction, vehicle expenses, insurance, debt service, and like expenses when distributed on an accounted and documented rational proration system.

(c) Fixed asset recovery expenses, consisting of depreciation of fixed assets, and additional fixed asset expense recovery charges calculated on the current estimated cost of replacement, divided by the approximate life expectancy of the fixed asset. An additional charge, to make up the difference between depreciation not previously recovered and the full cost of replacement, also shall be calculated and considered a cost so as to recover such unrecovered costs over the remaining life of the asset.

(d) General overhead, expressed as a percentage, distributing and charging the expenses of the city council, city attorney, city manager, city clerk, city treasurer, and all other staff and support provided to the entire city organization. Overhead shall be prorated between tax-financed services and fee-financed services on the basis of said percentage so that each of taxes and fees and charges shall proportionately defray such overhead costs.

(e) Departmental overhead, expressed as a percentage, distributing and charging the cost of each department head and his or her supporting expenses as enumerated in subsections (a), (b), (c), and (f), of this section.

(f) Debt service costs, consisting of repayment of principal, payment of interest, and trustee fees and administrative expenses for all applicable bond, certificate, note of securities, issues or loans of whatever nature or kind. Any required coverage factors or required or established reserves beyond basic debt service costs also shall be considered a cost if required by covenant within any securities ordinance, resolution, indenture or general law applicable to the city.

# APPENDIX B: Attorney General Opinion No. 92-506

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

DANIEL E. LUNGREN  
Attorney General

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OPINION

of

DANIEL E. LUNGREN  
Attorney General

CLAYTON P. ROCHE  
Deputy Attorney General

No. 92-506

March 9, 1993

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THE HONORABLE DAVID G. KELLEY, MEMBER OF THE CALIFORNIA STATE ASSEMBLY, has requested an opinion on the following questions:

1. Is a local agency prohibited from charging building permit and similar fees which exceed the estimated reasonable costs of providing the services rendered unless the amounts of the fees are approved by the electorate?

2. May a local agency charge building permit and similar fees based upon the Uniform Building Code Valuation Tables which are in excess of the estimated reasonable costs of providing the services rendered unless the amounts of the fees are approved by the electorate?

THE HONORABLE ROBERT PRESLEY, MEMBER OF THE CALIFORNIA STATE SENATE, has requested an opinion of the following question:

3. If a local agency charges building permit and similar fees based upon the Uniform Building Code Valuation Tables ‘ without supporting evidence regarding the relationship between the fees and the services rendered, are such fees valid?

### CONCLUSIONS

1. A local agency is prohibited from charging building permit and similar fees which exceed the estimated reasonable costs of providing the services rendered unless the amounts of the fees are approved by the electorate.

2. A local agency may not charge building permit and similar fees based upon the Uniform Building Code Valuation Tables which are in excess of the estimated reasonable costs of providing the services rendered unless the amounts of the fees are approved by the electorate.

3. If a local agency charges building permit and similar fees based upon the Uniform Building Code Valuation Tables without supporting evidence regarding the relationship between the fees and the services rendered, such fees are invalid to the extent they exceed the reasonable costs of providing the services rendered.

### ANALYSIS

We are informed that it is a common practice for cities and counties to follow the schedule of fees contained in the Uniform Building Code Valuation Tables (“Tables”) which set forth graduated building permit fees based upon the total valuation of the proposed construction as well as hourly rates for inspections and plan reviews. The three questions concern whether a city or county may charge building permit, plan inspection, and similar fees based upon those found in the Tables without an independent investigation as to whether each fee bears a reasonable relationship to the cost incurred in rendering the particular service. The questions posed also assume the possibility that if the fees are greater than the costs incurred, California law would require a two-thirds vote of the electorate to sustain their validity.

#### A. The California Constitution

“The general rule is that a regulatory fee must not ‘exceed the sum reasonably necessary to cover the costs of the regulatory purpose sought’ in order to be considered as a fee rather than a guise for a tax.” (*Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 661; see also *County of Plumas v. Wheeler* (1906) 149 Cal. 758, 763; *Trend Homes, Inc. v. Central Unified School Dist.* (1990) 220 Cal.App.3d 102, 114.) Thus, such fees which exceed the reasonable costs of providing governmental services may constitute “special taxes” within the meaning of article XIII A of the California Constitution. (See Gov. Code, §§ 50075-50077; *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 57; *Alamo Rent-A-Car, Inc. v. Board of Supervisors* (1990) 221 Cal.App.3d 198, 200-208; *Trend Homes, Inc. v. Central Unified School District, supra*, 220 Cal.App.3d 102, 114; *Bixel Associates v. City of Los Angeles* (1989) 216 Cal.App.3d 1208,

1218-1219.) Section 4 of article XIII A permits cities and counties to impose “special taxes” only after approval of a two-thirds vote of the electorate.<sup>1</sup>

In this opinion we need not determine whether building permit and similar fees in excess of the reasonable costs incurred in rendering the services are “special taxes” within the meaning of article XIII A. However, the constitutional amendment constitutes the historical background for the statutory schemes governing here, giving strong evidence of the legislative intent in enacting these provisions. (See, e.g., *California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844; *People v. Henson* (1991) 231 Cal.App.3d 172, 177.) Such intent would be to ensure that local building permit and similar fees do not conflict in any way with article XIII A.

#### B. The Government Code

The Government Code provisions most germane to our inquiry are found in sections 66012-66024, setting forth “Fees For Specific Purposes” (§§ 66012-66014), “Procedures For Adopting Various Fees” (§§ 66016-66018.5), and provisions regarding “Protests, Legal Actions, And Audits” (§§ 66020-66025).<sup>2</sup> The primary section to which we direct our attention is section 66014. Subdivision (a) of section 66014 provides:

“Notwithstanding any other provision of law, when a local agency charges fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission ... ; the processing of maps . . . ; or planning services ... ; those fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged, unless a question regarding the amount of the fee charged in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.”

The introductory phrase “Notwithstanding any other provision of law” makes the rules set forth in the statute exclusive as to the fees enumerated therein, which include those germane to our inquiry. (See *In re Marriage of Dover* (1971) 15 Cal.App.3d 675, 678, fn. 3; *State of California v. Superior Court* (1965) 238 Cal.App.2d 691, 695; 63 Ops.Cal. Atty.Gen. 660, 661-662 (1981).) Applying this rule of “exclusivity,” we find that fees such as building permit fees or fees for plan checking and approval (1) “shall not exceed the estimated reasonable cost of providing the services” for which they are issued or performed (2) “unless ... the amount of the fee charged in excess of the estimated reasonable cost ... is ... approved by... popular vote....”

Moreover, sections 66016-66018.5 mandate that (1) prior to levying new fees or service charges, or increasing existing ones, the local agency must hold a public hearing after giving interested parties access to the data relating to the estimated costs of the services to be

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<sup>1</sup> Article XIII A, section 4 provides: “Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.”

<sup>2</sup> All references hereafter to the Government Code prior to footnote 3 are by section number only.

provided, and (2) no fees shall be levied exceeding the reasonable estimated costs of the services without the requisite two-thirds vote of the electorate.

Finally, sections 66020-66025 provide a procedure for interested parties to protest the imposition of fees, and also to bring court actions to set aside or annul existing or newly adopted fees as unreasonable, or to determine whether they constitute “special taxes” within the meaning of article XIII A, section 4, of the Constitution.

The basic question at issue herein is whether a city or county may validly adopt the fee schedules found in the Tables (1) without investigating whether the fees set forth therein are “reasonable” under the requisite criteria set forth in section 66014 and (2) without a vote of the electorate.

The Tables are contained in a private publication issued annually by the International Conference of Building Officials (“ICBO”), applicable not only in California, but nationally. We have been presented with no evidence that the fees set forth therein would approximate the estimated costs of the specified services in any particular local jurisdiction in California. Nor have we been presented with evidence that any cost analysis has been made by the ICBO in this respect.

Accordingly, a local agency may not, under the statutory scheme provided in the Government Code, adopt the fee schedules set forth in the Tables, since it must have the requisite data “available to the public . . . indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied.” (§ 66016, subd. (a).) As to jurisdictions which already have adopted the fee schedules of the Tables, such current fees would be subject to protest (§ 66021) and judicial action (§ 66022). (See § 66014, subd. (b).

Thus, the statutory scheme set forth in the Government Code leads to the conclusion that a city or county may not adopt or charge the fees set forth in the Tables. Nothing in the Government Code raises a presumption of reasonableness for such schedule of fees. As already indicated, the Tables are contained in a private publication of a nongovernmental association.

### C. The Health and Safety Code

Despite the mandate of the Government Code regarding a local agency’s adoption of fees, it has been suggested that certain provisions of the State Housing Law (Health and Safety Code, §§17910-17995.5)<sup>3</sup> permit cities and counties to adopt the fee schedules found in the Tables as an alternative to the requirements set forth in the Government Code. We reject the suggestion for a number of reasons.

Under the State Housing Law, the Department of Housing and Community Development (“Department”) is directed to adopt building standards for “hotels, motels, lodging houses, apartment houses, and dwellings and structures accessory thereto” (§ 17921) that are “substantially the same requirements as are contained in . . . [T]he Uniform Building Code . . . .” (§ 17922, subd. (a); see 72 Ops.Cal.Atty.Gen. 180, 184-186 (1986); 55 Ops.Cal.Atty.Gen. 157, 158-159 (1972)). With certain exceptions not relevant here, “the provisions published in the

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<sup>3</sup> All references hereafter to the Health and Safety Code are by section number only.

State Building Standards Code or the regulations promulgated pursuant to section 17922 shall be applicable to” every city and county. (§ 17958; see *Briseno v. City of Santa Ana* (1992) 6 Cal. App.4th 1378, 1382-1383; 72 Ops.Cal.Atty.Gen. 180, 184 (1989).)

Since the fee schedules contained in the Tables are part of the Uniform Building Code, why are they not applicable to cities and counties under the provisions of sections 17922 and 17958?

First, the Tables have not been adopted by the Department under section 17922’s grant of authority. The obvious reason is that the Tables are not “building standards” which the statute directs the Department to adopt. A building standard “regulates, requires, or forbids the method of use, properties, performance, or types of materials used” and includes requirements for the “architectural and design functions of a building.” (§ 18909, subds. (a), (b); see also §§ 18940-18942; 75 Ops.Cal.Atty.Gen, 131, 132-136 (1992).)

In 55 Ops.Cal.Atty.Gen. 157 (1972), we concluded that the building standards adopted by the Department pursuant to section 17922 were to be substantive in nature rather than administrative. We stated:

“Although the Department is limited in adopting rules and regulations by the provisions of the specified model or uniform codes, this limitation applies only to substantive regulations. The statutes, when read as a whole, demonstrate that the reference in section 17922 to the “same requirements” was not intended to include requirements of an administrative nature.

“.....

“It is . . . the substantive criteria contained in the specified uniform codes, which criteria have been set forth for the propose of promoting safety and stability in building activities, to which the Department’s attention is properly directed.

“That the Legislature did not intend to incorporate by reference the administrative provisions of the specified uniform codes is also evident from the fact that the State Housing Act includes sections which specifically designate procedures for administrative actions such as enforcement of the regulations and appeals from allegedly erroneous or unlawful applications of those regulations. See sections 17921, 17930, 17931, 17932, 17952 and 17965. These procedures may differ from those contained in the uniform codes. See sections 204 and 303(a) of the Uniform Building Code, 1970 editions.” (id., at p. 161.)

Consistent with our 1972 opinion, the Department has not adopted the fee schedules contained in the Tables but instead views the language of Government Code section 66014 [“fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged” without electorate approval] as controlling. “Unless unreasonable or clearly contrary to the statutory language or purpose, the consistent construction of a statute by an agency charged with responsibility for its implementation is entitled to great deference.” (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 460.)

The language of section 17922 is not the only reason compelling the Department to omit the Tables from its adoption of the Uniform Building Code. As indicated in 55 Ops.Cal.Atty. Gen. 157, 161 (1972), the State Housing Law itself has its own administrative provisions that “may differ from those contained in the uniform codes.” Here, section 17951 expressly allows cities and counties to charge building permit and similar fees but only if the fees are “imposed pursuant to Section 66016 of the Government Code.” (§ 17951, subd. (c).) Hence, all such fees imposed under the State Housing Law must not exceed, without voter approval, “the estimated amount required to provide the service.” (Gov. Code, § 66016, subd. (a).) The applicable rules of statutory construction are: “The mode prescribed is the measure of the power... (*People v. Zamora* (1980) 28 Cal.3d 88, 98; see *Danville Fire Protection Dist. v. Duffel Financial & Const. Co.* (1976) 58 Cal.App.3d 241, 247; 72 Ops.Cal.Atty.Gen. 180, 188, fn. 7 (1989)), and the specific limitations of section 17951 regarding the imposition of fees control over the more general language contained in sections 17922 and 17958 (see *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 420).

Accordingly, our construction of section 17951 harmonizes the State Housing Law with the requirements of Government Code section 66016, The latter statute expressly refers to section 17951 and vice versa. “[S]tatutes should be construed in harmony with other statutes on the same general subject.” (*Building Material & Construction Teamsters’ Union v. Farrell* (1986) 41 Cal.3d 65 1, 665.)

We have also examined the legislative history of the relevant provisions of the State Housing Law, particularly sections 17922, 17951, and 17958. (Stats. 1981, ch. 914; Stats. 1979, ch. 1152; Stats. 1970, ch. 1436; Stats. 1961, ch. 1844.) We find an evident legislative intent to prohibit building permit and similar fees imposed under the State Housing Law from violating the “special taxes” provision of article XIII A of the Constitution. “A statute should be construed whenever possible so as to preserve its constitutionality.” (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.)

Finally, our construction of sections 17922 and 17951 effectuates the Legislature’s purpose in enacting Government Code section 66014 with its introductory phrase “[n]otwithstanding any other provision of law.”

In sum, under both the Government Code and the Health and Safety Code, a local agency is required to limit its building permit and similar fees to the estimated costs of providing the services rendered. Any excess above such reasonable estimated costs requires approval by a two-thirds vote of the electorate.

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# COUNTY INFORMATION TECHNOLOGY PROJECT

## PURPOSE OF THE INVESTIGATION

The 2009 Monterey County Civil Grand Jury (Grand Jury) inquired into the follow-up recommendation of the 2007 Monterey County Civil Grand Jury report on Component Organization and Registration Environment/Enterprise Resource Planning (CORE/ERP) information technology (IT) project implementation for Monterey County. The Monterey County Finance Department refers to this IT project as ERP.

## BACKGROUND FOR THE INVESTIGATION

The following definition of enterprise resource planning is taken from *PC Magazine*:

*“An integrated information system that serves all departments within an enterprise. Evolving out of the manufacturing industry, ERP implies the use of packaged software rather than proprietary software written by or for one customer. This system can include software for manufacturing, order entry, accounts receivable and payable, general ledger, purchasing, warehousing, transportation and human resources.”<sup>1</sup>*

The 2007 Grand Jury Report investigated the implementation of the ERP project. Finding 1.4 in that grand jury report states:

*“The new general ledger system is now planned to go into effect 1 July 2009 (fiscal year 2009-2010) with the new payroll system 6 months later (calendar year 2010).”*

Recommendation 1.2 of that same report states:

*“The County administrative officer and the auditor/controller should do all they can to insure that the implementation of the new system proceeds on schedule.”*

The 2007 Board of Supervisors’ (BOS) response to Recommendation 1.2 said that quarterly progress reports would be made. It described no other processes for controlling the project or interaction between the BOS and project managers.

As a follow-up to the 2007 Grand Jury Report, the 2009 Grand Jury inquired into the status of the ERP project schedules, budget, and operational attributes specifically for the Financials (general ledger and related applications) and Human Resources (HR) components.

## INVESTIGATIVE METHODOLOGY

- Interviewed the Monterey County assistant auditor-controller, ERP project manager, and ERP change manager.
- Reviewed schedules and specifications for many of the ERP components.

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<sup>1</sup> [www.pcmag.com/encyclopedia](http://www.pcmag.com/encyclopedia) using ERP as the search term

- Reviewed the specified criteria for successful performance tests of the Financials component.
- Reviewed the documented specifications for ERP components, the related project schedules, and agreements with the providing software services company, Consultants for Government and Industry (CGI).

## **INFORMATION GATHERED FROM THE INVESTIGATION**

The ERP system was contracted to the software firm CGI for design, development, testing, and training. CGI has significant experience in providing ERP systems to government entities in California and other states.

CGI maintained detailed schedules and provided the software components on schedule. On schedule delivery of ERP systems is unusual, due to the scope and complexity of the software.

The specifications for all ERP components were done with meticulous attention to detail, and had the required reviews and approvals to proceed. Replacing outdated and separate computer software systems with a single integrated ERP system is a large project, and some details are usually missed. A process is in place to collect the missed details and the requests to change the system, to evaluate the impact of these requests, and to prioritize which changes should be made first.

The Auditor-Controller and the ERP work group have had weekly status meetings to review the progress made toward a production level Financials system. The ERP change manager communicates regularly with planned users of the system and arranges hands-on training as system components become available. Users and IT staff may recommend changes to any of the system components. The change requests are recorded, analyzed, and prioritized for possible implementation.

There is a distribution list of users, IT staff, and managers who are sent e-mails about the latest versions and changes of the software under development. Users have the ability to enter data, request and view reports, and give feedback to the ERP IT team.

The smaller, less complex components of the project have been delivered on schedule, starting in 2008. These components were run in parallel with the old systems for three months, to verify that the new system was accomplishing the same results as the previous systems.

The ERP project team did not respond to requests for user interviews with the Grand Jury by the September 2009 writing of this report. The purpose of interviewing users is to verify the correct operation and usability of the new system.

As of July 2009, CGI and the Monterey County staff have stayed within their budget.

## **FINDINGS OF THE INVESTIGATION**

- F9.1.** The smaller, less complex components of the project have been delivered on schedule.
- F9.2.** One of two highly complex components, Financials, was planned for July 2009 production and was delivered on July 9, 2009.

- F9.3.** The other highly complex component, the Human Resources portion, is scheduled for use in January 2010.
- F9.4.** As of July 2009, CGI and the Monterey County staff have stayed within their budget.
- F9.5.** An effective process exists for communication with IT staff, users, and management about system changes, defects, and status.
- F9.6.** The performance of the system components will be measured to validate adequate response time.
- F9.7.** Users of the Financials components were not available for interviews during the requested time frame.

### **COMMENDATIONS OF THE GRAND JURY**

The combination of change management, project management, regular status meetings, rigor in evaluating and prioritizing changes, and attention to budget is noteworthy and exceptional in this IT project. The Auditor-Controller's team and the ERP team are to be commended for their communications and project management.

### **RECOMMENDATIONS OF THE GRAND JURY**

- R9.1.** Continue regular status meetings between the project manager and the change manager, their staffs, and the staff of the Auditor-Controller until after the final component, Human Resources, is successfully in operation. [Related Findings: F9.3 and F9.5]
- R9.2.** Monitor the system to evaluate end-to-end performance to users, including heavy network traffic and running complex computer software. [Related Finding: F9.6]
- R9.3.** Continue to work with CGI to resolve problems and improve the delivered system within budget. [Related Finding: F9.5]
- R9.4.** The 2010 Civil Grand Jury should interview users of the Financials and HR components for feedback on accuracy and usability. [Related Finding: F9.7]

### **REQUIRED RESPONSES**

#### **Monterey County Board of Supervisors:**

All Findings and Recommendations

#### **Monterey County Auditor-Controller:**

All Findings and Recommendations

Responses must comply with the following:

### CALIFORNIA PENAL CODE SECTION 933.05

- (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding.
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
  - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

# GLOSSARY

## A

AF = acre feet  
AFY = acre feet per year  
ALS = advanced life support  
ASR = Aquifer Storage and Recovery  
ATAB = Anti-Terrorism Approval Body

## B

BLS = basic life support  
BOS = Monterey County Board of Supervisors  
Brown Act = Ralph M. Brown Act, California Government Code section 54950, *et seq.*

## C

CalAm = California American Water  
CalFire = California Department of Forestry and Fire Protection  
CAWD = Carmel Area Wastewater District  
CDCR = California Department of Corrections and Rehabilitation  
CE = continuing education  
CEO = Chief Executive Officer  
CGI Group, Inc. = Consultants for Government and Industry  
Classified Seniority List = a list of classified school employees ranked by seniority  
CO = Correctional Officer  
CORE/ERP = Component Organization and Registration Environment/Enterprise Resource Planning  
CPR = cardio-pulmonary resuscitation  
CSA 74 = County Service Area 74  
CSEA = California School Employee Association  
CSIP = Castroville Seawater Intrusion Project  
CSIP/SVRP = Castroville Seawater Intrusion Project/Salinas Valley Reclamation Plant  
CTF = Soledad Correctional Training Facility  
CUESD = Chualar Union Elementary School District

## D

DA = District Attorney  
DMH = California Department of Mental Health

## E

EHR = Electronic Health Record System  
EMS = Emergency Medical Services  
EMSA = Emergency Medical Services Agency  
EMT = Emergency Medical Technician  
EOP = Enhanced Outpatient Program  
ERP = Enterprise Resource Planning

## F

Fire Chiefs Association = Monterey County Fire Chiefs Association  
FQHC = Federally Qualified Health Centers  
FTE = full-time equivalent

## G

GA = Grant Administrator  
GPM = gallons per minute

## H

HSGP = Homeland Security Grant Program

## I

Initiatives = Integrated Improvement Initiatives being pursued by Natividad Medical Center and the Monterey County Health Department  
IT = information technology

## J

JPA = Joint Powers Authority

## K

kites = inmate notes to prison staff forwarning of attacks

**M**

Master Agreement = agreement between CUESD and CSEA  
 MCFCWCD = Monterey County Flood Control and Water Conservation District  
 MCHD = Monterey County Health Department  
 MCWD = Marina Coast Water District  
 MCWRA = Monterey County Water Resources Agency  
 “Measure A, 1988” = Countywide Paramedic Emergency Medical Services System  
 MGD = million gallons per day  
 MIA = medically indigent adult  
 MPC = Monterey Peninsula College  
 MPI = Master Patient Index  
 MPWMD = Monterey Peninsula Water Management District  
 MRWPCA = Monterey Regional Water Pollution Control Agency  
 MTA = medical technician assistant

**N**

NMC = Natividad Medical Center

**O**

OBB = Open BuyBack  
 OES = Office of Emergency Services

**P**

Pajaro Basin = Pajaro Valley Groundwater Basin  
 PBCSD = Pebble Beach Community Services District  
 PUC = California Public Utilities Commission  
 PVWMA = Parjaro Valley Water Management Agency

**R**

Regional Project = Monterey Regional Water Supply Program  
 RN = registered nurse  
 RUWAP = Regional Urban Wastewater Augmentation Project

**S**

SAA = State Administrative Agent  
 Salinas Basin = Salinas Valley Groundwater Basin  
 Seaside Basin = Seaside Groundwater Basin  
 Seaside Muni = Seaside Municipal Water System  
 SEC = Securities Exchange Commission  
 SRDF = Salinas River Diversion Facility  
 SVRP = Salinas Valley Reclamation Plant  
 SVSP = Salinas Valley State Prison  
 SVWP = Salinas Valley Water Project  
 SWRCB = State Water Resources Control Board

**U**

UAW = unaccounted for water

**V**

VBAC = Vaginal Birth After Caesarian

**W**

Watermaster = Seaside Groundwater Basin Watermaster



