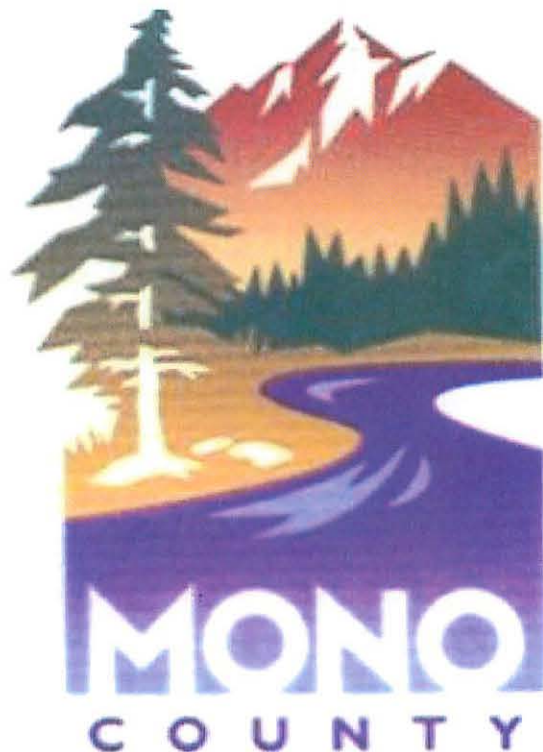


# MONO COUNTY GRAND JURY

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Final Report  
2009-2010

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### LOGO

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Victoria Phelps & Barbara Smith

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

IN RE: 2009-2010 Grand Jury	GENERAL ORDER
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I certify that the 2009-2010 Mono County Grand Jury Final Report 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 28 day of June 2010.

  
STAN ELLER  
Presiding Judge of the Superior Court



## ***COUNTY OF MONO – SUPERIOR COURT***

***GRAND JURY***

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Victoria C. Phelps  
Grand Jury Foreperson  
2009-2010

June 11, 2010

The Honorable Judge Stan Eller  
Mono County Superior Court  
P.O. Box 1037  
Mammoth Lakes, CA 93546

Dear Judge Eller:

Attached is the Final Report of the 2009-2010 Mono County Grand Jury. The Grand Jury investigated four complaints, conducted an investigation of the Mono County Community Development Department as part of its watchdog function, reviewed and updated the Grand Jury Handbook, conducted a follow-up review of issues and recommendations with respect to the Mammoth Lakes Police Department contained in the Final Report of the 2008-2009 Grand Jury, and conducted an inspection of the Mono County Jail. In May, the Grand Jury released one of its reports – the result of its investigation into a complaint against a Mono County Sheriff's deputy - as an interim report, at the request of the Mono County Sheriff's Department. Two complaints were received quite late in the Grand Jury's term and have been referred to next year's Grand Jury for consideration and investigation.

The 2009-2010 Grand Jury continued a practice initiated by the 2008-2009 Grand Jury of not establishing standing committees, electing instead to establish committees based on the issues to be investigated and the interests of each juror. This issue oriented approach to committee organization has been incorporated into the suggested revisions to the Grand Jury Handbook as an alternative to the standard structure of establishing standing committees. This alternative method of organizing committees allowed the Grand Jury to spread the work load more evenly and to better accommodate jurors' time and interests.

The Grand Jury conducted numerous interviews and meetings this year with various Mono County government officials and employees. All were most willing to share their thoughts, ideas and experiences with the Grand Jury. The citizens of Mono County are fortunate to have such dedicated individuals serving on their behalf.

The Grand Jury conducted numerous interviews and meetings this year with various Mono County government officials and employees. All were most willing to share their thoughts, ideas and experiences with the Grand Jury. The citizens of Mono County are fortunate to have such dedicated individuals serving on their behalf.

The Grand Jury would like to thank you, Judge Forstenzer, the Grand Jury advisors and the staff of the Mono County Superior Court for the assistance they have provided this year.

I would like to personally thank Sheryl Saari, our Assistant Foreperson, and Pat Agnitch, our Secretary, for their invaluable assistance. Pat did a terrific job of taking minutes and keeping us organized. I would also like to acknowledge and thank all of the Grand Jury members for their dedication and energy in reviewing and investigating the various complaints and other matters undertaken by the Grand Jury, and for their diligent efforts on behalf of Mono County citizens.

It has been a privilege, and a truly rewarding experience, to serve as Foreperson of the Mono County Grand Jury this year. Thank you for the opportunity to serve our community.

Sincerely,



Victoria C. Phelps, Foreperson  
2009-2010 Mono County Grand Jury

## 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 12<sup>th</sup> 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 17<sup>th</sup> 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 can not 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: [www.monocourt.org](http://www.monocourt.org).

## GRAND JURORS AND COMMITTEES

### 2009-2010 Grand Jurors:

Victoria Phelps, Foreperson  
Crowley Lake

Cindy Kitts  
Benton

Sheryl Saari, Vice Foreperson  
Mammoth Lakes

Angela Olson  
Mammoth Lakes

Pat Agnitch, Secretary  
Crowley Lake

Ralph Scribner  
June Lake

Dan Anthony  
Walker

Doug Weitz  
Bridgeport

Laura Archibald  
Crowley Lake

Jean Wuamett  
Paradise

Randy Des Baillets  
Mono City

### Grand Jury Committees:

#### Matter 09-01:

Doug Weitz, Chair  
Pat Agnitch  
Dan Anthony  
Cindy Kitts  
Ralph Scribner

#### Matter 09-02:

Cindy Kitts, Chair  
Dan Anthony  
Randy Des Baillets  
Ralph Scribner

#### Matter 09-03:

Laura Archibald, Chair  
Sheryl Saari

#### Matter 09-04:

Cindy Kitts, Chair  
Dan Anthony  
Randy Des Baillets  
Angela Olson

#### Matter 09-05:

Sheryl Saari, Chair  
Pat Agnitch  
Laura Archibald  
Angela Olson  
Doug Weitz

#### Matter 09-06:

Jean Wuamett, Chair  
Pat Agnitch  
Cindy Kitts  
Sheryl Saari

Note: The Foreperson is a member of all committees

## **GRAND JURY ADVISORS**

**Ed Forstenzer and Stan Eller**  
Judges of the Mono County Superior Court

**George Booth**  
District Attorney

**Marshall Rudolph**  
County Counsel

**Mark Magit**  
Assistant County Counsel



**COMPLAINT: EASTERN SIERRA SCHOOL DISTRICT**  
**SUPERINTENDENT'S CONTRACT**  
**(09-01)**

**STATEMENT**

The 2008-2009 Mono County Grand Jury received a complaint against the Eastern Sierra Unified School District ("ESUSD") School Board that was carried over to the 2009-2010 Grand Jury. The complaint expressed a concern relating to the employment contract offered to the new School Superintendent ("Superintendent") hired by ESUSD in 2008. The complaint specifically questioned an \$80,000 loan made by ESUSD to the Superintendent for the purpose of purchasing a house ("Housing Loan"). The complaint noted that the Housing Loan would be forgiven in its entirety if the Superintendent remained in the position for at least ten years. The complaint further questioned the legality of the transfer of service credit for the Superintendent from the Alaska retirement system to the California retirement system.

**INVESTIGATION**

The complaint was received late in the term of the 2008-2009 Grand Jury. Preliminary inquiries by the 2008-2009 Grand Jury included a telephone interview with a member of the ESUSD School Board. Such Board member indicated that ESUSD had suffered high turnover in the position of Superintendent and that the principal reason for the Housing Loan was to entice the Superintendent to remain in the position for a long time.

The 2009-2010 Grand Jury reviewed copies of the Superintendent's employment contract, dated July 1, 2008, including Addendum I dated October 15, 2008, Addendum II dated October 30, 2008, and Addendum III dated November 12, 2008 (collectively, the "Contract"), a copy of the promissory note in the amount of \$80,000 ("Note") evidencing the Housing Loan, and documentation relating to the transfer of retirement service credit for the Superintendent from Alaska to the California State Teachers' Retirement System ("STRS"). The Contract included agreement among the parties for ESUSD to pay the amount of the employee contribution to STRS associated with the Superintendent's salary which otherwise would be payable by the Superintendent, and to make a monthly contribution to purchase STRS service credit based on the Superintendent's out-of-state service in public education. The Note is a personal promissory note and is not secured by real property.

Several provisions in the Contract and the Note appeared to be outside the normal parameters of this type of employment contract. These provisions included: the terms of the Housing Loan which states it would be forgiven after 10 years of employment, the ESUSD's contribution to the Superintendent's STRS service credit for out of state service, and the legality of the ESUSD School Board's actions in entering into an

agreement of this nature. In addition, the Grand Jury questioned why the Note was not secured by a trust deed on the Superintendent's residence, as such trust deed should have been recorded with the Mono County Recorder's office. The Grand Jury conferred with Mono County Counsel as to the legality of the Contract, the Housing Loan and Note. The Mono County Counsel determined that the ESUSD School Board had acted within the legal scope of its authority with respect to the hiring of the Superintendent and that the provisions of the Contract and the Note evidencing the Housing Loan were legal and binding.

### **FINDINGS**

The Grand Jury finds that, while it is understandable and appropriate for taxpayers to be concerned about the use of taxpayer dollars and about the provisions of the Contract and the Note, the ESUSD School Board acted within its legal authority in entering into the Contract and the Note and complied with all legal requirements related thereto.

### **RECOMMENDATIONS**

1. County residents within the ESUSD boundaries who are unhappy with the actions of the ESUSD School Board should consult directly with the ESUSD School Board members regarding concerns about such members' actions. The Grand Jury also notes that such residents have the opportunity, every four years, to vote for members of the ESUSD School Board and to express their satisfaction or dissatisfaction with the ESUSD School Board members at the ballot box.
2. In order to protect the taxpayers of Mono County, any future loans made by ESUSD, or by any other agency or school district within Mono County, to any employee for the purpose of assisting with the purchase of a residence, should be secured by a trust deed on such residence, and such trust deed should be recorded with the Mono County Recorder's office.

**MONO COUNTY COMMUNITY DEVELOPMENT DEPARTMENT**  
**(09-02)**

**STATEMENT**

The Grand Jury is charged with reviewing, from time to time, certain aspects of county governance. The Grand Jury chose to review the operations of the Mono County Community Development Department (“CDD”). The CDD includes the Building, Planning, and Code Enforcement divisions.

**INVESTIGATION AND FINDINGS**

The Grand Jury interviewed the Director of the CDD (the “Director”), the Building Official, and the Compliance Specialist and reviewed the General Plan Annual Report 2008. The Grand Jury looked at the overall scope of the CDD, including the organization and staffing; the handling of complaints (both employee and public); budget; communication within the CDD; communication between the CDD and other departments (Fire, Public Works, Environmental Health, etc.); communication with the public; planning, building and permit processes; construction guidelines; code compliance policies; and the future of the CDD.

The CDD is responsible for a broad range of duties, including coordination and preparation of the Mono County General Plan, which contains land use, housing, noise, conservation, open space, safety, and circulation (transportation) elements. The Director informed the Grand Jury that the last comprehensive update to the General Plan occurred in 1993, but that the CDD is undertaking a new comprehensive update.

The CDD consists of three basic divisions: Building, Planning, and Code Enforcement. The Building Division is managed by the Building Official who supervises two Building Inspectors (one who covers the North County area and one who covers the South County area). The Planning Division is managed by the Assistant Director who supervises a Principal, a Senior, and an Associate Planner, as well as three Assistant Planners and one Intern. The Code Compliance Division is managed by the Compliance Specialist who supervises one Intern. The clerical staff consists of two positions, a Fiscal Technical Specialist at the Bridgeport (North County) office and a Planning Commission Secretary at the Mammoth (South County) office. The clerical position in Mammoth handles a full service counter, while the position in Bridgeport handles primarily building concerns. The CDD staffs two part-time interns who work three days a week (a maximum of 1000 hours each per year). One works primarily in Planning and the other in Code Enforcement. At the time the Grand Jury interviewed the Director, there were two vacant positions within the CDD for a “Permit Tech” and a “Transportation Analyst.” The Director would like to fill the “Permit Tech” position in the near future. He would also like to broaden the “Transportation Analyst” position to a “Community Development Analyst.” However, the Director indicated that he was reluctant to fill any vacancies or make any changes due to the uncertain future of the County budget. He is strongly in favor of training (both from within and from outside sources) to broaden each employee’s

capabilities, benefiting all. All hiring and firing procedures are dictated by County personnel policies. The Director stated he would prefer to hire employees from within, allowing for employee advancements and for positions to be filled by individuals the CDD has trained.

Personnel complaints are handled internally by the CDD. If the problem is minor, the immediate supervisor deals with the problem; if the problem is more involved, the head of the division or even the Director may get involved. If training is recommended, there are weekly training programs covering various topics. These are usually internal, but funds are available for outside training if needed (in areas such as customer service).

All employees of the CDD interviewed by the Grand Jury felt that communication was of the utmost importance. The management team meets weekly, as needed. A new computer software program has been put in place and should expedite the permit process by making it easier for the owner/builder or contractor to obtain necessary permits. With the new computer program in place, an owner/builder or a contractor will only have to submit one set of plans rather than three. The one set of plans can now be scanned into the CDD computer system for all to inspect. This will improve communication within the department and with other departments (Public Works, Environmental Health, etc.) Video conferencing has also helped to provide better communication with offices at different locations within the County.

Regional Planning Advisory Committees (“RPACs”) are active in most areas of the County. RPAC meetings are also used to improve communication between the different County departments and the public.

The County’s Land Development Technical Advisory Committee meets twice a month and meetings are open to any concerned citizen. At these meetings, members of the public can meet with representatives from the CDD, Public Works, Environmental Health, and sometimes the Assessor’s Office, and ask questions regarding future building projects.

The Building Official pointed out that old building codes are constantly changing and new ones are being added (such as the new Energy Code effective 2010). He acknowledged that it is a challenge to keep up with these changes and keep the public informed of the changes. The County is proposing an “amnesty” program for unpermitted construction. This will allow individuals to obtain the correct permits and bring past construction up to code.

The Code Compliance division handles issues dealing with zoning; animal issues pertaining to land use (not animal control); tax collection; business license; non-payment of Transit Occupancy Tax; and enforcement for Public Works. When a complaint is filed, the Code Specialist first does an inspection to determine if there are any violations. If there is a violation, a notice is sent explaining the problem and giving a compliance due date (usually 30 days). If there is non-compliance with the issues raised in the notice, a fine of up to \$5000 may be imposed.

The CDD would like to change the way the public perceives the operations of the CDD.

The CDD plans to continue to improve communication with the public, within its own department, and with other departments. The CDD has made positive changes in the process of issuing permits and reviewing building plans. The addition of the new computer program has enabled the CDD to speed up the permitting process. The CDD has made strides in educating and training its staff, and has a good policy regarding employee review. With the exception of the two vacant positions and a future need for additional personnel in the Code Compliance Division, the CDD is sufficiently staffed. Presently the budget is adequate.

### **RECOMMENDATIONS**

The Grand Jury recommends that the CDD continue to make strides to improve communication with the public. This could be accomplished by continuing to educate the public through presentations at RPAC meetings and other public meetings. Public participation at these meetings could be improved if the public was better informed as to the place, time, and agenda of future meetings. This information should be posted in multiple prominent places throughout the representative area and in a prominent place on the County website. The Grand Jury would like to see the CDD strive to further simplify the building permit and inspection process for the owner/builder and contractor, especially on smaller, non-commercial home projects. The Grand Jury recommends filling any vacant positions in the CDD as well as hiring additional personnel for Code Enforcement as soon as permitted by the County budget constraints. The Grand Jury also recommends that the CDD continue to improve its methods of dealing with complaints, both employee related, as well as complaints related to building and permitting procedures.

**GRAND JURY HANDBOOK**  
**(09-03)**

**STATEMENT**

The Grand Jury undertook a review and update of the Grand Jury Handbook.

**FINDINGS**

The Grand Jury found that the current Handbook is substantially correct, but that certain sections of the Handbook needed to be revised and updated to reflect, among other things, current Grand Jury officers, County employees, mileage rates, Grand Jury mailing address, composition of Grand Jury committees, and Grand Jury reports. These revisions and updates have been submitted to the Mono County Superior Court (the "Court") for approval and implementation.

The last section of the Handbook encompassing the Mono County Departmental Directory (the "Directory") provides information on Mono County government offices and employees, Board of Supervisors commissions, committees and special districts and must be updated annually for each new Grand Jury.

**RECOMMENDATIONS**

1. The Grand Jury recommends that the Court update all existing Handbooks to incorporate the revisions and updates submitted by the Grand Jury.
2. The Grand Jury recommends that the Court continue to update Handbooks on an annual basis (in particular, the Directory) and redistribute the updated Handbooks to all carryover and new Grand Jury members at the beginning of each Grand Jury term.

**COMPLAINT: HAMMIL VALLEY DRAINAGE CHANNEL**  
**(09-04)**

**STATEMENT**

The Grand Jury received a letter from a group of private property owners (the “Owners”) in the Hammil Valley area of Mono County (the “Affected Area”) raising concerns about the current status of a natural drainage channel (the “Channel”) that carries runoff from the White Mountains down into Hammil Valley. The letter stated that, in recent years, the runoff has been very minor. However, the Owners are concerned that the Channel, which is now filled with weeds, vegetation and dirt, would not be able to handle normal runoff in a big rain year. The letter further mentioned that, following the last large flood in Hammil Valley in 1989, the Mono County Public Works Department brought in equipment and cleared the Channel. The Owners stated that they have approached the County about doing another clean up of the Channel, but that no one seems to know who is actually responsible for the Channel. The Owners asked that the Grand Jury look into their concerns about the current state of the Channel and determine who should be responsible for cleaning and maintaining the Channel.

**INVESTIGATION**

In the course of its investigation, the Grand Jury interviewed one of the Owners, the Director of the County Public Works Department, two employees of the County Public Works Department, and the Mono County Supervisor of District 2 (the “Supervisor”). The Grand Jury also consulted with Mono County Counsel and reviewed employee time records regarding the 1989 clean up of the Channel, several maps of the Hammil Valley area, numerous photographs of the debris in certain parts of the Channel, minutes of the Mono County Board of Supervisors’ meetings, and a form of an Access Agreement (the “Access Agreement”) approved by the Board of Supervisors, by and between Mono County and each of the Owners.

Members of the Grand Jury also traveled to the Affected Area to view various portions of the Channel.

**FINDINGS**

**History:**

The Channel starts at the bottom of Matheiu Grade. The portion of the Channel in question runs from the bridge crossing Highway 6 south for approximately 5-8 miles. The Channel is a naturally occurring ditch that has never been engineered or properly constructed. A large flood occurred in the Affected Area in 1989. After the 1989 flood, the County reacted to public concerns by sending a Public Works employee to clean out the Channel. Such employee used a bulldozer to deepen and better define the Channel and to push up the banks of the Channel using surrounding material. The employee also repaired the various culverts (owned by the County, crossing Black Rock Mine Road, Crestview Road and Dawson Ranch Road) that had been washed out. The 1989 clean up work continued for about one half mile past a 90 degree turn in the Channel (the “90

Degree Turn”) that is located south of Dawson Ranch Road, at the north end of a large alfalfa farm (the “Alfalfa Farm”) in the Affected Area.

The owner of the Alfalfa Farm obtained a Federal agricultural grant approximately nine years prior to the 1989 flood, the purpose of which was to create the 90 Degree Turn and re-route the Channel around the Alfalfa Farm. As part of the grant, the owner of the Alfalfa Farm was required to maintain his portion of the Channel for a period of ten years. Although the ten-year period has expired, the Grand Jury was informed by various interviewees that the owner of the Alfalfa Farm continues to maintain his portion of the Channel. The 90 Degree Turn has a berm, but, right after the 90 Degree Turn, the Channel narrows considerably and may be insufficient to handle any significant runoff.

Other than some maintenance of the Channel by the owner of the Alfalfa Farm from the 90 Degree Turn around the Alfalfa Farm, the Channel has not been maintained in any way since the 1989 flood.

#### Short Term Solution

At the time of the 1989 clean up, the Channel was free of debris and was able to handle normal runoff. Currently, with the debris that now occupies much of the Channel, the flow is impeded. Consequently, the Owners have reason to be concerned that the Channel may not adequately handle runoff in a year of heavy snowfall and precipitation.

It is the position of the County that the County has no responsibility or liability for maintenance of the Channel as almost all of the Affected Area is private property. The Board of Supervisors has taken the position that the County cannot generally justify using public tax dollars to clear private property. However, due to the efforts of the Supervisor to address the concerns of his constituents, the matter was brought before the Board of Supervisors at its meeting on September 15, 2009. At that meeting, the Board of Supervisors authorized the Public Works Department to consider a one-time clean up of the Channel and, for that purpose, to enter into Access Agreements with each of the Owners.

The Access Agreements would allow County personnel and wards of the California Department of Forestry and Fire Protection (“Cal Fire”) to enter each Owner’s private property for the purpose of maintenance work (as outlined in the Access Agreements) on the Channel. It is anticipated that most of the work will be done by hand by wards of Cal Fire and the resulting debris will be hauled away by the County. The Access Agreements contemplate that the authorization provided by the Owners will allow a one-time only clean up by the County, and the Access Agreements specifically limit the liability of the County and Cal Fire. If an Owner refuses to give authorization for the clean-up work by refusing to sign an Access Agreement, the County will not clean that portion of the Channel that lies within such Owner’s property. If any portion of the Channel is not cleared, that may affect the viability of the cleared Channel to handle runoff. Following this one-time clean up, the Owners will then be responsible for future maintenance and clean up of the Channel



If a sufficient number of Owners sign Access Agreements, the County will move forward with scheduling the one-time clean up. The timing of the one-time clean up will necessarily be dependent on the fire season and the availability of Cal Fire crews to perform the clean up work. However, it is anticipated that the one-time clean up will begin sometime in Spring 2010.

The Grand Jury believes that the California Department of Transportation (“Caltrans”) should be responsible for maintenance of the culverts under Highway 6 and for any other property that falls within the Caltrans right-of-way.

### Long Term Solutions

Based on the Grand Jury’s investigation and interviews, there appear to be three possible long-term solutions to the issue of maintenance of the Channel. Ultimately, it will be up to the Owners to determine which of these solutions, if any, they wish to pursue. The Owners may also eventually identify other potential long-term solutions that better suit their situation.

One possible long-term solution identified by the Grand Jury would be for the Owners to vote to establish a special flood control district that could raise taxes from Owners to properly engineer and maintain the Channel. However, such a flood control district would require the affirmative vote of a majority of the property owners whose property would fall within the special district. The Grand Jury notes that such an affirmative vote could be very difficult to achieve.

Another possible long-term solution would involve the pursuit (through the County) of grant funding to properly engineer and reconstruct the Channel. The County’s current flood plain mapping of the Tri-Valley area, including the Affected Area, is now over 20 years old. The County recently obtained grant funding to update and complete base mapping of the Tri-Valley area, using sophisticated Lidar (light detection and ranging) technology. The County has now entered into a partnership with the Federal Emergency Management Agency (“FEMA”), pursuant to which FEMA, using the new base mapping completed by the County, will complete an update of the flood plain mapping of the Tri-Valley area. Once the FEMA flood plain mapping is up to date, the County will conduct outreach to County residents to explain the new flood plain mapping and educate residents on how the new mapping may affect them. The Supervisor also hopes to use the new mapping to encourage the County to approach a variety of sources (FEMA, Army Corps of Engineers, Sierra Nevada Conservancy, State of California, etc.) and apply for one or more grants to properly engineer and reconstruct the Channel to handle not only regular annual runoff, but also serious flooding. However, it was pointed out to the Grand Jury that the potential cost and difficulty of properly engineering and reconstructing the Channel may far exceed the benefit to the Owners. A proper engineering and reconstruction of the Channel could also involve a number of issues that Owners may object to, such as access problems, rights of way, easements, waivers of private property rights, etc.

A third possible long term solution is to simply maintain the Channel as a natural low flow ditch for the purpose of handling annual runoff and not try to engineer or reconstruct

the Channel to handle floods. The Owners have indicated that they are most concerned that the Channel handle annual runoff, and an Owner interviewed by the Grand Jury expressed his understanding that the Channel is not designed to protect against a flood. The County's willingness to perform a one-time clean up of the Channel should keep the Channel reasonably clear of debris and able to handle normal runoff for a number of years. However, as most of the Channel is located within private property, the County has made clear that it will not devote future public tax dollars to maintenance of private property and, therefore, the Owners will be responsible for all future maintenance of the Channel. If the Channel is maintained as a natural low flow ditch, it was pointed out to the Grand Jury that it would be in the Owners' best interests to obtain flood insurance (if they fall within the new FEMA flood plain area) and to take reasonable flood mitigation measures, such as elevating their homes and installing flood vents.

### **RECOMMENDATIONS**

1. The Grand Jury recommends that the County continue with its plans to do a one-time clean up of the Channel with the assistance of Cal Fire, and that such one-time clean up occur as soon as possible. (The Grand Jury notes that the Board of Supervisors, at its meeting on May 18, 2010, gave final approval for the one-time clean up of the Channel.)
2. In order to establish future responsibility for the clean up and maintenance of the Channel, as well as all naturally occurring channels and ditches that fall within private property, the Grand Jury recommends that the County explore the legality and feasibility of adopting an ordinance (or taking equivalent action) requiring that each private property owner whose property includes portions of a naturally occurring channel or ditch be responsible for the clean up and maintenance of such portion of the channel or ditch that falls within such owner's private property. (The Grand Jury notes that, with respect to the Channel, future clean up and maintenance of the Channel should be much easier following the County's planned one-time clean up.)
3. The Grand Jury believes that the Owners need to decide on the most economical and beneficial long-term solution for the maintenance of the Channel, and take financial responsibility for such solution. However, the Grand Jury recommends that the County continue to provide (nonfinancial) assistance and expertise to Owners to facilitate this process.

**COMPLAINT: MONO COUNTY SHERIFF'S DEPARTMENT**  
**(09-05)**

**STATEMENT**

The Grand Jury received a complaint on behalf of an Hispanic family (the "Family") from the Bridgeport area. The Family consists of a husband (the "Husband"), a wife (the "Wife"), an older son (the "Son"), and two younger children. According to testimony in the Court Proceedings (see below), the Husband and Wife are not actually married, but for purposes of this report, the Grand Jury will identify them as Husband and Wife. Further, for purposes of this report, references to the Family include only the Husband, the Wife and the Son. The Complainant, acting on behalf of the Family, alleged harassment of, and abusive and illegal behavior toward, the Family by a deputy (the "Deputy") of the Mono County Sheriff's Department (the "Sheriff's Department"). The alleged incidents of harassment and abusive behavior are detailed under Findings below. The Complainant also informed the Grand Jury that, prior to contacting the Grand Jury, he had written two letters to the Mono County Sheriff (the "Sheriff") and, together with the Husband and Wife, had also met with the Sheriff to try to resolve their complaints. (Copies of the Complainant's letters to the Sheriff formed part of the complaint submitted to the Grand Jury.) The Complainant alleged that his efforts to help the Family resolve their complaints against the Deputy and the Sheriff's Department were unsuccessful.

In his complaint to the Grand Jury, the Complainant made several other general allegations about the Deputy involving incidents with individuals other than members of the Family. As the Complainant did not specifically identify such other individuals or dates of specific incidents, the Grand Jury restricted its investigation to allegations involving interactions between the Deputy and Family.

**INVESTIGATION**

The Grand Jury interviewed the Complainant (acting on behalf of the Family), a defense attorney for the Husband (involving the Court Proceedings referenced below), the Deputy, the Mono County Sheriff (the "Sheriff"), and an officer of the Mono Narcotics Enforcement Team ("MONET"). The Grand Jury also (i) reviewed all law enforcement reports from the Sheriff's Department involving members of the Family, which involved incidents that occurred on 22 different occasions from November 25, 2005 to September 3, 2009, 18 of which involved the Son, (ii) listened and/or watched five different recorded interactions between the Deputy and members of the Family (with the shortest of such recordings being 23 minutes and the longest being 61 minutes in length), (iii) listened to four other recordings of various other interactions between law enforcement personnel from the Sheriff's Department and members of the Family (with the shortest of such recordings being 24 minutes and the longest being 41 minutes in length), (iv) reviewed a location report provided by the Sheriff's Department (the "Location Report") showing visits by law enforcement personnel from the Sheriff's Department to the Family's home during the time period in question, (v) reviewed a printed log (over 100 pages) of all on duty activities undertaken by the Deputy during the time period in

question (the “Deputy’s Log”), and (vi) reviewed a written report prepared by the private investigator hired by the Husband’s and Wife’s defense attorneys (involving the court proceedings referenced below). Certain issues relating to this complaint were also the subject of proceedings (the “Court Proceedings”) in the Mono County Superior Court (the “Court”), and the Grand Jury reviewed the written transcripts of the Court Proceedings and the Court’s written ruling in such proceedings.

## **FINDINGS**

### **Brief Summary of Relevant Dates and Events:**

The Family immigrated to the Bridgeport area from Mexico over ten years ago. The Family has not legalized its immigration status since arriving in the United States. The Son has had a number of encounters with the Sheriff’s Department, mainly as a juvenile. The Husband and Wife had some previous encounters with the Sheriff’s Department (mainly in their capacity as parents to the Son) prior to the events described below, but none of these previous encounters involved illegal activities by the Husband and Wife. However, during the course of these previous encounters, the Deputy became aware that neither the Husband nor the Wife had a valid driver’s license, and the Deputy warned both the Husband and the Wife, on several occasions, that they should not be driving without a license.

On June 21, 2008, the Deputy had his first encounter with the Family when he responded to a medical call about an unresponsive female (later identified as the Wife). On that occasion, while ascertaining the identity of persons present, the Deputy determined that the Husband did not have a valid California driver’s license and warned the Husband that he should not be driving. On July 11, 2008, the Deputy again went to the Family’s home after receiving a call about an intoxicated juvenile (later identified as the Son). The Deputy ultimately arrested the Son for burglary and receiving stolen property and, as a result, the Son was placed on juvenile probation. On that date, while ascertaining the identity of persons present, the Deputy determined that the Wife did not have a valid California driver’s license and warned her that she should not be driving. The Deputy later observed the Wife driving on another occasion and warned her again about driving without a license. On February 1, 2009, the Deputy went to the Family’s home to conduct a juvenile probation check. The Deputy found the Son to be in possession of alcohol and issued a citation to the Son for probation violation. The Deputy stated that he subsequently conducted several more (5 or 6) informal probation checks on the Son over the next several months, but none of these subsequent checks occurred in the Family’s home.

On April 2, 2009, the Deputy observed the Wife driving a van through Bridgeport. After checking with Mono County dispatch to confirm that the Wife still did not have a valid driver’s license, the Deputy stopped the Wife, cited her for driving without a license, and impounded the van. (The Grand Jury was informed that a vehicle is generally impounded when there are no other licensed drivers to take charge of the vehicle and to prevent the violation, for which the driver was arrested, from continuing. A vehicle generally remains in impound for 30 days before a licensed driver can retrieve it.) The Grand Jury reviewed the videotape of the April 2, 2009 encounter and found that the Deputy was consistently

professional, calm and polite to the Wife and reminded her several times that he had previously warned her not to drive without a license.

On June 12, 2009, the Deputy observed the Husband driving the same van. The Deputy followed the Husband for several miles while checking the status of the Husband's driver's license with Mono County dispatch. After confirming that the Husband had no valid license, the Deputy stopped the Husband. The Deputy also determined that the registration on the van had expired in early 2009 due to lack of insurance. The Grand Jury reviewed the videotape of the June 12, 2009 encounter and found that the Deputy was consistently professional, calm and polite to the Husband and arranged for the children in the van (including the Son) to be driven home by another Sheriff's Department deputy. The Deputy also reminded the Husband that he had warned the Husband on several prior occasions not to drive without a license. (On the videotape, the Deputy stated that this encounter was the fourth time he and the Husband had spoken about the Husband's lack of a valid driver's license and about how the Husband should not be driving. The Husband acknowledged that he had been warned previously by the Deputy.) Once again, the van was impounded for a period of 30 days. The Deputy transported the Husband to the Sheriff's Department to book and release him for driving without a license and for lack of valid registration and insurance. The Husband was not able to provide any valid identification to the Deputy while at the Sheriff's Department, and claimed that his identification documents were at home. When the Wife and Son arrived at the Sheriff's Department, the Deputy asked the Son to go home and retrieve the Husband's documents. The Son did go home, but soon returned saying that he could not find the documents.

During the booking of the Husband on June 12, 2009, the Husband complained to the Deputy that he could not afford to pay the 30 day impound fees again. The Deputy informed the Husband and Wife that the only people who could help them to retrieve the van early were officers of MONET. The Husband provided some drug information to the Deputy and agreed to provide more information later. The Deputy provided the Husband and Wife with a telephone number to contact MONET.

On June 18, 2009, the Deputy, together with a Spanish-speaking deputy, visited the Family's home to follow up with the Husband about additional drug information and the identification documents the Husband had claimed were at home. The Wife arrived home sometime after the Deputy arrived. Ultimately, both the Husband and the Wife turned over to the Deputy copies of the false identification documents that they had been using for employment, admitting that the documents had been purchased in San Francisco (Husband) and Los Angeles (Wife). The Husband claimed he had no additional drug information, but the Wife volunteered to help with drug information. The Grand Jury listened to the entire audiotape of the June 18, 2009 encounter. Again, the Grand Jury found that the Deputy was consistently professional, calm and polite to the Family during this encounter. This particular incident on June 18, 2009 was also the subject of the Court Proceedings to determine if the false identification documents had been properly and legally obtained by the Deputy. The Court ruled that the June 18, 2009 encounter between the Deputy and Husband and Wife was consensual, that statements made by the Husband and Wife were voluntary, that all evidence obtained during this encounter was

admissible, that there was nothing untoward or inappropriate in terms of the conduct of the Deputy.

The Deputy informed the Grand Jury that, approximately a week after the June 18, 2009 encounter, the Deputy introduced the Wife to a MONET officer. According to the MONET officer, the Wife did initially agree to assist MONET in order to have charges against the Husband and her dismissed. However, the MONET officer informed the Grand Jury that the Wife never again contacted MONET after her initial meeting with such officer.

On July 7, 2009, the Deputy observed a red van speeding and followed and stopped the van. The driver was the Son, who had no valid driver's license or permit and was eventually determined to be driving under the influence. Both of these events constituted a violation of the Son's probation, and the Son was arrested for driving without a valid permit, driving under the influence and probation violation. The Deputy informed the Grand Jury that he did not impound the red van because he did not want to impose an additional financial penalty on the Husband and Wife for something the Son had done. The Grand Jury listened to the videotape of the July 7, 2009 encounter and, once again, found that the Deputy was consistently professional, calm and polite to the Son and reminded the Son that he had already given the Son two "breaks" for prior incidents. The Son agreed that the Deputy had previously given him two breaks, and then asked the Deputy to give him another break.

On September 3, 2009, after warrants had been issued by the District Attorney's office based on the Husband and Wife's forged identification documents obtained by the Deputy on June 18, 2009, the Deputy, along with another Sheriff's Department deputy, returned to the Family's home to arrest the Husband and Wife for forgery. The Grand Jury listened to the audiotape of the September 3, 2009 encounter and, once again, found that the Deputy acted in a professional, calm and polite manner.

#### Specific Complaints:

The Complainant alleged, on behalf of the Family and in his two letters to the Sheriff, that the Deputy had engaged in abusive, threatening and illegal behavior toward the Family, had harassed the Family into providing copies of their false work documents, had pressured the Family and, in particular the Wife, to provide drug information, and had stopped by the Family's home more than 15 times to threaten the Family that he would "make things very bad" for them if they did not provide drug information. The Complainant stated that the Deputy would come by the Family's house at all hours, would "wave the documents he had taken from them" and repeat his threats to the Family. In the Court Proceedings, the Husband also first stated to the Court that the Deputy had stopped by the Family's home "6 or 7" times between June 12, 2009 and June 18, 2009 and later, during the same testimony, the Husband claimed that the Deputy had stopped by the Family's home "10 to 15" times but he did not remember the dates. The Complainant and the Husband stated that the Family felt intimidated and harassed by the Deputy and that the Deputy followed them around the Bridgeport area. The Complainant also alleged that the Deputy repeatedly told the Wife that she was not to tell anyone, including the Husband, about her possible assistance to MONET.

### Determination by the Grand Jury:

It is clear that the Family chose to immigrate to the United States, to live in Bridgeport, and to do so without legalizing its immigration status. It is also apparent that the Family's encounters with the Deputy and other law enforcement personnel from the Sheriff's Department commenced due to the juvenile problems related to the Son. However, the legal problems of the Husband and Wife are directly related to their status as illegal immigrants.

While the Grand Jury empathizes with the Family on the difficulties of raising children and making a living in Mono County, especially without valid identification or work documents, the Grand Jury does not condone illegal behavior. The Husband and the Wife have been driving (presumably for years) without valid drivers' licenses and, for at least a portion of that time, without valid registration or insurance. The Grand Jury finds this situation alarming.

Most Mono County residents have obtained, and continue to maintain, a valid driver's license and valid registration and insurance on their vehicles. To do this, Mono County residents pay the required annual vehicle registration fees and annual vehicle insurance costs, which can be considerable. However, the Grand Jury does not believe that a person's inability to obtain a valid driver's license and valid car registration or insurance should allow that person to get a "free pass" and be allowed to continue driving in spite of such person's lack of a valid driver's license and/or lack of a valid vehicle registration and insurance. The Grand Jury feels strongly that the Sheriff's Department and other Mono County law enforcement personnel cannot allow anyone, including members of the Family, to continue to drive unlicensed, unregistered and uninsured, endangering not only themselves and their children, but also other drivers in Mono County. In fact, the Grand Jury suspects that Mono County residents would be very upset if the Sheriff's Department and other Mono County law enforcement personnel were to ignore illegal drivers and unregistered vehicles and failed to diligently enforce California State law by pursuing unlicensed drivers and impounding unregistered and uninsured vehicles. Again, the Grand Jury empathizes with the Family as to the burdensome costs of retrieving their vehicle from 30 days of impound. However, driving such vehicle without a valid driver's license and without valid registration and insurance is a choice the Family made and is illegal. All drivers in Mono County face the same penalties for the same illegal activity.

The Grand Jury also does not condone the use by illegal immigrants of false or forged identification and work documents. No member of the Family has valid identification or work documents. The Court ruled in the Court Proceedings that the Deputy legally obtained copies of the Husband's and Wife's forged documents on June 18, 2009. Once the Deputy obtained these documents, he informed the Grand Jury that he immediately returned to the Sheriff's Department to log the documents into evidence, as is required by Sheriff's Department policies. Once documents are logged into evidence, a law enforcement officer cannot subsequently remove them from evidence. There is no dispute in this particular matter that there was any delay by the Deputy in logging the documents into evidence. Therefore, the Deputy could not have subsequently returned on numerous occasions to the Family's house at all hours to "wave the documents he had taken from them," as alleged in the complaint because such documents, once placed in the evidence

locker, were no longer available to the Deputy. Further, once the Deputy had put the Wife into contact with the MONET officer (shortly after the June 18, 2009 encounter), the Deputy had no further interactions with the Wife or the Husband regarding drug information.

The Grand Jury understands that the arrests of the Husband and Wife on felony forgery charges may eventually lead to significant legal problems, including possible deportation. This is unfortunate, but again, moving to the United States and using false or forged documents is a choice the Family made. Use of false or forged identification and work documents is illegal. Again, the Grand Jury believes that Mono County residents would be upset if the Sheriff's Department and other Mono County law enforcement personnel were to turn a blind eye to such illegal behavior and failed to enforce the law.

The Grand Jury is also concerned that illegal immigrants in Mono County may feel that the use of false driver's licenses and false identification documents is a victimless crime, and that they are simply doing what they have to do to get by. The use of false documents is in no way a victimless crime. In fact, the Grand Jury believes that the use of false documents contributes significantly to the problem of identity theft in Mono County, in California and around the country. When an illegal immigrant buys or otherwise secures false identification documents (often using someone else's valid name and/or social security number), the use of those documents can cause endless problems for those persons whose valid name and/or social security number may have been stolen and used on the false documents.

During the course of this investigation, the Sheriff informed the Grand Jury that the in-home probation check of the Son conducted on February 1, 2009 had not been previously approved by the Mono County Probation Department. The Sheriff explained that the probation department believes that it should be solely responsible for conducting and approving all in-home probation checks. Therefore, the Sheriff's Department has now adopted a policy that deputies from the Sheriff's Department may no longer conduct in-home probation checks without first notifying and receiving approval from the Mono County Probation Department.

Ultimately, the Grand Jury found that the Complainant's and the Family's allegations of abusive, threatening and illegal behavior by the Deputy toward the Family were not sustained. In the audio and video recordings of his encounters with the Family, the Deputy was consistently professional, polite and calm. The Deputy's behavior was not abusive, threatening, harassing or intimidating in any way. It is also clear that, prior to arresting the Wife and the Husband for driving without a valid driver's license, the Deputy had repeatedly warned both the Wife and the Husband not to drive without a license. The Family broke the law on several occasions and the Deputy took appropriate action in each case. The allegations that the Deputy stopped by the Family's home numerous times ("at least 15 times" according to the complaint and up to "10 to 15" times according to the Husband's testimony in the Court Proceedings) to harass the Family members about drug information were not sustained and were not supported by a review of the Location History, the Deputy's Log, and law enforcement reports from the Sheriff's Department. In response to the Complainant's allegation that the Deputy repeatedly warned the Wife not to inform her Husband or anyone else about her possible



assistance to MONET, the Deputy and the MONET officer explained to the Grand Jury that all confidential informants are advised to keep quiet about their assistance in providing information about drug activities. This is primarily for the safety of the confidential informant; the more people who know about a confidential informant, the more dangerous it is for that informant.

The Grand Jury feels strongly that the choice of any person to immigrate illegally to the United States rests with that person and does not confer on that person the right to consistently break the law without suffering the legal consequences.

### **RECOMMENDATIONS**

1. The Grand Jury recommends and encourages the Sheriff's Department and all Mono County law enforcement personnel to continue to vigorously enforce all laws requiring the possession and use of valid drivers' licenses, valid registration and insurance of vehicles, and valid identification and work documents. To fail in this regard is unfair to, and endangers, all legal residents of Mono County.

2. During this investigation, the Grand Jury found that the availability of audio and video recordings of interactions between Sheriff's Department deputies and the public is invaluable. Therefore, the Grand Jury recommends that, to the extent possible, all vehicles used by Sheriff's Department deputies and other Mono County law enforcement personnel be equipped with video recorders. The Grand Jury further recommends and encourages all Sheriff's Department deputies and other Mono County law enforcement personnel to always and consistently use audio and/or video recorders to record any and all interactions with members of the public.

3. The Grand Jury recommends that illegal immigrants who are in the United States and wish to remain in the United States diligently pursue all possible steps to become a permanent legal resident and/or a United States citizen, thereby conferring on such immigrants the ability to drive and work legally and safely in the United States.

**COMPLAINT: MAMMOTH LAKES POLICE DEPARTMENT  
ENFORCEMENT OF RESTRAINING ORDER**

**(09-06)**

**STATEMENT**

The Grand Jury received a complaint against the Mammoth Lakes Police Department (the "MLPD"). The specific complaint resulted from an incident involving the complainant's ex-husband and two MLPD officers (described below) that occurred on November 7, 2009. The complainant also voiced general concerns that she was not receiving adequate support and help from authorities in enforcing certain restraining orders and keeping her and her children safe.

**INVESTIGATION**

The Grand Jury interviewed two Mono County Deputy District Attorneys (collectively, the "DDA") on two occasions, and also interviewed the MLPD Chief of Police (the "Chief"), two MLPD officers and the complainant (who was accompanied by a representative from Wild Iris and an interpreter). In addition, the Grand Jury listened to an audio recording of a meeting between the DDA and the complainant, and received a written report from the Chief regarding his meeting with the complainant (who was accompanied to such meeting by two representatives from Wild Iris). The Grand Jury also reviewed various police reports, court orders and other documents provided by the complainant and the DDA.

**FINDINGS**

The complainant's concerns originated with an incident that occurred in June 2008. The complainant's ex-husband had received an adverse court ruling regarding child custody issues and, together with his brother and other family members, went to the complainant's home following the court hearing. A major brawl ensued, during which the complainant, her brother and her brother's fiancée were severely beaten. As a result of the beating, the ex-husband and his brother served several months in the Mono County Jail. At the end of their jail sentence, the ex-husband and his brother were turned over to Federal immigration authorities for deportation. However, both the ex-husband and his brother returned eventually to Mammoth Lakes.

In July 2008, the complainant was granted restraining orders against her ex-husband, his brother, and several of their family members who had been involved in the brawl. The restraining orders are valid for a period of three years. The ex-husband was granted only telephonic visitation rights with his children.

On November 7, 2009, the ex-husband went to the MLPD and asked for officers to accompany him to the complainant's home so that he could see his children. When the

two MLPD officers and the ex-husband arrived at the complainant's home, the complainant immediately showed the MLPD officers a copy of her restraining order against her ex-husband. The MLPD officers reviewed the restraining order, separated the husband from the complainant and her children, and explained to the ex-husband that, in accordance with the restraining order, he could not approach within 100 feet of the complainant and her children. The MLPD officers later verified the existence of the restraining order and obtained a copy through Mono County dispatch.

During the Grand Jury's interviews with the Chief and with each of the two MLPD officers involved in the November 7, 2009 incident, the Chief and the officers acknowledged that, at the time of the incident, the restraining order against the ex-husband was not in the MLPD restraining order file. Restraining orders are maintained in an accessible paper file at the MLPD office and are organized in chronological order. An electronic file of restraining orders is maintained at Mono County dispatch. The MLPD officers also stated that, after reviewing the copy of the restraining order received from Mono County dispatch, they did not believe that the restraining order against the ex-husband had been properly served on the ex-husband. However, they also mentioned that the officers had no reason to suspect the existence of a restraining order, especially as they considered it very unusual (and unlikely) for the ex-husband to come to the MLPD office and request assistance from the MLPD in violating his own restraining order. The MLPD officers acknowledged that officers do not typically check for restraining orders unless someone specifically asks about one. The officers also explained that the MLPD will come and take a report when a person calls to report a violation of a restraining order. The Chief and the two MLPD officers assured the Grand Jury that the restraining order against the ex-husband is now in the MLPD restraining order file and that all MLPD personnel are very aware of the restraining order.

During the Grand Jury's two interviews with the DDA, the Grand Jury was told that the DDA had spoken previously with the complainant about potential violations of the restraining orders. The DDA also found that the restraining orders had not been properly entered into the MLPD restraining order file, but assured the Grand Jury that the problem had been resolved and that the restraining orders were now in the file. The DDA also said that the complainant was asked to provide the DDA with a written list of all of the alleged violations of the restraining orders so that the DDA would have a complete record of all of the incidents of concern to the complainant in the case of a potential future criminal prosecution against the ex-husband, his brother and/or other family members. The DDA also informed the Grand Jury that, in their opinion, the MLPD officers had responded correctly and appropriately during the incident on November 7, 2009.

The Grand Jury reviewed the various files and records regarding this matter and also questioned whether or not the ex-husband had been properly served with the restraining order. According to the DDA, restraining orders are civil matters, and it is the protected person who must take steps to cause the restraining orders to be served against the restrained persons. However, it was explained to the Grand Jury that, as a result of the incident on November 7, 2009, the ex-husband has now been made aware of the restraining order which constitutes legal service. With the assistance of Wild Iris, the

complainant has also recently served, or is in the process of serving, the other restraining orders against the ex-husband's brother and other family members.

Subsequent to the Grand Jury's interviews with the DDA, the DDA met again with the complainant (and the Grand Jury listened to the audio tape of that meeting.) During the meeting, the complainant reviewed with the DDA the various incidents involving alleged violations of the restraining orders, and received assurances from the DDA that she was welcome and encouraged to come in and tell the DDA about any new incidents. The DDA explained to the complainant that this was important in order to build a potential criminal case against the ex-husband, his brother and/or other family members in the event of future knowing violations of the restraining orders. The complainant also told the DDA that she had not been receiving child support from her ex-husband. The DDA informed the complainant that failure to pay child support is a crime and that the DDA might follow up on that if the ex-husband did not begin paying required child support.

The Chief and the MLPD Lieutenant also met with the complainant (who was accompanied to such meeting by two representatives from Wild Iris) to explain the actions of the two MLPD officers involved in the November 7, 2009 incident, and to assure the complainant that the MLPD would support her as best it could. The Chief reported to the Grand Jury that, as a result of such meeting, he felt that the complainant had a better understanding of what she can expect in the future in terms of support from the MLPD. The Chief also informed the Grand Jury that he and the Lieutenant had both provided the complainant with their business cards, and had told her she could call either one of them if she encountered any future problems with her ex-husband, his brother and/or other family members. The Chief also stated that he had put out a notice on the MLPD email system making all officers aware of the complainant's restraining orders and advising officers to take any calls from the complainant seriously.

The Grand Jury met with the complainant (who was accompanied by a representative of Wild Iris and an interpreter) after her meetings with the DDA and the Chief. The Grand Jury explained to the complainant that the DDA and the Chief had assured the Grand Jury that they were now very aware of the complainant's concerns and the restraining orders, that the restraining orders were in the MLPD restraining order file, and that they were committed to helping and protecting the complainant to the extent legally possible. The Grand Jury also reiterated to the complainant the importance of always carrying the restraining orders with her, keeping track (in writing) of any suspected violations of the restraining orders, and reporting any such violations to the MLPD and/or the DDA. The Grand Jury also explained that neither the Grand Jury, the DDA nor the MLPD had jurisdiction in Federal immigration matters and could not force the deportation of the ex-husband, his brother and/or other family members against whom the complainant has valid restraining orders. The complainant informed the Grand Jury that her ex-husband has recently begun making minimum child support payments, and is also seeking custody of his children through the court. The Grand Jury suggested to the representative from Wild Iris, who planned to accompany the complainant to court for scheduled hearings in the custody matter, to alert the MLPD prior to any such hearings if they suspected any potential violence from the ex-husband.

Ultimately, the Grand Jury found that the MLPD acted properly in this case. No violations of policy or protocol were found.

The complainant has received assurances from the MLPD, the DDA and the Grand Jury that her concerns have been heard and are being addressed.

### **RECOMMENDATIONS**

1. The Grand Jury recommends that MLPD officers be diligent in checking the status of restraining orders on a regular basis.

## **FOLLOW UP TO 2008-2009 MAMMOTH LAKES POLICE DEPARTMENT REPORT**

### **STATEMENT**

The Grand Jury elected to do a brief follow-up to the report regarding the Mammoth Lakes Police Department (the "MLPD") prepared by the 2008-2009 Grand Jury (as report no. 08-05, hereafter referred to as the "MLPD Report").

### **INVESTIGATION**

The sole purpose of this follow-up report was to determine what actions have been taken by the MLPD and by its Chief of Police (the "Chief") in response to the issues raised in the MLPD Report and the suggested recommendations set forth in the MLPD Report. It was not the Grand Jury's intention to conduct another investigation of the MLPD. Therefore, the Grand Jury interviewed only the Chief in connection with this follow-up report.

### **FINDINGS**

Public agencies have a legal duty to provide a written response to Grand Jury recommendations within 90 days after release of a Grand Jury report. Accordingly, in a memorandum dated September 2, 2009, the Chief provided to the Mammoth Lakes Town Manager (the "Town Manager") his response to the recommendations set forth in the MLPD Report, and the Grand Jury reviewed a copy of that memorandum. Those responses were incorporated into the Town Manager's letter, dated October 21, 2009, to the Presiding Judge of the Mono County Superior Court, a copy of which was included in the Agenda Bill for the October 21, 2009 meeting of the Mammoth Lakes Town Council. The Chief and Town Manager agreed to most, but not all, of the recommendations set forth in the MLPD Report. A copy of the October 21, 2009 Agenda Bill is available on the Town of Mammoth Lakes (the "Town") official website.

The Grand Jury also reviewed the Chief's memorandum dated October 27, 2009 to the Town Manager providing additional information on the recommendation contained in the MLPD Report that "the Chief and other management personnel of the MLPD monitor more closely the performance of all officers who are placed on special assignment to determine whether the objectives of the assignment are being met." The Chief's memorandum of October 27, 2009 indicated that this recommendation had been implemented and explained the steps taken by the MLPD to better monitor the performance of officers on special assignment. The Grand Jury also reviewed the Chief's memorandum dated November 9, 2009 to the Mammoth Lakes Town Council thanking the Council for its decision to fill the School Resource Officer position and stressing the importance and value of this position.

The Chief informed the Grand Jury that, in fall 2009, he conducted "fireside chats" with all of the MLPD officers to discuss matters of concern to them (as recommended in the MLPD Report), held a meeting with the members of the Peace Officers' Association (the

“POA”) to discuss all the issues raised in the MLPD Report, and tasked the MLPD Lieutenant with conducting an investigation into issues raised by certain officers regarding the behavior of a particular Sergeant. The Grand Jury reviewed the Chief’s notes summarizing issues raised by officers in the “fireside chats” and potential fixes to such issues, the Chief’s notes summarizing the issues discussed with the POA, and the Lieutenant’s report, dated October 16, 2009, detailing his investigation into the Sergeant’s behavior.

After a review of the above documents and the Grand Jury’s interview with the Chief, the Grand Jury made the following determinations and observations:

1. **Hiring of the Chief:** The MLPD Report included a suggestion that, when the Chief retires, the Town Council consider doing a comprehensive search for a new chief, including recruitment of both inside and outside candidates. The Chief will be retiring in August 2010. The Chief informed the Grand Jury that the Town is currently searching for an interim police chief who would hopefully begin work as of July 1, thereby allowing for a 5-6 week transition period with the Chief. Any interim chief would only act in such capacity for approximately six months. This time period would allow the Town to conduct a comprehensive search for a new chief, and it is the Grand Jury’s understanding that both inside (if any) and outside candidates will be considered.
2. **“Brady” Violations:** The Chief informed the Grand Jury that there have been no “Brady” violations in the past year.
3. **Wildlife Specialist:** The Chief reported that the Wildlife Specialist is doing a good job, gets along well with the MLPD officers, and reports mainly to the MLPD Sergeants. The Chief believes that the Wildlife Specialist is currently doing everything that is required by the Wildlife Management Contract between the Town and the Wildlife Specialist. The Wildlife Specialist currently is permitted to carry a gun, but, according to the Chief, has not yet fired the gun while on the job.
4. **Issues with Sergeants:** The MLPD Report addressed issues with two of the MLPD Sergeants. One Sergeant had been involved in two internal affairs investigations and was ultimately terminated from the MLPD in summer 2009. The Chief informed the Grand Jury that such Sergeant has appealed his firing and the hearing on such appeal is ongoing. The Chief could not predict the outcome of the appeal, but noted that the hearing has been difficult for the MLPD because officers have been subpoenaed and have had to testify against one another. Also, the MLPD intends to fill the position vacated by the Sergeant, and has conducted interviews with potential candidates. However, the MLPD has decided to wait to fill the position until the appeal hearing involving this Sergeant has been resolved.

The second issue with a MLPD Sergeant involved complaints about such Sergeant’s behavior, including excessive micromanagement, and lack of support and mistreatment of subordinate officers. As stated above, the Chief asked the MLPD Lieutenant to conduct an investigation into the Sergeant’s behavior, and such investigation was completed in October 2009, as detailed in the Lieutenant’s memorandum of October 16, 2009. As part of this process, several MLPD officers and Sergeants were interviewed in order to clarify

the complaints and concerns. This allowed for specific complaints and issues, rather than rumors and innuendo, to be presented to the Sergeant. A performance improvement plan, with specific goals and objectives, was put into place for the Sergeant. The plan also requires monthly meetings and reviews between the Sergeant and the MLPD Lieutenant. The Chief informed the Grand Jury that the Sergeant, while initially extremely defensive about the complaints against him, eventually adopted a positive attitude and pledged to work at improving his behavior. When asked by the Grand Jury if the Sergeant's behavior had noticeably improved, the Chief stated that there definitely had been improvement, but that it was still a "work in progress" and that the required monthly reviews were not always occurring on a regular basis.

5. Special Assignments: The MLPD Report addressed a specific complaint about an officer who had been assigned to the Mono Narcotics Enforcement Team ("MONET"), but had not been performing well in that position and had been left in the position for too long. The Chief reiterated to the Grand Jury his belief that the officer in question had been successful in other MLPD assignments, and that the MLPD strives to make all officers successful in their assignments. As summarized in the Chief's October 27, 2009 memorandum to the Town Manager, several changes in procedure were put into place by the MLPD to better monitor activities associated with special assignments, including: (i) requiring members of MONET to submit a monthly (rather than a quarterly) report recapping their activities during the month; (ii) requiring the School Resource Officer to submit a daily log recapping his activities at the schools; (iii) requiring the Traffic Officer to maintain a daily activity log and broadcasting his activities via the police communications system; and (iv) monitoring of the activities of the Detective by both the Lieutenant and the Sergeant on the day shift, and sharing the Detective's caseload regularly with other officers during daily briefings.

6. Communication: The MLPD Report identified problems with, and breakdowns in, communication between MLPD personnel as one of the most important issues within the MLPD. The MLPD Report recommended that the Chief conduct "fireside chats" with each of the officers in the MLPD to better identify specific issues of concern. The Chief reported to the Grand Jury that he had completed "fireside chats" with all officers in fall 2009, spending one to three hours with each officer. As reported by the Chief to the Grand Jury, and as set forth in the Chief's summary notes regarding the "fireside chats," issues raised by officers in such chats, included: (i) improving public perception of the MLPD by setting a good example and providing better outreach to the public about MLPD accomplishments through press releases, etc.; (ii) better community outreach, including outreach to the Hispanic community; (iii) timeliness of written work and reports; (iv) securing better equipment and taking better care of such equipment; (v) taking better care of each other; (vi) developing goals; (vii) maintaining open communication and an open door policy, and more brainstorming with officers; (viii) providing better training, including weaponless defense training; and (ix) identifying possible locations for a new police facility. The Chief stated that he and the MLPD officers identified potential fixes (immediate fixes, fixes to be completed within one year, and long-term fixes) to the various issues and have been endeavoring to address each of these issues over the past year.



The Chief also held a meeting with all members of the POA to get their input on communication and other issues within the MLPD. The Chief's notes summarizing such meeting indicated that the discussion included (i) how and when to fill the vacant Sergeant position; (ii) the promotion process; (iii) the behavior problems with another Sergeant; (iv) the need to improve communication between the Chief and the Lieutenant; (v) the possibility of a second administrative position and a second lieutenant position; (vi) ways to improve communication between officers and resolving differences in working styles; (vii) training budget and increased training opportunities, (viii) better equipment, including plastic seats in MLPD vehicles and improved booking room benches; and (ix) the potential for a new MLPD building.

The Chief has shared all issues and ideas raised in the "fireside chats" and the meeting with the POA with all of the MLPD officers in briefings and squad meetings. He said that the organization as a whole is working at improving communication.

The Chief reported to the Grand Jury that most, if not all, police vehicles now have video recording equipment. Some of the vehicles now have plastic rear seats.

The MLPD has worked at improving its community outreach efforts, and plans to implement a specific outreach effort to the Hispanic community.

The MLPD now provides six range trainings per year for officers, each of which includes one hour devoted to weaponless defense training, and three hours devoted to weapons training.

The Chief said that the Town has secured a real estate agent to help identify potential sites for a new MLPD facility. Several sites are under consideration, but no decision has been made and likely won't be made for some time due to budgetary reasons.

The Chief also shared with the Grand Jury the 2010 MLPD Goals, which include (i) improving community relations, (ii) improving officers' overall fitness and professional appearance, (iii) handling transition within the organization over the next several years and encouraging officers to discuss assignments, promotional interests and methods for self-improvement; (iv) maintaining a cooperative working relationship with the Wildlife Specialist and allied agencies; (v) improving training opportunities for officers, and (vi) implementing and improving outreach to the Hispanic community.

## **RECOMMENDATIONS**

The Grand Jury was pleased to see that the Chief and the MLPD as a whole have taken steps to address the issues and recommendations set forth in the MLPD Report. The Grand Jury encourages the Chief and the MLPD to continue in these efforts, and recommends that the interim chief (to be hired in summer 2010) and the new permanent MLPD chief continue to address these issues in a supportive and constructive manner.

## **MONO COUNTY JAIL TOUR**

The Grand Jury toured the County Jail (the "Jail") facility in Bridgeport on March 4, 2010. In attendance were the Mono County Undersheriff, the Jail Commander and the Grand Jurors.

The tour consisted of viewing the vehicle sally port, gun lockers, booking cage, holding cells, jail library, laundry, kitchen and pantry, staff offices and dispatch. Each area of the Jail is under camera surveillance, on a 24/7 basis. The Grand Jury learned that a library is required by law and as a result, the Jail library is stocked with paperbacks and Code books.

When an inmate is booked, the individual enters the booking cage and, in many cases, is also strip searched before entering the booking area. After being searched, the booking process is documented by video and audio tape. Each individual is digitally fingerprinted with the resulting analysis communicated immediately to Sacramento. The inmate's property is tagged and secured. The breath analyzer is calibrated weekly, and due to the altitude, the equipment is more sensitive to the environment which can be problematic; consequently, back-up equipment is always available for use. Inmates who have been arrested on alcohol-related charges are given a subsequent sobriety test to insure that they are under the legal intoxication limit before leaving the Jail.

The Jail is required to provide complete medical care to all inmates, which can be costly. A Physicians Assistant is on-call 4 days per week from the Bridgeport Clinic to address inmate medical issues and prescribe medicine. Annual medical costs for the Jail total approximately \$150,000 - \$180,000, which is calculated based upon Medicare rates. In addition to medicine, the Jail is equipped with medical equipment. The detox area requires a fireproof room and flooring to prevent injury to the inmate and the facility.

If an arrested individual has an outstanding warrant issued in another jurisdiction, that jurisdiction is responsible for transporting the inmate to the jurisdiction. Since transporting an inmate can be costly, whenever possible, the various enforcement agencies try to work together to minimize costs.

The Jail is required to provide inmates with the basic necessities including food, clean linens and clothing, and a clean facility. Inmates wear striped clothing when in jail, and orange attire when working outside the Jail facility. The Jail kitchen has a staff of two and is subject to annual food inspections by the Health Department. All meals are approved by a Registered Dietician.

In the past, the Jail's leaking roof has caused flooding in the facility and numerous resulting problems. Staff became adept at tenting critical equipment with plastic materials to prevent damage to the computer and dispatch systems. At the height of the flooding, a mutual aid request was distributed and many County departments, and out-of-county departments, cooperated and provided support. The Mono County Sheriff's Department will reciprocate support to these agencies when called upon. Funding was secured to re-roof the Jail and install new flooring in damaged areas. The project took approximately

6 – 7 weeks to complete which is a little longer than expected. As a result, the facility is now weather-proof which enables staff to concentrate upon their work, rather than handling flooding-related issues. However, since the re-roofing project was completed, minor leakage has been noted. Since the workmanship is still under warranty, the contractor will be making the repairs.

The Records department is staffed by one person. Crimes involving narcotics accounts for a large number of recorded bookings. Since Megan’s Law was enacted, sex offenders are required to be registered and currently there are 13 registered sex offenders in the County.

The Dispatch operation, which includes 911, CAD and RIMS, is completely computerized with battery/generator systems as a back-up should there be a failure. The computerized system is able to track inmates and their court appearance schedules, in addition to staff work schedules, emergency contacts, etc. A paging system is utilized to communicate to the inmate population and a camera surveillance system enables staff to monitor inmate activity.

If the need should arise, staff can utilize taser guns and o.c. spray (oleoresin capsicum spray, commonly referred to as pepper spray) to control unruly inmates. Recently pepper ball guns were purchased to subdue inmates, if required.

The Jail includes 3 cell blocks. The “A” cell block is utilized for hardcore criminals. “B” and “C” cell blocks are used for lesser criminals and the accommodations are dorm-style with a shared common area. The female cell has a maximum capacity of 4 inmates. Isolation cells are used for child molestation cases or suicidal inmates, or to discipline inmates.

The Jail is 21 years old and currently bed-rated for 48 inmates. A recent needs assessment estimated that in 20 years, the Jail will need to be bed-rated for 131 inmates. As the Jail is the only facility of its kind in Mono County, an individual committing a crime anywhere in the County needs to be transported to Bridgeport which takes officers away from handling on-site responsibilities, and during inclement weather, the time commitment to transport criminals is even greater. Given that the Town of Mammoth Lakes has the largest population in the County, there appears to be a need for a southern facility closer to Mammoth Lakes. Limited State grant funding is available to enlarge the Jail; however, if funding were to be received, the State stipulates that numerous conditions be met. For example, if the County were to receive AB 900 funds, the State would require a designated allocation of Jail beds and inmates from all over the State could be housed at the Mono County Jail. The average daily cost for each inmate is \$137, and if inmates from throughout the State were housed at the Jail, the Mono County budget would need to be increased to accommodate these additional out-of-county inmates. In addition, although AB 900 was approved several years ago in 2007, no funds have been distributed from this Assembly Bill to build or renovate jail facilities.

The Jail receives a small subsidy from inmates for services such as telephone use, and the purchase of items such as candy.

There are many potentially litigious situations that can occur in the Jail's operation. The most expensive is the strip-search process. The second most expensive matter is the provision of medical care after an inmate is released from custody as the Jail is required to provide 5 days worth of medicine(s). During these 5 days, no oversight is provided and the former inmate can claim that a variety of situations occurred for which the Sheriff's Department would be responsible. Proving otherwise can be an expensive effort.

Overall, the Grand Jury was impressed with the Jail operation and was pleased to see that the facility is in excellent condition since roofing and flooring renovations have been made.