



## BOARD OF SUPERVISORS COUNTY OF MADERA

MADERA COUNTY GOVERNMENT CENTER  
200 WEST FOURTH STREET / MADERA, CALIFORNIA 93637  
(559) 675-7700 / FAX (559) 673-3302 / TDD (559) 675-8970

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April 26, 2011

The Honorable Mitchell C. Rigby  
Presiding Judge  
Madera County Superior Court  
209 West Yosemite Avenue  
Madera, California 93637

**Subject: Response to the 2010-2011 Grand Jury Final Report entitled "Madera County Department of Agriculture/Sealer of Weights and Measures"**

Dear Honorable Judge Rigby:

In accordance with Penal Code Section 933, the Madera County Board of Supervisors submits this response to the Recommendations in the 2010-11 Madera County Grand Jury Report on "Madera County Department of Agriculture/Sealer of Weights and Measures" (See Attachment #1).

The following are the Grand Jury's recommendations in their Report, and the Board of Supervisors' response to the recommendations:

### **Grand Jury Recommendation**

The Grand Jury recommends that the Ag Commissioner work closely with the Board of Supervisors to maintain a staffing level sufficient to provide services critical to the agricultural community.

### **Grand Jury Recommendation**

The Grand Jury recommends that the Ag Commissioner develop a program to lessen the impact of staff vacancies or absences. Ag inspectors should receive on-the-job training to perform duties in one or more additional programs for which they have qualified by licensure. During periods in which there is less demand for services in their specialty program, they should be assigned to train in and provide support for the other program(s).

### **Grand Jury Recommendation**

The Grand Jury recommends that, to improve retention, the department and the County should identify job-related values of employees, such as achievement recognition or promotional opportunities.

**Grand Jury Recommendation**

The Grand Jury recommends that the Ag Commissioner revise and update The Answer Book 2003 regularly.

**Grand Jury Recommendation**

The Grand Jury recommends that the department promptly complete a review of the fees charged for services. The Board of Supervisors should approve a fee schedule which covers the actual cost of providing services.

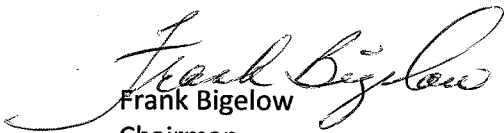
**Grand Jury Recommendation**

The Grand Jury recommends that the local demand for Diphacinone Grain bait should be assessed. If warranted, a cost-effective means for making it available locally should be sought.

**Board of Supervisors' Response to Grand Jury Recommendations**

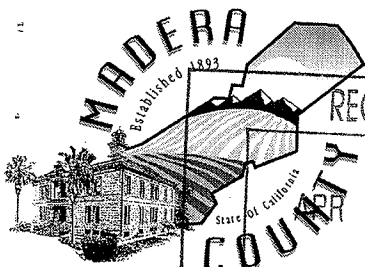
The response of the Commissioner of Agriculture to the above Recommendations is considered appropriate and is submitted as the Board of Supervisors' response. (See Attachment #2.)

Sincerely,

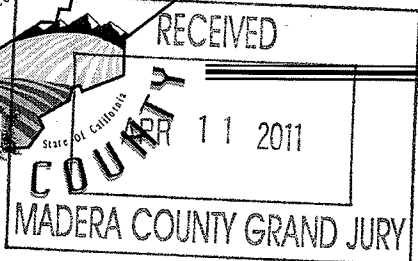


Frank Bigelow  
Chairman  
Madera County Board of Supervisors

Attachment



# Madera County Department of Agriculture Weights and Measures



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APR 05 2011

JURY DIVISION  
SUPERVISOR

Robert J. Rolan, Agricultural Commissioner  
Sealer of Weights and Measures

Jay Seslowe, Assistant Agricultural  
Commissioner/Sealer

TO: Presiding Judge, Madera County Superior Court  
Madera County Grand Jury

FROM: Robert Rolan, Agricultural Commissioner/Sealer of Weights and Measures

DATE: April 4, 2011

RE: Response to 2010/2011 Madera County Grand Jury Final Report entitled:  
"Madera County Department of Agriculture/Sealer of Weights and Measures"

In order to ensure a correct understanding of the Department's environment and some of the variables by which decisions made are by management, background information has been included to clarify the Department's responses to the Grand Jury's recommendations.

Because Recommendations #1 and 3 are interrelated, they have been combined to provide a more accurate response.

### Grand Jury Recommendations #1 & 3:

- *"The Grand Jury recommends that the Ag Commissioner work closely with the Board of Supervisors to maintain a staffing level sufficient to provide services critical to the agricultural community."*

*"The Grand Jury recommends that, to improve retention, the department and the County should identify job-related values of employees, such as achievement recognition or promotional opportunities."*

### Background information:

Over the last thirty years, the department has had a high level of turnover, mainly due to low salaries, compared to other San Joaquin Valley counties. The typical scenario has been to fill vacant positions at the entry level because journey level salaries were too low to attract journey level candidates. After approximately two years of training a new Inspector and assisting him/her in obtaining required state licenses, the Inspector would resign and take a similar position in another county (usually Fresno) at a higher level of pay and usually with less of a commute.

The Agricultural Commissioner's office combined with the Madera County Department of Weights and Measures (Sealer) in 1986. At that time, the W & M department had a staff that included the Sealer, a secretary, and least two inspectors. Only one of those individuals, an Inspector, was retained by the County. While the Agricultural Commissioner had a license to legally oversee the program, no one else in the department had any experience or licenses in the weights and measures disciplines at that time. Within two years after the consolidation of offices, the sole experienced W & M Inspector resigned before others could become proficient in weights and measures activities. Not having a stable foundation upon which to integrate the weights and measures culture into the

Commissioner's department and the ongoing loss of trained individuals have created a continuous rebuilding cycle in that program since the consolidation occurred.

In 2007, the "Agricultural Technician" position was created. It was a position that did not require a college degree or specific program licenses and the department could fill up to two allocated Inspector positions at this level. The purpose of the Technicians was to assist Inspectors in activities where a license was not required. Further, it was presumed that there was a strong likelihood of retaining the Technicians – and retention of expertise – because there was no demand for their services from adjoining counties. This has proved to be a successful and cost-effective strategy.

Also in 2007, the Senior Agricultural and Standards class was created. This strategy enhanced the professional career ladder of Inspectors, allowing them to progress to another level and provided incentive to stay in Madera County. In conjunction with the Senior class, a salary survey was completed which aligned the compensation of the professional staff with other San Joaquin Valley counties thus, improving retention, recruitment, and departmental efficiency. Inspectors also received the additional benefit of reimbursement for state licensing exam fees.

These improvements provided a brief period of extraordinary stability within the department until December, 2009 when the furlough program was initiated. The salary reductions resulting from that policy directly influenced the resignation of three seasoned inspectors who left during the months of March, April, and September of 2010; this was identified in their exit interviews.

Page 4 of the Report indicates *"The Grand Jury found that, due to budget cuts, the permanent inspection staffing level has been reduced by four positions (from 14 to 10) in the past two years."* More correctly stated, the department's 2010/2011 budget allocated a total of nine (9) positions (two of which were filled by Agricultural Technicians), while the 2009/2010 budget allocated twelve (12) positions, two of which were frozen for salary savings.

Regardless of the number of allocated positions, the department has operated with a total of ten or less inspectors (or Technicians) every year since 2002. At present, the department's staffing level consists of seven permanent Inspectors and two Technicians. *(In addition, a retired annuitant has been retained to provide W&M training to staff; approximately 300 hours have been allocated to this expense for FY 2010/2011).*

### **Response to Recommendations #1 & 3:**

Compensation and personnel strategies were promoted by the department and approved by the Board of Supervisors with the intention of reducing the loss of licensed professionals and technical expertise. This effort was thwarted due to the budgetary crisis which began in fiscal year 2009/10 and continuing to the present. Although vacant positions were swept or frozen, the department has avoided layoffs.

In response to the Grand Jury's recommendation to *"... identify job-related values of employees, such as achievement recognition or promotional opportunities..."* the Agricultural Commissioner/Sealer recommends the two following incentives for future consideration:

- The creation of an Agricultural Technician II classification. This is necessary to extend the career path of the Agricultural Technician class and increase the likelihood of retaining the two Agricultural Technicians currently on staff. In the relatively short amount of time since the positions were formed they have both served in multiple programs and helped to bridge the loss of expertise when a resignation has occurred.
- Provide additional compensation for holders of a Class A or B California Driver's License. At present, only one person on staff is qualified to operate the heavy capacity weight truck. This truck is used for testing vehicle scales, livestock scales, and other heavy capacity scales. Without the availability of a qualified driver, scales will not be checked and local industry will

be negatively affected. (Since 2005, the department has provided training and reimbursement to four Inspectors for the California Class B driver's license exam. All four of the Inspectors left county service within a year of obtaining the license).

Until additional funding becomes available to eliminate furloughs and reinstate necessary staffing levels, the Agricultural Commissioner/Sealer will continue to utilize available staff in a manner that reflects the highest priorities of the moment. Priorities are currently being determined by the potential for harm to Madera County's agricultural economy, the environment, and that of our neighboring counties. When those priorities are driven by exotic pests or other emergencies, routine customer services may be curtailed or negatively affected. Finally, revenue considerations are also a significant factor in the prioritization process. This will be explained in greater detail in the following response.

### **Grand Jury Recommendation #2:**

- *"The Grand Jury Recommends that the Ag Commissioner develops a program to lessen the impact of staff vacancies or absences. Ag inspectors should receive on-the-job training to perform duties in one or more additional programs for which they have qualified by licensure. During periods in which there is less demand for services in their specialty program, they should be assigned to train in and provide support for the other program(s)."*

### **Background:**

As specified in section 224 of the Food and Agricultural Code, the Agricultural Commissioner is reimbursed for net county expenditures in eleven specific agricultural programs. Those programs are itemized in the annual financial statement which is submitted to the California Department of Food and Agriculture. Within those eleven Ag programs, at least ten separate "specialties within a specialty" can be identified.

In the Weights and Measures program, an annual activity report is filed with the Division of Measurement Standards. In that report, five different programs, including "Devices" are specified. Within the Devices program alone, 20 different types of weighing or measuring devices are inspected in Madera County. Each of those types of devices has a specific procedure for testing as well as different testing equipment.

As stated on page 4 of the Grand Jury report: "...they [inspectors] tend to become specialists in their assigned program(s)." This is true due to the complexity of the department's activities. There are many specialized programs each having their own set of statutes, regulations, procedures, paperwork, and pieces of equipment. Realistically, it is impractical for any one person to become proficient in every inspection performed by this department. However, since at least 1986, it has been the policy of the department to cross train personnel in as many different disciplines as possible. In some instances, a modicum of proficiency is enough for an Inspector to assist with a seasonal activity, such as bee inspection. However, a potentially dangerous activity such as use of a liquefied petroleum gas prover or transference of 1,000 pound weights for scale testing requires a higher degree of familiarity obtained by more frequent participation in that program. Unfortunately, the opportunities to provide training become less available when operating with reduced staffing.

Meeting annual revenue projections is an ongoing factor in determining how personnel are utilized. As noted above, the department is reimbursed by the state for its participation in **agricultural activities**. This funding, unclaimed gas tax (UCGT) from the Motor Vehicle Fuel Account, represents a large portion of the department's annual revenue. The amount received is based upon the overall net county cost for those activities identified in F & A Code section 224 in proportion to the net county costs of other counties.

When person hours are reduced in agricultural programs due to attrition, furloughs, frozen positions, reassignment to weights and measures programs, etc., UCGT revenue is reduced. Person hours attributed to weights and measures programs are *not included* in the UCGT formula. Consequently, all additional W&M program costs used for cross training or additional staffing come directly out of the General Fund. (*In both the current and past fiscal year, the Board of Supervisors has declared a fiscal emergency in Madera County and departments have been directed to minimize General Fund expenditures and capture as much revenue as possible*).

**Response to Recommendation #2:**

The department has a long history of cross training staff in as many different program activities as is practicable. Besides providing primary and secondary individuals to the programs, it also allows professional staff to become versed in a wide array of regulatory activities. However, the continuity of this policy has been frequently compromised by insufficient staffing due to budgetary constraints or revenue considerations.

**Grand Jury Recommendation #4:**

- *"The Grand Jury recommends that the Ag Commissioner revise and update The Answer Book 2003 regularly."*

**Background:**

The Answer Book 2003 was prepared as a regulatory aid for growers. It was intended to be a handy field reference for the most common pesticide handler problems that the department observed during inspections. The content of the book was prepared by staff and it was produced in collaboration with Creative Copy, a local print shop that had assisted the department with layout and printing of the annual crop report. Subsequent to its printing, it was also placed on the department's website.

By 2007, regulatory changes occurred that necessitated an update to the Answer Book. However, the department's personnel had changed drastically during that period of time, including the primary individual responsible for production of the Book, who had left county service.

Management had an awareness of the need to update this reference but it was not pursued due to other departmental priorities. However, during the Commissioner's interview with the Grand Jury on September 23, 2010, a member who had viewed the Answer Book on the department's website mentioned that he thought it was a valuable resource that should be updated.

A few weeks later, management consulted with the IT department about the technical issues involved with performing the update. Due to the nature of the publication, specifically, the formatting which included numerous photos, boxes, and other content besides text, the IT department indicated that it would not be as simple as editing the text; every entry that was made would generate reformatting changes.

By mid-November a WORD format version of the document had been reviewed by staff and updated. However, no further progress was made during the period of November through February due to impact of pesticide permit renewals, licensee registrations, high risk bee inspections, and other activities.

**Response to Recommendation #4:**

The loss of staff expertise, departmental priorities, and technical requirements associated with the updating of The Answer Book 2003 delayed the revision of this document. However, the project was completed last month and the new version is now on the Department's website. Photocopied versions are also being made available to individuals upon request.

#### **Grand Jury recommendation #5:**

- *"The Grand Jury recommends that the department promptly complete a review of the fees charged for services. The Board of Supervisors should approve a fee schedule which covers the actual cost of providing services."*

#### **Background:**

One of the Grand Jury's conclusions was that "...the County may be foregoing a significant amount of revenue from recoverable costs by charging service fees which are out-of-date and do not cover the costs of providing the services." On page 5 of the Grand Jury report the following statement is made: "Some non-mandated services are provided on a fee-for-service basis. The department reported that fees charged are outdated and do not cover the cost of providing the service. The Board of Supervisors has requested that each department review fees schedules for possible modification." A portion of that statement is incorrect; the department's fees are not outdated. On February 9, 2010 the Board of Supervisors approved a new fee schedule for the department which is considered current.

In July, 2009, the department began a survey of fee schedules in all San Joaquin Valley counties as well as a number of other counties throughout the state. A representative from each identified county was interviewed for clarification of how the fees were calculated. In addition to differences in salary and benefit levels, a number of other variables were identified such as: county policies and procedures; how wages and benefits of inspection personnel were determined; differences in the commodities or sites inspected; distance of inspection sites from the main or branch office; and other factors used to determine the cost of a service.

An extensive in-house time analysis was also performed in which individual time accounting records, program monthly reports, and annual financial statements were reviewed. In some instances, time determinations for specific tasks were validated with field observations to determine appropriate fees. In December, 2009, the Auditor provided a weighted average hourly rate (WAHR) to the department which would serve as the benchmark fee for non-mandated services. The WAHR was set at \$71.61 which included all salaries, benefits, A-87 costs, vehicles and mileage.

#### **Response to Recommendation #5:**

Extensive research was done in the past fiscal year to validate the fees that the department charges for non-mandated services. The current fee schedule was approved by the Board of Supervisors in February, 2010 and went into effect one year ago. The department will continue to monitor the fee schedule on an annual basis as directed by the Board to ensure that fees for non-mandated services reflect the actual cost of performing those services.

#### **Grand Jury recommendation #6:**

- *"The Grand Jury recommends that the local demand for Diphacinone Grain bait should be assessed. If warranted, a cost-effective means for making it available locally should be sought."*

#### **Background:**

The department stopped producing rodenticides in 1995 due to outdated mixing facilities that did not meet the legal standards for health and safety. In order to continue to provide this service to the public, the department began purchasing anticoagulant bait from Kings County which was sold at cost. The department also continued the purchase of gas cartridges from USDA which provided an alternative squirrel control measure.

The sale of anti-coagulant baits was eventually curtailed in January, 2009 for several reasons. Customer demand for the baits had become very unpredictable and sales were substantially reduced. As a result, the bait inventory was stored much longer than anticipated and storage conditions were

not conducive to long term storage. Weevil infestations became a constant problem, causing damage to the product. This necessitated the hiring of a pest control operator to fumigate the bait.

Customers began to complain about the quality of the product and sales further declined. Finally, at least one customer who purchased large quantities of bait decided that it was more convenient to buy it directly from Kings County rather than from Madera County. After two or more years of inconsistent demand for the product, additional costs to provide the service, and with no viable storage facility that was capable of maintaining the integrity of the product, rodenticide sales were discontinued.

New regulations in California have now classified anti-coagulant rodenticides as restricted use pesticides. New label restrictions further limit how and where the baits can be used and new certification requirements for applicators have been imposed. Since these materials cannot be purchased without a valid permit, the regulatory changes will increase the number of permits issued by the department, certification exams for users, and other related paperwork *regardless* of where they choose to purchase the material.

Products for home and other non-agricultural uses require special packaging and are no longer available at county offices. These materials can only be purchased from neighborhood hardware or "big box stores" such as Lowe's and Home Depot. There are no permits or reporting requirements for those products.

**Response to Recommendation # 6:**

Prior to ending bait sales, a letter was sent to all customers to give them advance notice of the decision to curtail the service. Notice was also given at grower continuing education meetings in November, 2008 and a sign was posted at the front desk for walk-in customers. Information on where to purchase bait was also provided to customers. Initially, a few customers who were unaware of the policy change were inconvenienced. In past years, growers who had an interest in a particular service expressed that interest through the Madera County Farm Bureau. To date the Farm Bureau has not indicated any support from their members to reinstate bait sales by the department.

Every grower who uses a pesticide for the production of a crop – whether conventional or organic – is required to obtain a permit and file pesticide use reports with the department. Consequently, staff has physical contact with representatives of virtually every farm in Madera County at least once each year. Since bait sales were ended in 2009, there have been no complaints from growers that the department does not sell rodenticides or requests that we consider reinstating this service.

In summary, it is not advisable to reconsider the reinstatement of bait sales to the public at this time for the following reasons:

- The expense of providing a secure container or facility capable of storing treated grain;
- The expense of meeting the legal specifications to allow fumigation of the product;
- The lack of requests from the public to reinstate this service;
- The addition of another activity when the department is understaffed and under a schedule of two furlough days per month.