

BOARD OF SUPERVISORS COUNTY OF MADERA

MADERA COUNTY GOVERNMENT CENTER
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FRANK BIGELOW
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August 7, 2012

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

Subject: Response to the 2011-12 Grand Jury Report entitled "Madera County Solid Waste Management and Recycling Revisited."

Honorable Judge Rigby:

Pursuant to the California Penal Code 933.05, the Madera County Board of Supervisors submits this response to the findings and recommendations in the 2011-12 Madera County Grand Jury Report on "Madera County Solid Waste Management and Recycling Revisited." See Attachment #1.

The following are the Grand Jury's findings and recommendations and the Board of Supervisors' responses:

Finding 1:

In regard to the 2010-2011 Recommendation *"that the County avoid the appearance of impropriety in the granting and management of contracts in the area of solid waste management as millions of dollars are involved"*, the Grand Jury found that on March 27, 2012, the BoS contracted with consulting firm Gershman, Brickner & Bratton, Inc. (Contract No. MCC 9543-C-2012) to perform a business needs assessment, develop a scope of work to be sent out to bid, and solicit/select a new contractor(s) to assume responsibility for the various operations.

Response:

Agree with the finding per California Penal Code 933.05 (a) (1).

Finding 2:

In regard to the 2010-2011 Recommendation *"that the RMA, subject to appropriate BoS*

guidance, give thirty days (30) notice to contractor A for contract non-compliance", the Grand Jury found that on March 31, 2011 the BoS gave the thirty (30) day notice to contractor for contract non-compliance.

Response:

Agree with the finding per California Penal Code 933.05 (a) (1).

Finding 3:

In regard to the 2010-2011 Recommendation "*that the County renegotiate the contracts for the operation of the landfill and the MRF [Materials Recovery Facility] to better represent the interests of the residents of Madera County*", the Grand Jury found that the BOS is considering options for future operation of the Landfill and MRF.

Response:

Agree with the finding per California Penal Code 933.05 (a) (1).

Finding 4:

In regard to the 2010-2011 Recommendation "*that, in the future, contracts for solid waste management should be awarded on the basis of competitive bid*", the Grand Jury found that the BOS has contracted with a consulting firm to develop a scope of work to be sent out for bid.

Response:

Agree with the finding per California Penal Code 933.05 (a) (1).

Finding 5:

In regard to the 2010-2011 Recommendation "*that the landfill revert to a County operation resulting in increased control, cost savings, and opportunities for substantial revenue from recycling*", the Grand Jury found that:

- a. the County does not have the in-house expertise to operate the Landfill; and
- b. options for future operation of the Landfill will be studied by the contracted consulting firm.

Response:

Agree with the finding per California Penal Code 933.05 (a) (1).

Finding 6:

In regard to the 2010-2011 Recommendation "*that, ... the request for proposal should include hauling, managing the landfill and MRF, and managing the North Fork Transfer Station*", the Grand Jury found that the BOS has given notice of termination for the contracts for these four operations.

Response:

Agree with the finding per California Penal Code 933.05 (a) (1).

Finding 7:

In regard to the 2010-2011 Recommendation *"that the BOS take the necessary steps to amend the agreements with contractors A and B in regard to the process used to determine appropriate increases in service fees for collection of solid waste in the unincorporated areas of the county....based upon legitimate changes in operating costs"*, the Grand Jury found that this issue has been addressed.

Response:

Partially disagree with the finding per California Penal Code 933.05 (a) (2). The Board of Supervisors has considered the response of the County Engineer and finds it to be an appropriate response (See Attachment #2)

Finding 8:

In regard to the 2010-2011 Recommendation *"that the MRF should be operated as a dirty MRF as a required by the contract and state permit"*, the Grand Jury found that the County has taken the position that it does not matter whether the MRF is operated as clean or dirty.

Response:

Agree with the finding per California Penal Code 933.05 (a) (1).

Finding 9:

In regard to the 2010-2011 Recommendation *"that the County fund a method for separating recyclable materials in the unincorporated areas of the county to increase recycling"*, the Grand Jury found that no action has been taken; however, County staff is exploring options for partial implementation of recycling efforts in the unincorporated areas.

Response:

Partially disagree with the finding per California Penal Code 933.05 (a) (2). The Board of Supervisors has considered the response of the County Engineer and finds it to be an appropriate response (See Attachment #2)

Finding 10:

In regard to the 2010-2011 Order that *"the District Attorney...recover funds and reasonable interest for the over-charges collected by the contractor for that portion of the tipping fee designated for operation of the MRF"*, the Grand Jury found that:

- a. the District Attorney's request for the funding needed to comply with this Order was denied by the BoS; and
- b. the BosS has filed a lawsuit (Case No. MCV059402) against the contractor to recover these funds along with 10% interest.

Response:

Agree with the finding per California Penal Code 933.05 (a) (1).

Finding 11:

In regard to the 2010-11 Order that *"the District Attorney...recover monies generated from the sale of recyclable materials as called for in the contract "*, the Grand Jury found that:

- a. the District Attorney's request for the funding needed to comply with this Order was denied by the BoS; and
- b. the BoS has filed a lawsuit (Case No. MCV059402) against the contractor to recover these funds along with 10% interest.

Response:

Agree with the finding per California Penal Code 933.05 (a) (1).

Finding 12:

In regard to the 2010-2011 Recommendation that *"special attention be paid to insure that the contractor is not co-mingling expenses from the various businesses that it operates out of the landfill"*, the Grand Jury found that BoS addressed this issue in pending litigation No. MCV059402.

Response:

Agree with the finding per California Penal Code 933.05 (a) (1).

Finding 13:

In regard to the 2010-11 Recommendation *"that the County complete a comprehensive, independent audit of the landfill and MRF operations every three years"*, the Grand Jury found that the BoS has caused an independent audit to be performed.

Response:

Agree with the finding per California Penal Code 933.05 (a) (1).

Finding 14:

In regard to the 2010-11 Recommendation *"that the [current] audit...should be reviewed in detail by the BoS and a copy provided promptly to the Grand Jury. Deficiencies noted should result in a thirty (30) day notice of contract non-compliance and steps needed for the contractor to into compliance"*, the Grand Jury found that:

- a. the BoS has reviewed the audit report;
- b. the Grand Jury was not provided with a copy of the audit report; and
- c. the BoS issued a thirty (30) day notice of contract non-compliance.

Response:

Agree with the finding per California Penal Code 933.05 (a) (1).

Finding 15:

In regard to the 2010-11 Recommendation *"that the BoS require that enforcement of the contract receive active and direct attention by the CAO, the RMA Director, County Counsel, and the Division of Solid Waste Management [with] frequent, scheduled reports as to such activities from County agencies"*, the Grand Jury found that weekly monitoring and reporting on the Landfill operations are being performed by RMA staff.

Response:

Agree with the finding per California Penal Code 933.05 (a) (1).

Finding 16:

In regard to the 2010-11 Recommendation *"that the Department of Environmental Health develop stricter inspection and documentation procedures to insure that the proper handling and storage of household hazardous wastes is in compliance with health and safety regulations"*, the Grand Jury found that the handling and storage of household hazardous waste appears to be in compliance with regulations.

Response:

Agree with the finding per California Penal Code 933.05 (a) (1).

Finding 17:

In regard to the 2010-11 Recommendation *"that the BoS pursue corrective action to insure that the contractor ceases and desists from operating unrelated businesses on County property, until such time as a negotiated agreement for the contractor to pay fair market value to do so is in effect"*, the Grand Jury found that the BoS has entered in to a contract (Agreement No. 9434-C-2011) with the Landfill operator for lease of property on which to store his equipment for other businesses.

Response:

Agree with the finding per California Penal Code 933.05 (a) (1).

Recommendation 1:

The Grand Jury recommends that contacts for collection of solid waste provide that service fee increases require specific approval of the BoS and that such increases be based upon changes in operating costs.

Response:

The Board of Supervisors has considered the response of the County Engineer and finds it to be an appropriate response (See Attachment #2)

Recommendation 2:

The Grand Jury recommends that the County increase recycling county-wide by identifying and implementing methods for separating recyclable materials in the unincorporated areas where feasible.

Response:

The Board of Supervisors has considered the response of the County Engineer and finds it to be an appropriate response (See Attachment #2)

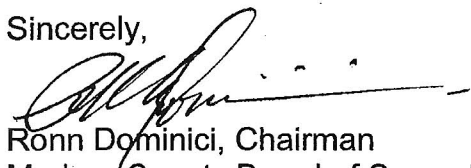
Recommendation 3:

The Grand Jury recommends that the County require that the MRF be operated as a dirty MRF to further increase recycling of materials.

Response:

The Board of Supervisors has considered the response of the County Engineer and finds it to be an appropriate response (See Attachment #2)

Sincerely,



Ronn Dominici, Chairman
Madera County Board of Supervisors
Attachment



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FILED
MAY 18 2012
MADERA COUNTY BOARD
OF SUPERVISORS

May 18, 2012

Madera County Board of Supervisors
200 W. 4th Street
Madera, CA 93637

Enclosed is a copy of the 2011-2012 Madera County Grand Jury report entitled:

Madera County Solid Waste Management and Recycling Revisited

Pursuant to California Penal Code Section 933.05(f), a copy of the report is being provided to you two working days prior to the report's public release. The public release of this report is scheduled for May 23, 2012. Please note that under Penal Code section 933.05 (f), [no] officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report".

In accordance with California Penal Code Section 933.05(a) and (b), you shall respond to the **findings and recommendations** in this report that address subjects under your control.

According to Penal Code Section 933(c), you have 60 days to submit your responses to **both the findings and recommendations** contained in this report. Accordingly, the date on which the responses must be submitted is August 23, 2012.

Please send your responses to:

Presiding Judge
Madera County Superior Court
209 West Yosemite Avenue
Madera, CA 93637

Madera County Grand Jury
P.O. Box 534
Madera, CA 93639

Thank you,

Ralph Capone
Foreman
2011-2012 Madera County Grand Jury

Admin
(51)



RESOURCE MANAGEMENT AGENCY
DEPARTMENT OF ENGINEERING
 KEN VANG PE, COUNTY ENGINEER

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 Madera, CA 93637-8720
 (559) 675-7817
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 kheng.vang@madera-county.com

DATE: May 28, 2012

TO: Honorable Mitchell C. Rigby, Presiding Judge
 Madera County Superior Court
 209 W. Yosemite Ave.
 Madera, CA 93657

FROM: Ken Vang P.E., County Engineer

SUBJECT: Final Report Madera County Solid Waste Management and Recycling Revisited

Please find below our response and comments in response to the Grand Jury's Findings and recommendations for Special District's Division.

Findings:

1. In regard to the 2010-2011 Recommendation *"that the County should avoid the appearance of impropriety in the granting and management of contracts in the area of solid waste management as millions of dollars are involved"*, the Grand Jury found that on March 27, 2012, the BoS contracted with consulting firm Gershman, Brickner & Bratton, Inc. (Contract No. MCC 9543-C-2012) to perform a business needs assessment, develop a scope of work to be sent out to bid, and solicit/select a new contractor(s) to assume responsibility for the various operations.
We agree with the findings.
2. In regard to the 2010-2011 Recommendation *"that the RMA, subject to appropriate BoS guidance, give thirty days (30) notice to contractor A for contract non-compliance"*, the Grand Jury found that on March 31, 2011 the BoS gave the thirty (30) day notice to contractor for contract non-compliance.
We agree with the findings.
3. In regard to the 2010-2011 Recommendation *"that the County renegotiate the contracts for the operation of the landfill and the MRF [Materials Recovery Facility] to better represent the interests of the residents of Madera County"*, the Grand Jury found that the BoS is considering options for future operation of the Landfill and MRF.
We agree with the findings.
4. In regard to the 2010-2011 Recommendation *"that, in the future, contracts for solid waste management should be awarded on the basis of competitive bid"*, the Grand Jury found that the BoS has contracted with a consulting firm to develop a scope of work to be sent out for bid.
We agree with the findings.
5. In regard to the 2010-2011 Recommendation *"that the landfill revert to a County operation resulting in increased control, cost savings, and opportunities for substantial revenue from recycling"*, the Grand Jury found that:
 - a) the County does not have the in-house expertise to operate the Landfill; and
 - b) options for future operation of the Landfill will be studied by the contracted consulting firm.*We agree with the findings.*

6. In regard to the 2010-2011 Recommendation *"that ... the request for proposal should include hauling, managing the landfill and MRF, and managing the North Fork Transfer Station"*, the Grand Jury found that the BoS has given notice of termination for the contracts for these four operations.
We agree with the findings.
7. In regard to the 2010-2011 Recommendation *"that the BoS take the necessary steps to amend the agreements with contractors A and B in regard to the process used to determine appropriate increases in service fees for collection of solid waste in the unincorporated areas of the county ... based upon legitimate changes in operating costs"*, the Grand Jury found that this issue has not been addressed.
We partially agree with the findings. As part of the RFP process, new agreements will be prepared for the selected contractor. The new agreements will include clauses for determining appropriate increases in service fees for collection of solid waste.
8. In regard to the 2010-2011 Recommendation *"that the MRF should be operated as a dirty MRF as required by the contract and state permit"*, the Grand Jury found that the County has taken the position that it does not matter whether the MRF is operated as clean or dirty.
We agree with the findings.
9. In regard to the 2010-2011 Recommendation *"that the County fund a method for separating recyclable materials in the unincorporated areas of the county to increase recycling"*, the Grand Jury found that no action has been taken; however, County staff is exploring options for partial implementation of recycling efforts in the unincorporated areas.
We partially agree with the findings, AB 341 which was recently passed requires that all commercial businesses and multifamily developments of 5 or more units that generate 4 cubic yards or more of solid waste shall subscribe and arrange for recycling services by July 1, 2012. The County is working with Contractors A and B, to identify how they can assist the County in meeting this requirement.
10. In regard to the 2010-2011 Order that *"the District Attorney ... recover funds and reasonable interest for the over-charges collected by the contractor for that portion of the tipping fee designated for operation of the MRF"*, the Grand Jury found that:
 - a) the District Attorney's request for the funding needed to comply with this Order was denied by the BoS; and
 - b) the BoS has filed a lawsuit (Case No. MCV059402) against the contractor to recover these funds along with 10% interest.*We agree with the findings.*
11. In regard to the 2010-2011 Order that *"the District Attorney ... recover monies generated from the sale of recyclable materials as called for in the contract"*, the Grand Jury found that:
 - a) the District Attorney's request for the funding needed to comply with this Order was denied by the BoS; and
 - b) the BoS has filed a lawsuit (Case No. MCV059402) against the contractor to recover these funds along with 10% interest.*We agree with the findings.*
12. In regard to the 2010-2011 Recommendation that *"special attention be paid to insure that the contractor is not co-mingling expenses from the various businesses that it operates out of the landfill"*, the Grand Jury found that the BoS addressed this issue in pending litigation No. MCV059402.
We agree with the findings.
13. In regard to the 2010-2011 Recommendation *"that the County complete a comprehensive, independent audit of the landfill and MRF operations every three years"*, the Grand Jury found that the BoS has caused an independent audit to be performed.
We agree with the findings.

14. In regard to the 2010-2011 Recommendation "that the [current] audit ... should be reviewed in detail by the BoS and a copy provided promptly to the Grand Jury. Deficiencies noted should result in a thirty (30) day notice of contract non-compliance and steps needed for the contractor to come into compliance", the Grand Jury found that:
- a) the BoS has reviewed the audit report;
 - b) the Grand Jury was not provided with a copy of the audit report; and
 - c) the BoS issued a thirty (30) day notice of contract non-compliance.
- We agree with the findings.*
15. In regard to the 2010-2011 Recommendation "that the BoS require that enforcement of the contract receive active and direct attention by the CAO, the RMA Director, County Counsel, and the Division of Solid Waste Management [with] frequent, scheduled reports as to such activities from County agencies", the Grand Jury found that weekly monitoring and reporting on the Landfill operations are being performed by RMA staff.
- We agree with the findings.*
16. In regard to the 2010-2011 Recommendation "that the Department of Environmental Health develop stricter inspection and documentation procedures to insure that the proper handling and storage of household hazardous wastes is in compliance with health and safety regulations", the Grand Jury found that the handling and storage of household hazardous waste appears to be in compliance with regulations.
- We agree with the findings.*
17. In regard to the 2010-2011 Recommendation "that the BoS pursue corrective action to insure that the contractor ceases and desists from operating unrelated businesses on County property, until such time as a negotiated agreement for the contractor to pay fair market value to do so is in effect", the Grand Jury found that the BoS has entered into a contract (Agreement No. 9434-C-2011) with the Landfill operator for lease of property on which to store his equipment for other businesses.
- We agree with the findings.*

Conclusions:

1. The Grand Jury concluded that the BoS has taken an active role in addressing many of the Landfill operation issues identified by the 2010-2011 Grand Jury.
2. The Grand Jury concluded that RMA staff is actively and directly monitoring the Landfill operations.

Recommendations:

1. The Grand Jury recommends that contracts for collection of solid waste provide that service fee increases require specific approval of the BoS and that such increases be based upon changes in operating costs.
The recommendation has not yet been implemented, but will be implemented in the future. As part of the RFP process and selection of a new Contractor, new agreements will be prepared for the selected contractor. The new agreements will include clauses for determining appropriate increases in service fees for collection of solid waste.
2. The Grand Jury recommends that the County increase recycling county-wide by identifying and implementing methods for separating recyclable materials in the unincorporated areas where feasible.
The recommendation has not yet been implemented, but will be implemented in the future. AB 341 which was recently passed requires that all commercial businesses, and multifamily developments of 5 or more units that generate 4 cubic yards or more of solid waste shall subscribe and arrange for recycling services by July 1, 2012. The County is working with Contractors A and B, to identify how they can assist the County in meeting this requirement.
3. The Grand Jury recommends that the County require that the MRF be operated as a dirty MRF to further increase recycling of materials.
The recommendation requires further analysis, the consulting firm Gershman, Brickner & Bratton, Inc.

(GBB) has been selected by the County to perform a business needs assessment, develop a scope of work to be sent out to bid, and solicit/select a new contractor(s) to assume responsibility for the various operations. As part of the business needs assessment, GBB will provide recommendations on future operations of the MRF facility and a strategy to comply with AB 341.

4. The Grand Jury recommends that subsequent Grand Juries continue to monitor issues regarding solid waste management and recycling in the county.