



MONO COUNTY GRAND JURY

2017-2018

FINAL REPORT

Submitted June, 2018

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LAYOUT

Danielle Bauman

PRODUCTION

Deborah Pierrel & Danielle Bauman

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MONO

IN RE:

2017-2018 Grand Jury

GENERAL ORDER

I certify that the 2017-2018 Mono County Grand Jury Final Report, pursuant to California Penal Code § 933 (a), complies with Title Four of the California Penal Code and direct the County Clerk to accept and file the final report as a public document.

Dated this 16th day of July 2018.



MARK MAGIT
Presiding Judge of the Superior Court

GRAND JURY ADVISORS

Mark Magit

Presiding Judge, Superior Court, Mono County

Hector Gonzalez Jr.

Executive Officer, Superior Court, Mono County

Tim Kendall

District Attorney, Mono County

Stacey Simon

County Counsel, Mono County

Danielle Bauman

Executive Assistant, Superior Court, Mono County

GRAND JURORS

2017-2018 Grand Jurors

Deborah Pierrel, Foreperson
Mammoth Lakes

Christopher Brandt, Assistant Foreperson
Mammoth Lakes

David Richman
Mammoth Lakes

Greg Newbry
Mammoth Lakes

Joseph Adler
Mammoth Lakes

Juliana Olinka Jones
Mammoth Lakes

Kathryn Williams
Benton

Kirk Stapp
Mammoth Lakes

Susi Bains
Mammoth Lakes

Thom Heller
Mammoth Lakes

Thomas Gaunt
Mammoth Lakes

2017-2018 Alternate Grand Juror

Jiselle Kenny
Mammoth Lakes

THE GRAND JURY SYSTEM

Shrouded in secrecy, the functions of a Grand Jury are not widely known. The following summary describes what a Grand Jury is and does:

The Grand Jury system dates back to 12th century England during the reign of Henry II. Twelve “good and lawful men” were assembled in each village to investigate anyone suspected of crimes. The jurors passed judgment based on what they themselves know about a defendant and the circumstances of the case. It was believed that neighbors and associates were the most competent to render a fair verdict. By the end of the 17th century, the principle that jurors must reach a verdict solely on the basis of evidence was established, and that practice continues today. Although California Supreme Court decisions have curtailed the historical criminal indictment function, the Grand Jury still serves as an inquisitorial and investigative body functioning as a “watchdog” over regional government.

The Mono County Grand Jury, as a civil Grand Jury, is not charged with the responsibility for criminal indictments except in the case of elected or appointed county officials. Its primary function is the examination of county and city government, including special legislative districts such as community service districts and fire protection districts. The Grand Jury seeks to ensure that government is not only honest, efficient and effective, but also conducted in the best interest of the citizenry. It reviews and evaluates procedures, methods and systems used by governmental agencies to determine compliance with their own objectives and to ensure that government lives up to its responsibilities, qualifications and the selection process of a Grand Jury are set forth in California Penal Code Section 888 et seq.

The Grand Jury responds to citizen complaints and investigates alleged deficiencies or improprieties in government. In addition, it investigates the county’s finances, facilities and programs. The Grand Jury cannot investigate disputes between private citizens or matters under litigation. Jurors are sworn to secrecy, and all citizen complaints are treated in strict confidence.

The Mono County Grand Jury is a volunteer group of 11 citizens from all walks of life throughout the county. Grand jurors serve a year-long term beginning July 1, and the term limit is two consecutive years. Lawfully, the Grand Jury can act only as an entity. No individual grand juror, acting alone, has any power or authority. Meetings of the Grand Jury are not open to the public. By law, all matters discussed by the Grand Jury and votes taken are kept confidential until the end of term.

One of the major accomplishments of a Grand Jury is assembling and publishing its Final Report. This document is the product of concentrated group effort and contains recommendations for improving various aspects of governmental operations. When it is completed, the Final Report is submitted to the presiding judge of the Superior Court. After release by the court, it is directed first to county department heads for review, then to the communications media. The Final Report is a matter of public record, kept on file at the court clerk’s office. It is also available on line at: <http://www.mono.courts.ca.gov/>.

THE 2017-2018 MONO COUNTY GRAND JURY FINAL REPORT

June 2018

INTRODUCTION

The Mono County Grand Jury is charged with reviewing county government, investigating citizen complaints, and making appropriate recommendations to county officials and agencies as part of its year-end report. This Grand Jury felt it was important to advise the community of the status of its work in a timely manner, which is why an interim Final Report was issued previously. This Final Report contains the last of the completed investigations by the 2017-2018 Mono County Grand Jury. Both our Interim Report and this report are considered final reports with completed content.

All Mono County Grand Juries write and submit a final report of their investigations, findings, and recommendations at the end of their term, usually on or before June 30th of the year in which they serve. This final report is reviewed by the Superior Court of California, Mono County, released to named agencies and individuals for accuracy, and finally distributed to the press and the public.

It is appropriate that agencies and elected officials and department heads who are named in the Grand Jury's report and who are obligated to respond, do so in a timely manner so the public may read and review these responses and reach their own conclusions about each case. The goal of the Grand Jury is to be a "citizens' watchdog." If mandated response deadlines are ignored and timely responses not made available to the public, an important part of that "watchdog" function is lost.

Where applicable, certain members of the Grand Jury recused themselves due to conflicts based upon previous or current employment or relationships, from all parts of the investigation, including interviews and deliberations.

It is the responsibility of the citizens of Mono County to review each Grand Jury's report and determine for themselves what action, if any, they should take.

SUMMARY

This 2017-2018 Mono County Grand Jury Final Report consists of 5 investigations.

California Penal Code § 933 requires elected officials or agency heads to respond within 60 days of the issuance of a Grand Jury report that requires their response and requires governing bodies to respond within 90 days. Elected officials and government agencies are required to respond to recommendations made in Grand Jury reports, indicating their agreement or disagreement with those recommendations with their reasons and actions taken pursuant to those recommendations. These responses are to be addressed to the Presiding Judge of the Superior Court.

Mono County Grand Jury Final Report for the Year 2017 – 2018

Investigation #1

Town of Mammoth Lakes: Mammoth Lakes Tourism Final Report by Grand Jury Investigative Committee

Analysis:

Based upon a previous Grand Jury investigation, the current Grand Jury decided to further investigate Mammoth Lakes Tourism (MLT) by opening our own investigation.

Methodology:

The Grand Jury requested various documents on numerous occasions and subsequently subpoenaed said documents. Grand Jury members attended an MLT Board meeting and also conducted an interview of the MLT Board Chairman.

Findings:

- The Grand Jury found at least one instance of inaccurate public noticing of MLT Board meetings and as such a violation of the Brown Act.
- The MLT Board has not adopted requirements for its members to receive either Brown Act or Ethics Training.
- Based on our inquiries and interview of the Board Chairman regarding the negotiations for air service, it was represented in the interview, that there is now a better definition of the responsibilities and expenditure authority of key MLT Staff, based on recently adopted guidelines. However, there still appears to be a lack of transparency and communication between the Executive Director, the Board and the public at large. It was represented that the Board is not provided any information regarding the actual contract.
- Although not involved in the contract or negotiation of the contract to secure air service to Mammoth Lakes, MLT has committed to subsidizing those services on behalf of the Town. The actual negotiations are performed by Mammoth Mountain Ski Area, a private company.

Recommendations:

- That all staff and Board members of MLT be required to receive regular Brown Act and Ethics training.
- That the Executive Director provide written updates to all MLT Board members on a monthly basis, or more often as circumstances dictate, of ongoing negotiations, decisions and issues.
- In addition to the MLT Executive Director, that at least one Board member be involved in any negotiation that would result in a financial obligation above \$10,000 to MLT, even if MLT is not a signatory to said agreement.
- Any action that results in a financial obligation by MLT, based on a contract negotiated by others, must include a copy of said contract as part of the public record.

Mono County Grand Jury Final Report for the Year 2017 – 2018

Investigation #2

Mono County Jail

Final Report by Grand Jury Investigative Committee

Analysis:

Penal Code Section 919 (b) requires that the Grand Jury annually inquire into the condition and management of the public prisons within the county.

Methodology:

To comply with that requirement, two members of the 2017-2018 Grand Jury visited the Bridgeport Mono County Jail, and interviewed a number of staff including the lieutenant in charge of the jail and the Sheriff.

Findings:

- The Grand Jury found that the Jail appeared clean and well maintained.
- The Grand Jury found the food service area and process with inmate kitchen help seemed organized well for all.
- While limited by space, the jail has made good use of what they have.
 - The facility must maintain areas to separate men, women, children, intoxicated or under the influence and those who must be assessed for the competency/ability to stand trial, as well as long and short term inmates and those of lesser vs. higher agitated crimes.
 - At the time of the Grand Jury visit, there were 28 prisoners being held, of which 3 were female, 1 was in detox and 1 in assessment. Also, of the 28 prisoners, more than 80% were not Mono County residents.
- At the time of the Grand Jury visit, the jail was slightly understaffed, and in the process of filling positions, which are in the current budget.
- This facility houses both short-term inmates waiting trial or other processing as well as long-term inmates.
 - The long-term inmates are those who request to serve their time in Mono County Jail and are approved, for periods of up to 7 years. They do not accept those who have served sentences prior in a penitentiary or who have a history of agitated crimes or actions.
- The Sheriff, Lieutenant and staff we interacted with were very forthright and showed enthusiasm and pride in their facility.
- We were advised that all staff, including dispatch are 'hybrid' positions; able to carry a firearm and oversee inmates, not just dispatch. They also switched duties every 4 hours to ensure alertness
- The prison control room also acts as the dispatch for all 911 Emergency Calls, Fire, Search and Rescue, Sheriff and Police.
- Approval for a new facility has happened and it is anticipated in the next 5 years, approximately.
- Inmate medical and medical transport needs were an area of discussion. The jail is equidistant between Mammoth and South Carson Medical Center.
 - They no longer have a contract with the Mammoth Hospital for medical services. They do work with the local Indian Tribe medical facility.

- They cannot helicopter serious injuries out due to weight and the need for an armed officer to go with them
- They drive to Carson Valley Medical for mid-level needs, but inmates with cardiac or other serious problems must be taken further; to Reno.

Recommendations:

- That they continue to work toward filling positions that are in the budget
- That they oversee and have input on the future facility from an operational standpoint
- That they continue to seek a timelier, more prudent solution to emergency medical transportation needs.

Mono County Grand Jury Final Report for the Year 2017 - 2018

Investigation #3 -

Inspection of Backflow Preventers/Cross Connection Devices

Final Report by Grand Jury Investigative Committee

Analysis:

A complaint letter was received by the Grand Jury regarding the annual requirement to inspect backflow/cross connection devices. The complainant believed that he did not need a backflow preventer on his property and that MCWD was therefore imposing a State regulation that did not apply to his circumstance.

Methodology:

The Committee reviewed state and local laws and ordinances and spoke with MCWD representatives.

Findings:

Backflow prevention devices are required by both State law (California Code of Regulations Title 17) and local code (Chapter 12, MCWD Water Code) to avert contamination of potable water systems. As a local governmental agency, MCWD's discretion is limited. Their policies and procedures must be at least equal; but shall not exceed State standards which specify annual inspections. Inspections are performed by third party certified inspectors at a cost to the homeowner. The complainant has an irrigation system which receives water from the Town potable water main. Because irrigation lines are open to the elements, they can be considered conduits for hazardous contaminants. In the event of a drop-in main line water pressure, water in an irrigation system could "backflow" into the main line causing contamination, if there is not a cross connection device in place.

Recommendations:

Based upon the information gathered for this investigation, the Grand Jury has no recommendations at this time.

Mono County Grand Jury Final Report for the Year 2017 - 2018

Investigation #4

Town of Mammoth Lakes Franchise Agreement with AmeriGas Final Report by Grand Jury Investigative Committee

Analysis:

A complaint letter was received by the Grand Jury regarding alleged AmeriGas excessive billing practices and a non-responsive customer service department leaving the complainant without a remedy for the disputed billing. In addition, Grand Jury members have heard of similar disputes, and have noted other complaints in the local papers to the extent where local police response and intervention was required when some AmeriGas customers attempted to discontinue service.

While the Grand Jury cannot investigate private contracts between individuals and independent services providers the Town of Mammoth Lakes has a Franchise Agreement with AmeriGas, and therefore the Grand Jury formed a Committee to review/determine AmeriGas and TOML compliance with the terms of the Agreement.

Methodology:

The Franchise Committee reviewed the Agreement and collected supporting documentation, and as a result created and submitted twenty-one (21) questions to the Town staff with respect to both parties' contractual obligations, as well as the Town's statutory and fiduciary responsibility to the citizens of Mammoth Lakes.

Findings:

The Franchise Agreement was adopted to provide monetary, safety, and aesthetic benefits to the citizens of the Town of Mammoth Lakes. As representation for its citizens, Town staff was entrusted with oversight and administration of the Agreement. Several Articles of the agreement have not been maintained, resulting in adverse financial and safety impacts and misrepresentations to the citizens of the Town.

The Town of Mammoth Lakes has not:

- Verified nor audited AmeriGas's financial records to determine the accuracy of the 2% franchise fee, nor has TOML maintained on an annual basis a record of the methods of calculation of the franchise fee.
- Ensured that the access fee imposed for pipeline use, and adjusted every 3 years, is the same for all suppliers who access the pipeline and that the fee shall not exceed the cost AmeriGas attributes to its own use.
- Reviewed and/or verified the Capital Recovery Analysis (CRA) to justify the continued charge of 32 cents per gallon. The CRA was levied to offset Rock Creek Energy's initial costs of system construction and maintenance.
- Ensured that AmeriGas submit an Emergency Response Plan on an annual basis.

- Required AmeriGas to provide updated as-built plans for utility lines they acquired during their purchase of the infrastructure.
- Required AmeriGas to annually submit changes to plans and/or reports of their inventory of facilities to the Town Engineer.
- Considered whether the Agreement has unfairly had an impact on competition for propane services, or whether the Agreement has had a negative impact on consumer interests.

Recommendations:

Based upon our review of the Agreement and information gathered for this investigation, the Grand Jury recommends the following:

- The Town audit AmeriGas to ensure the proper calculation of the 2% franchise fee.
- The Town notice and hold the appropriate hearing(s) to determine whether to re-negotiate or modify the Franchise Agreement, on terms designed to protect the Town's citizens from a disruption of adequate propane service including noticing of rate changes.
- The Town take provisions to ensure the health and safety of the citizens of Mammoth Lakes, and the various properties within or adjacent to the Town's jurisdictions and/or any other authorized remedies along with promoting competition.
- The TOML shall monitor and enforce all terms of the Franchise Agreement as outlined in the findings above for better fiscal management.
- The TOML Accounts Payable / Finance Department shall refine its record keeping system so as to better monitor invoices, bills and contracts to ensure that it acts in the best interest of the businesses, residents and property owners within the town of Mammoth Lakes.

Mono County Grand Jury Final Report for the Year 2017 - 2018

Investigation #5

Town of Mammoth Lakes Propane Billings

Final Report by Grand Jury Investigative Committee

Analysis:

Reference

Numerous citizen complaints have arisen over the last several years that AmeriGas, one of the two propane providers to the community of Mammoth Lakes, is increasing propane rates, contrary to the terms and provisions of existing written agreements between AmeriGas and those citizens and/or HOA's all while asserting its compliance with such agreements. The Grand Jury has examined billings from AmeriGas to the Town of Mammoth Lakes from several Town facilities to see what TOML was paying for its propane.

Methodology:

AmeriGas invoices to TOML for five Town owned facilities were requested. The invoice periods were not specified except to cover at least four seasons. TOML staff remitted to the Grand Jury invoice statements for the period of 7/2016 through 2/2018 but stated that they could not locate some invoices. Consequently, Grand Jury members directly contacted the local AmeriGas office to acquire the missing invoices, with limited success.

Billing rates in cost per gallon paid by TOML to AmeriGas are included in the Table below. In addition, cost per gallon paid by TOML to Eastern Sierra Propane for the Lake Mary at Lakeview Road intersection is included for comparative purposes. Blank spaces represent missing invoices or times of the year when deliveries may not have occurred.

Findings:

- Discrepancies in the monthly rate charges were noted between various sites. For example, in 12/2017 TOML rates varied from \$1.94 to \$5.02 per gallon between the four sites.
- The TOML has not maintained complete records of its monthly bills.
- The TOML does not appear to have a negotiated contract for rates for its propane purchases.
- The TOML has shown no evidence of its actions to internally review, dispute, audit or negotiate propane rates.
- The TOML has not been acting in the best interests of its citizens due to its lack of fiscal oversight.

**TABLE - RATES CHARGED BY AMERIGAS AND
EASTERN SIERRA PROPANE TO THE TOWN OF MAMMOTH LAKES***

Cost Per Gallon paid by TOML to Amerigas					Eastern Sierra Propane for Lakeview Rd @ Lake Mary Rd
Invoice Date	Town Yard	Community Center	Airport Terminal (Two Meters)	Old Police Dept.	
7/2016	\$2.63				
8/2016	\$2.64				
9/2016	\$2.79			\$1.80	\$2.23
10/2016	\$2.79		\$1.87	\$1.87	
11/2016	\$3.15		\$1.94	\$1.93	\$2.33
12/2016	\$3.33	\$1.96*	\$1.99-\$2.02	\$2.00	\$2.43
1/2017	\$3.63		\$2.10-\$2.17	\$2.17	\$2.63
2/2017	\$3.94	\$2.25*	\$2.29-\$2.25	\$2.25	\$2.63
3/2017	\$3.94		\$2.26	\$2.13	\$2.63
4/2017	\$3.94			\$2.15	\$2.63
5/2017	\$3.94	\$2.13*	\$2.15	\$2.13	
6/2017	\$3.94			\$2.06	
7/2017	\$4.08				
8/2017	\$2.43				
9/2017	\$2.58	\$2.08			
10/2017	\$4.54		\$2.18	\$2.19	
11/2017	\$4.64	\$2.28	\$2.27	\$2.30	
12/2017	\$5.02	\$2.33	\$2.33	\$1.94	
1/2018	\$2.99	\$2.38	\$2.40-\$2.38	\$2.33	
2/2018	\$3.10	\$2.37	\$2.38-\$2.38	\$2.37*	

* Invoice received directly from AmeriGas

Note: Blank cells = information was not available

Recommendations:

- The TOML proceed to negotiate its propane rates with all available propane providers.
- The TOML Accounts Payable Department shall refine its record keeping system so as to better monitor invoices, bills and contracts to ensure that it acts in the best interest of the businesses, residents and property owners within the town of Mammoth Lakes.