



Community Development/Regulatory Committee

Future of Fire Safety in Tuolumne County

Reason for Investigation

Concerns about fire and medical emergency response were voiced during early meetings of the Grand Jury (the Jury). Initial fact finding supported those concerns, particularly in regards to severely declining volunteer numbers, financial viability of current response levels, and coordination of county-wide resources. This report is focused on fire-responders and does not address County ambulance service.

Led by County Administrator Craig Pedro, Tuolumne County had initiated an in-depth study titled “*Tuolumne County Fire and First Responder Study-2011*”, (TCFFRS). Using data from that study’s draft, together with information gathered independently, the Jury set out to explore ways of maximizing benefits to County residents by efficient use of available funds and coordination of existing resources.

Methodology

CAO Craig Pedro was extremely cooperative. He shared initial information gathered for the Draft TCFFRS and was always available for Jury questions. With his cooperation the Jury avoided duplicating efforts and had factual information for immediate use. Assistant County Fire Warden Paul Speer provided a document titled “*Tuolumne County Fire District Profile, 2010*”, (TCFDP) and was generous with his time.

Interviews were conducted with Fire Protection Districts throughout the County, including Fire Chiefs, district board members, retired and active personnel. Current and retired personnel from the *California Department of Forestry and Fire Protection*

(CAL Fire) and Tuolumne County Fire Department personnel were interviewed. Copies of the completed TCFFRS were made available immediately. Jury members attended a special joint meeting of the Tuolumne County Board of Supervisors, Sonora City Council, Community Service Districts and several Fire Protection District Boards where the TCFFRS was presented, questions were addressed and an appeal for support and participation in a future working group was requested.

Background

Cooperation between local fire protection organizations and CAL Fire goes well back in history. September 23, 1930 Tuolumne County received its first CAL Fire truck purchased with State and County funds, a 1929 Moreland that was stationed on Stockton Street in Sonora. The Moreland responded to wild and structural fires in winter and summer throughout the County. In the 1950's Groveland got an engine for winter service and Twain Harte got an engine in 1961. Communities were putting together independent volunteer fire departments about that same time. The *Tuolumne County Fire Department*(TCFD) was created and funded by property taxes in 1974. The County Board of Supervisors decided to contract with CAL Fire for provision of rural firefighting as part of that action.

Tuolumne County has continued to contract with CAL Fire for structural fire protection assistance. The current contract will expire June 30, 2011.¹ Today there are eight full-time staffed local fire departments providing services for Tuolumne County. They are Tuolumne County, City of Sonora, Columbia, Groveland Community Service District, Twain Harte Community Service District, Mi-Wuk/Sugarpine, Tuolumne, and Me-Wuk Tribal. The current staffing level is at a minimum necessary to provide service.²

There are currently nine volunteer stations listed in the Tuolumne County Fire and First Responder Study(TCFFRS). The Tuolumne County Fire District Profile(TCFD) lists eleven volunteer stations. The difference appears to be that Crystal Falls, Chinese Camp, Moccasin and Smith stations are not included in the TCFFRS list of volunteer stations while Jamestown and Columbia College are listed as volunteer stations. Strawberry Fire Protection District does not appear in either document and is currently inactive due to lack of trained volunteer staff.

Facts

Budgets for fire and emergency medical response were hit hard by the tax changes of Proposition 13's passage in 1978. Rural fire protection tax funding was reduced substantially and raising funds became subject to public voting processes in most cases. Funding today primarily comes from that limited property tax allocation, the County general fund, development impact fees and Proposition 172. Several local fire districts have passed property tax assessments or other fees. Some assessments have expiration dates coming up in the next few years.

1 TCFDP

2 TCFFRS

Districts with assessments that have no expiration date are finding the approved tax rates are unable to keep pace with increasing costs. Salary and benefit packages are the single largest and fastest growing portion of fire protection budgets and vary among County providers. The existing fire and emergency response system is not sustainable unless additional resources are made available.³

Historically, volunteers have been the backbone of firefighting efforts. Their numbers have been declining, from approximately 200 persons in the early 1990's to only 74 remaining in 2010. The volunteer stations are not able to respond to every call due to shortage of manpower. This decline reflects a national trend.⁴

In hopes of stemming the serious loss of volunteer firefighters, CAL Fire and TCFD began a compensation program including an annual stipend, incentives for emergency responses, a uniform allowance, and training incentives in 2002. Tuolumne County Fire. Volunteer numbers have continued to decline.

In 2009 approximately 71% of calls to all of Tuolumne County's fire and emergency medical responders were for medical aid while only 4% were for structure fires. Vegetation fires and "other" fires added 12% to fire emergency calls making a total of approximately 16% of calls related to actual fires. Since 2006, medical-aid calls have increased by almost 33% while structure and other fire calls have remained relatively the same for that 3 year period.⁵

The "*Insurance Service Office*" (ISO) Fire Suppression Rating update is reportedly scheduled to occur in 2011.⁶ This rating directly affects the cost of homeowners' fire protection insurance. The ratings consider elements of dispatch, water supply and fire department response times.⁷

In 2002 the Training Bureaus of CAL Fire's Tuolumne Calaveras Unit were combined with Tuolumne County Fire District (TCFD) training unit. TCFD has also entered into a partnership with Columbia College in which all classes offered by the Training Bureaus are considered college courses and all students receive college credits. CAL Fire and TCFD use students enrolled in Columbia College's Fire Science program, "Resident Firefighters". The program's students live in CAL Fire/TCFD fire stations while attending college and respond to calls in evenings and on weekends. A small compensation is provided for responding to calls.⁸

Tuolumne County Fire Department resources are dispatched by the CAL Fire Emergency Command Center in San Andreas. This Command Center is moving to a location in Sonora within a few years.⁹

Tuolumne County has an Arson Investigation Unit overseen by the Tuolumne County District Attorney. It is staffed by members of the Sheriff's office, CAL Fire, and TCFD. Tuolumne County Fire Department has a Fire Prevention Bureau

3 TCCFRS and TCFDP

4 TCCFRS and TCFDP

5 TCCFRS

6 Interviews

7 TCCFRS

8 Interviews and TCFDP

9 Interviews

currently consisting of three Fire Inspectors¹⁰. Both systems appear to be providing good service to the community.

The following are statements referenced from the “Cooperative Fire Programs Fire Protection Reimbursement Agreement #4CA00473, the term of which is July 01, 2008 through June 30, 2011.”¹¹

The current CAL Fire contract with Tuolumne County defines the Fire Protection Services provided by the California Department of Forestry and Fire Protection, to be as follows:

- Emergency fire protection, emergency response and basic life support.
- Dispatch services.
- Extended Fire Protection Service Availability (Amador Plan).

The maximum annual cost of the Agreement to Tuolumne County is \$2,297,484.

Tuolumne County pays an “Administrative Charge” of 9.68% to CAL Fire which is estimated to be \$194,449 under the current Agreement. This percentage is expected to increase under any new Agreement.¹²

The current CAL Fire Agreement expires June 30, 2011.

The current CAL Fire Agreement contains a provision requiring Tuolumne County to give the State of California notice of whether the County intends to extend or enter into a new agreement and, if so, whether the County intends to change the level of fire protection services from those provided by this Agreement.

The total budgeted by Tuolumne County for the Tuolumne County Fire Department in 2008 was \$4,389,826. This amount includes the CAL Fire Agreement and “Local Agency Provided” resources.

Findings

- F1.** Combining all existing Tuolumne County fire districts and departments under a single management structure would address the following:
- (a) Improvement must be made in the use of currently available funding. Having a paid staff-member of Fire Chief status in multiple districts and departments is increasing costs unnecessarily.
 - (b) Training and equipment is not consistent among districts and departments.
 - (c) An inventory of County-wide resources, both human and equipment, would be a useful tool in addressing how to provide economical and efficient use of what is available.
 - (d) Parochial attitudes are a barrier to change. Making sure future

10 Interviews

11 CAL Fire Contract

12 Interviews

purchases of equipment and training of staff are compatible throughout the system will result in an emergency response capability and potential cost savings beneficial to everyone in the County, not just within a single district. Maintaining the integrity of current benefit assessments so that local taxpayers continue to receive what they voted to gain will be challenging to any proposal combining County-wide resources.

(e) Renewal or renegotiation of the CAL Fire Contract must be done with flexibility in mind and with careful attention to administrative cost reduction.

- F2.** The public's perception of emergency response is outdated. Actual fire related calls are a small portion of demand. The shift from firefighting to medical response is a large part of increased costs. New funding sources are required to meet the increasing demands for emergency response. Since most of this demand is likely to be in medical response, emphasis must be on how to address these expenses.
- F3.** Emergency dispatch is complicated. Centralization is needed now. The current dispatching system results in multiple actions necessary to send a response, (Appendix A), as well as errors in dispatching needed resources to the proper location. California Highway Patrol is the only available dispatch for 911 calls made from cellular phones.
- F4.** It is essential to educate the public about how their demand for services relates to cost. The public's expectation of service must be defined. What it costs to provide those services must be explained. Funding methods can then be established to provide that level of service.
- F5.** Volunteer numbers are declining due to several factors. An aging population, the demands on today's working families and discouragement from some professional firefighters are lesser issues. Training requirements appear to be the main obstacle to recruitment. Lack of opportunity to engage in actual fire fighting appears to be the primary obstacle to retaining volunteers because medical response is usually not their focus. Attrition will always be a factor. It is necessary that recruitment efforts remain constant.
- F6.** Some volunteer fire stations have a low response rate or are inactive. These stations mislead residents regarding safety-response times and may affect ISO ratings.
- F7.** The "Amador" Plan allows CAL Fire resources to be used for local structural fire protection during the non-fire season winter months.
- F8.** Groveland Community Service District provides response outside its district's boundaries to Mariposa County. Mariposa County assists Groveland when necessary. This cooperation is essential to isolated and remote residents. It has 22 volunteers, successfully uses part-time employees, supports a ROP fire cadet program and has community appreciation activities.
- F9.** Any centralization of responders will offer savings in some areas and increase costs in others. For some positions, personnel costs are likely to increase as

“equal pay for equal work” will be a factor. There are many undefined benefits CAL Fire provides in services and equipment that must be included in a cost analysis. The success of methods to save on maintenance, purchasing and other budget items will vary.

Recommendations

R1. The Grand Jury finds that Tuolumne County should consolidate all existing fire districts and departments under a single management system to provide structural fire protection on a year-around basis.

(a) A single Fire Chief providing leadership to all responding districts should be considered. The districts would employ Fire Captains and Lieutenants as needed. By whatever method, it is critical that fire command structure is centralized for all responders County-wide. This might be accomplished under the “Single County-wide Fire System - Joint Powers Agreement Option” discussed in the Tuolumne County Fire and First Responder Study. Use of part-time firefighters should be explored to meet staffing demand in all districts/departments. This usually results in cost savings by reducing benefit packages.

(b) Training should be standardized and every effort should be made to make it accessible to volunteers. Anyone from outside Tuolumne County that benefits from the consolidated Training Bureau’s courses should pay a reasonable fee for that training.

(c) An inventory of resources should be completed that includes what/who belongs to, or is provided by, CAL Fire and must include:

- services and equipment Tuolumne County is enjoying without cost through its contract with CAL Fire
- what/who does Tuolumne County Fire Department own and supply
- what/who does each district/department own and could possibly supply to a coordinated County-wide system

This comprehensive and accurate list of assets, including personnel, is crucial in determining how to save money. (The Commission on Fire Accreditation International recommends a system approach known as “Standards of Response Coverage” for use in self-assessment of a fire agency. [City-gate Assoc. Fire Department Evaluation for the Groveland Community Services District] This approach might be useful for the current evaluation of Tuolumne County fire and emergency response services.)

(d) Set aside parochial attitudes and address economic reality by:

- using available dollars wisely through coordinated purchasing of supplies and equipment
- sharing maintenance of, and training personnel to use, all available equipment

- avoid unnecessary duplication of resources
- standardize and coordinate training of volunteers
- encourage volunteers to be County-wide responders
- share educational and public relations efforts

(e) While negotiating a new CAL Fire contract, include language that allows phasing out the broader services CAL Fire provides and provides flexibility to address those changes. Maintain the Amador Plan type of winter support for a defined term. Every effort should be made to reduce costs subject to the Administration fee.

- R2.** Some communities in California are recovering at least part of response costs through various means including charging expenses to auto and homeowner's insurance coverage, medical insurance coverage, etc. Some are establishing "response fees" both for nonresidents and residents. Consultants are available that specialize in recovery, usually charging a set fee based on a percentage of recovered dollars. Models for in-house recovery systems are available from other local agencies. Success rates vary for both recovery systems. It should be noted, there is currently proposed State legislation to prohibit local agencies from adopting such fees and that some locales that had adopted fees have since dropped them for various reasons. Researching these possible funding sources should be part of the working-group's effort.
- R3.** Adding medically qualified personnel to dispatch would result in sending the appropriate level of staff and equipment to a call. It should be determined if such a change would result in the costs to provide skilled staff being recouped by efficiency in response. Establishing a central, well equipped, dispatch center staffed with medically trained personnel serving the entire County must be considered. The possibility of combining County-wide dispatching services with the proposed new CAL Fire Command Center project should be investigated. That investigation should be open to the idea of a single dispatch for all emergency responders. Planning to accommodate change in how 911 calls from cellular phones are currently handled should be included in any new dispatch program.
- R4.** The cooperative effort demonstrated by participation in the Tuolumne County Fire and First Responder Study is a good foundation for organizing and launching an educational public outreach program. The purpose of this program would be to explain what fire departments are expected to do today, how those demands have affected costs, the viability of volunteer-only stations, and the ongoing need for volunteers. Most importantly, the program should explain why change is necessary. That explanation would benefit from a clear presentation of how demand-for-service expectations relate to what the community can afford to provide. Once people understand that the level of service they expect cannot be provided with existing dollars, they will be more likely to support change.

- R5.** (a) Required training of volunteers should be made as accessible, affordable and flexible as possible. Volunteers should be encouraged to serve County-wide whenever possible. Opportunity to engage in actual fire fighting should be expanded. Any professional firefighter that in any way discourages or disparages the contribution of volunteers should be disciplined. Leadership at all levels should reaffirm the importance of volunteers to the success of fire departments.
- (b) Local businesses and organizations should be approached to sponsor volunteers with stipends or “scholarships” to help fund training, equipment and perhaps even child care during training sessions. At the very least, employers should be educated on why their cooperation is critical to volunteers they employ.
- (c) Centralization of volunteer programs under a single leader would improve the potential of gaining new recruits, make training consistent, provide expanded opportunity to participate in responses, and insure better retention of recruits. The program should make use of every good idea available from successful efforts throughout the County and elsewhere. In addition, this program might serve as a public-relations and education coordinator.
- R6.** All Tuolumne County responders should cooperate in a strategy to improve ISO ratings. Maintaining the existing ratings must be a priority. Water service suppliers are a vital part of this effort, their participation should be requested. Volunteer stations should be re-opened as soon as possible.
- R7.** Groveland Community Service District has a successful responder program. Elements of its staffing, training, volunteer recruitment and community appreciation programs would be useful models to review for initial centralized management policy.
- R8.** Studies of the economic issues relative to any consolidation should forecast costs and savings forward at least five years. It is likely consolidation will be costly in its first few years but changes might be very beneficial further out. Projections of this manner are difficult and subject to many influences over which the local agency has no control. All districts/departments in the County should support the Working-Group study of how best to utilize existing resources and demonstrate a willingness to change business models.

Remarks

Tuolumne County Administrator Craig Pedro provided exceptional cooperation. He and his staff are appreciated for giving up-to-date information as soon as it became available. Assistant County Fire Warden Paul Speer, Groveland CSD Fire Chief Shane Warner, County Fire Warden Mike Noonan and Dennis Townsend were very helpful and informative sources for the Jury.

Request for Response

According to California penal code 933(c), no later than 90 days after the grand jury submits a final report on the operation of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has jurisdiction pursuant to section 914.1 shall comment within 60 days to the presiding judge of the superior court.

The Jury suggests the following respond to the recommendations:

R1.(c) R9. Tuolumne County Administrator and TCFFRS Working Group

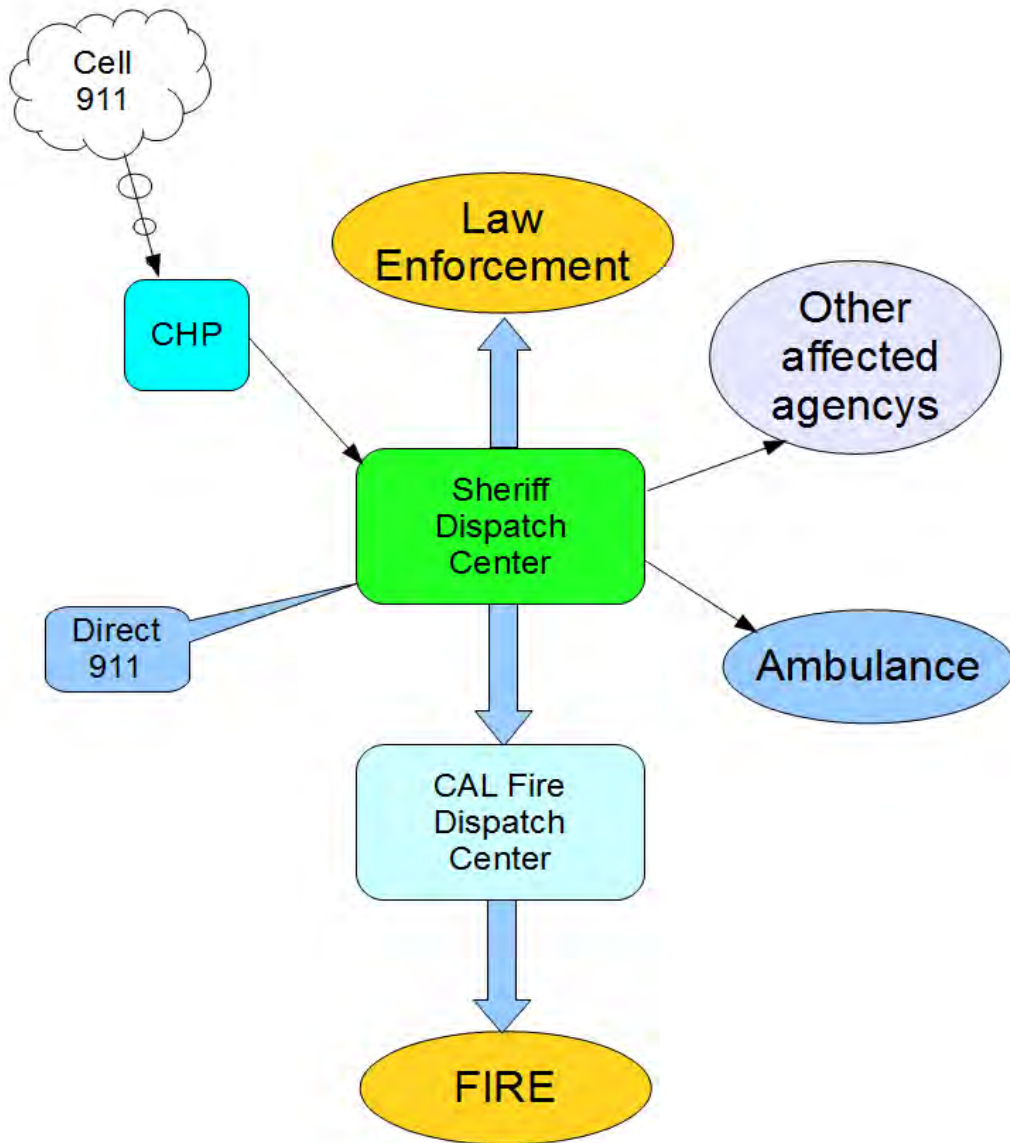
R1.(d), R4., R5.(a), R5.(c) and R6. ALL County Fire Protection Districts,
Groveland CSD, Twain Harte CSD

R1.(e) Tuolumne County

R2., R5.(b), R5.(c), R7 and R8. TCFFRS working group

Appendix A

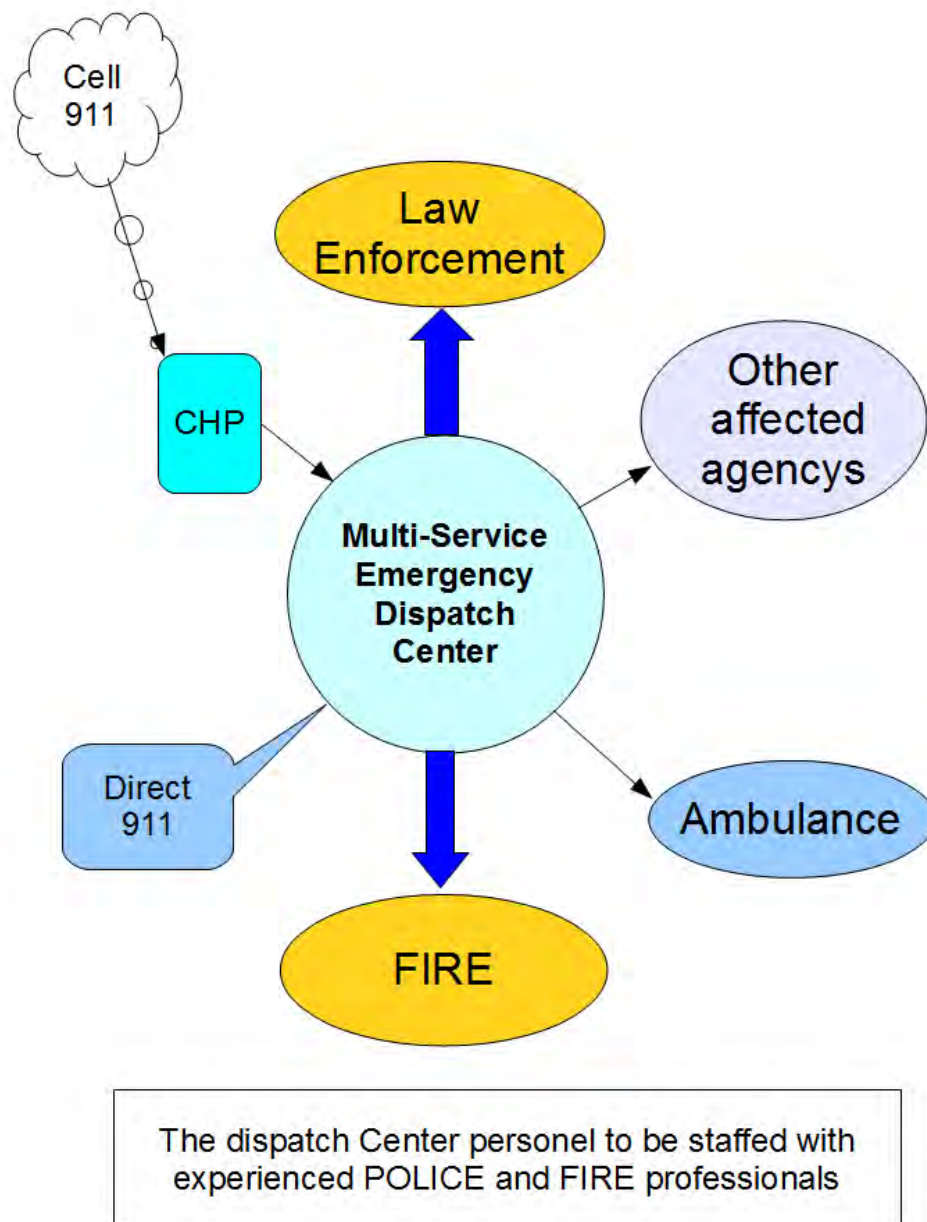
Current Tuolumne Police/Fire Procedure



Note# - The time lag between the call to the Sheriffs Dispatch Center and the relay to the CAL Fire Dispatch can be crucial.

Appendix B

Proposed Tuolumne Police/Fire Procedure

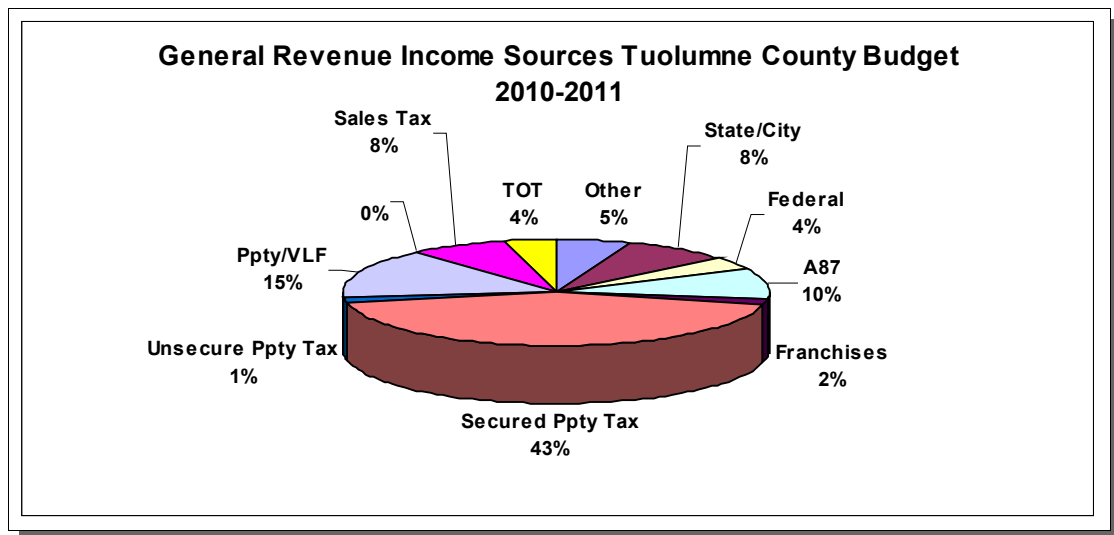




Secured Property Assessment Value and Tax Collection

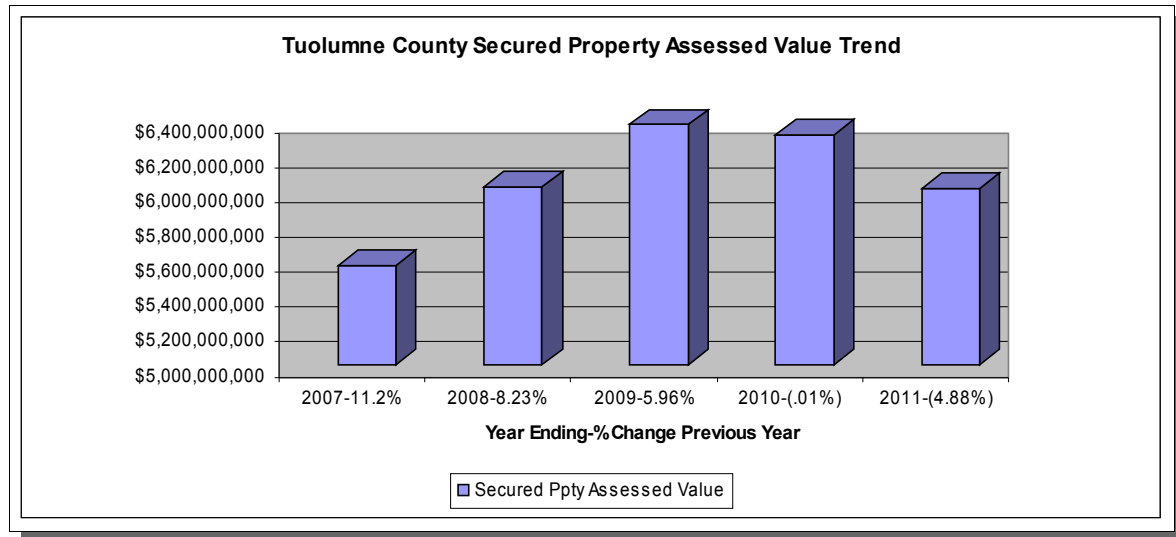
Reason For Investigation

The County's general revenue is that income derived from local sources, which excludes direct funds from State and Federal governments, and the Property Tax Assessment is the largest source of that general revenue¹. Secured property value includes land and structural improvements. Unsecured property deals with value of machinery and equipment of residences and businesses of the County. These two tax sources represent forty-four (44%) of the County's general revenue.

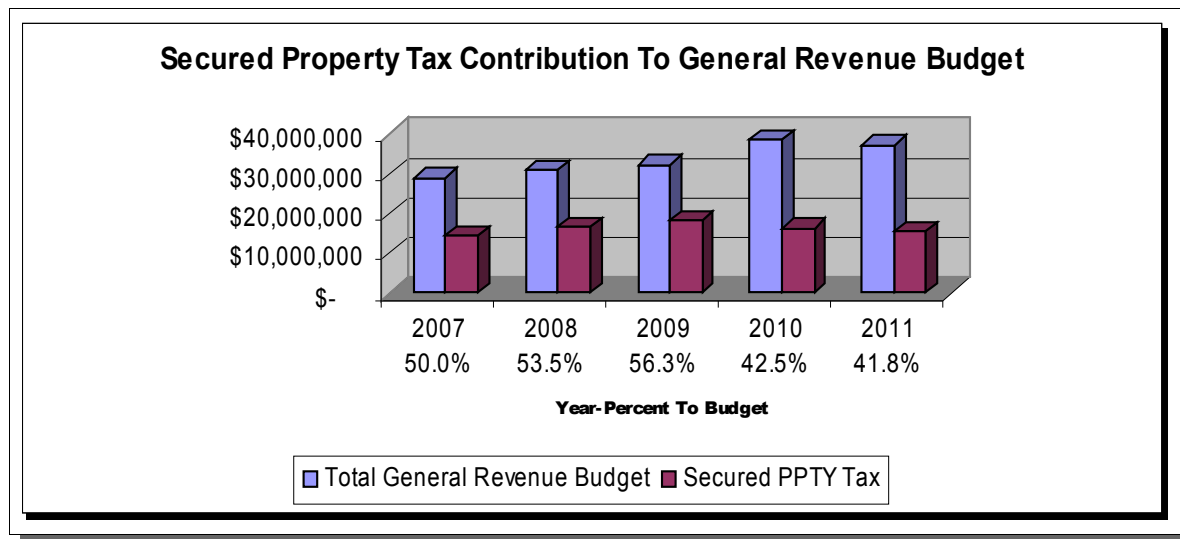


¹ General Revenue Budget (Revised 9/14/10)- FY 2010-2011 Adopted Budget

Over the years, even with the restrictions of Proposition 13, the assessed value of property in Tuolumne County has increased a substantial amount. In the year 1990, the value was \$2.3B, in 2000, \$3.6B and in 2010, \$6.5B². However, in recent fiscal years ending 2007 through 2011, the percent of year to year has been decreasing and in the last two years the total assessed value has decreased from the previous year³



This recent trend has, therefore, affected the revenue contribution to the general revenue as shown in the chart below⁴.



Since the Property Tax Value is a significant part of the revenue of the County and that value is trending downward, and recent changes to the economy and the resulting pending changes in the State of California's approach to moving more

² Assessor Annual Report 2010-2011- pg 10

³ Assessor Annual Report 2010-2011- pg 10

⁴ County Budgets-Years 2006-7, 2007-8, 2009-10, 2010-11

responsibilities to counties, the Tuolumne County Civil Grand Jury (the “Jury”) authorized the investigation of the secured property tax assessment and collection process. Specifically, the Jury was interested in the evaluation of the process and making assessment of the effectiveness and determining whether within the process the County’s agencies are being efficient.

Methodology

Initial investigations by the Jury determined that the extent of evaluating the assessment valuation process of secured and unsecured property, the tax collection process, accounting for the income, investment of revenue and reporting disbursements was a large task and due to the length of the Jury’s tenure, as well as experience and skills, did not permit an investigation of that scope. In addition, the major agencies of the County involved in the tax process are audited annually by the State of California to insure they meet the legal and fiscal requirements and the audit reports, in the last two years, did not indicate any serious violations.

The Jury, therefore, chose to focus on the process of assessment valuation process of secured property, the determination and assignment of the tax rate, the collection of this tax and the reporting of the revenue.

To determine the process used by the County, a Work and Process Flow Chart (the “Chart”) was created and is part of this report. The information on the Chart was obtained by interviews with the agencies involved in the process and actual work station evaluations of the input preformed by the County employees.

In addition, the Jury had interviews with Assessor/Recorder’s of other counties of similar size of Tuolumne.

The Committee also met with the County Administrator, Mr. Craig Pedro, with the full Jury and in interviews with representatives of the Jury.

Information regarding the statistical and financial data of the County was obtained from public documents such as the County Budget, Auditor Annual Report and Assessors Annual Report. Most of these documents for the current and previous year are available to the citizens of Tuolumne on the County website www.tuolumnecounty.ca.gov. County Budgets were provided to the Jury as a courtesy by the Board of Supervisors (the “Board”) of the County.

All financial, statistical data and information in the Chart were presented to the County Assessor/Recorder, Treasurer/Tax Collector and Auditor/Controller and approved by each function.

Background

Constitutional Amendments

The two most influential voter approved pieces of legislation affecting property tax valuation assessment, resulting in California Constitutional Amendments, were Proposition 8 and Proposition 13, which were passed by voters in 1978.

Proposition 8 allows a *temporary* reduction in assessed value when real property suffers a decline in value. A decline in value occurs when the *current market* value of real property is less than the *current assessed* (taxable) factored base year value as the lien date, January 1.

Proposition 13, which had the most influential impact on property assessment value, is a property tax limitation initiative. Proposition 13 rolled back most local real property, or real estate, assessments to 1975 market value levels, limited property tax rate to 1 percent and generally limits annual increases in the base year value of real property to no more than 2 percent, except when property changes ownership or undergoes new construction.

As a measurement of the impact of Proposition 13, California county property tax revenues dropped from \$10.3 billion in 1977-78 to \$5.04 billion in 1978-79. Proposition 13 required State Legislative “bailouts” to offset property tax revenue losses. The first year this stop-gap measure cost \$4.17 billion and the second year \$4.85 billion⁵.

Assessment Calculation

The California State Board of Equalization (the “BOE”) annually informs the County Assessors of the California Consumer Price Index (the “CCPI”)⁶. The CCPI percent change of inflation is measured by the California Department of Industrial Relations from the prior October fiscal year to October of the current fiscal year. The BOE then sets the percent of value change of property values in the State, which cannot exceed 2%, as legally set by Proposition 13. This Base Year Value Change determines the multiplier, referred to by the BOE as the “Factor”, for calculation on the current value of taxable property to arrive at the new assessment value of all property. An example of a BOE transmittal of that information is shown in Exhibit 1A. Since calendar year ending 2000, the CCPI’s and Factor’s are:

⁵ California Board of Equalization website: www.boe.ca.gov/proptaxes

⁶ See Exhibits 1 and 1A

CCPI Trends

Year Ending	CCPI % Change	Base Year	Factor
2000	1.853	1.85%	1.01853
2001	3.214	2.00%	1.02000
2002	4.172	2.00%	1.02000
2003	3.215	2.00%	1.02000
2004	2.459	2.00%	1.02000
2005	1.867	1.87%	1.01867
2006	3.665	2.00%	1.02000
2007	4.596	2.00%	1.02000
2008	3.38	2.00%	1.02000
2009	3.38	2.00%	1.02000
2010	3.477	2.00%	1.02000
2011	-0.237	-0.237%	0.99763

Population and Property Parcels

The taxable base for secured and unsecured property in the County has changed little in the past four years. In fiscal year 2007-8 the secured roll, which is principally land, structure and improvements was 38,021 parcels and in fiscal year 2010-11 the secured parcels totaled 38,256 parcels. Total secured and unsecured parcels in 2007-8 were 42,560 and in 2010-11 the total was 42,587⁷.

The County population from 2001 through 2010 has also been statistically stable, but in the last three years has shown a small percent decrease each year.⁸

County Population Trend

Fiscal Year Ending	County Population	% Change-Previous Year
2001	54,722	0.4%
2002	55,520	1.5%
2003	56,177	1.2%
2004	56,725	1.0%
2005	56,688	-0.1%
2006	56,940	0.4%
2007	57,038	0.2%
2008	56,559	-0.8%
2009	56,528	-0.1%
2010	55,753	-1.4%

⁷ Assessor Annual Reports 2007-8 through 2010-11

⁸ Auditor's Annual Report 2009-2010-Schedule 15

However, according to Tuolumne County Transportation Council the County population is expected to grow by the year 2050 to 87,000⁹. This, however, is only about 1.15% per year. There are no projections for the number of taxable parcels.

Property Tax Administration

To administer the property tax within Tuolumne, there are three agencies of government that conduct the property value assessment, reporting of secured and unsecured property tax revenue and tax collection: Assessor-Records-Archivists, the Auditor-Controller and Treasurer-Tax Collector. Below is a summary profile of each department as published on the Tuolumne County website

www.tuolumnecounty.ca.gov.

The Assessor must discover and inventory all taxable real and personal property in the County and determine a fair and equitable value to be enrolled on the annual assessment roll. These functions are largely dictated by the California Constitution, the Revenue and Taxation Code and the State Board of Equalization.

The Auditor-Controller has a goal to provide “the accurate and timely reporting of financial information and courteous service to the employees, departments and citizens of Tuolumne County”. This office is responsible for application of the tax rates, reporting the financial status of the County and fund disbursements. The department is audited annually by an independent auditing firm to insure that the financial statements of the County meet the federal standards as issued by the Comptroller General of the United States. Annual independent audit reports are available on the County’s website.

The Treasurer/Tax Collector has two major functions. “As County Treasurer, the department acts as the banking depository service for all County departments, District Schools and Special Districts.” The office also “administers the property tax billing and collection for the County.”

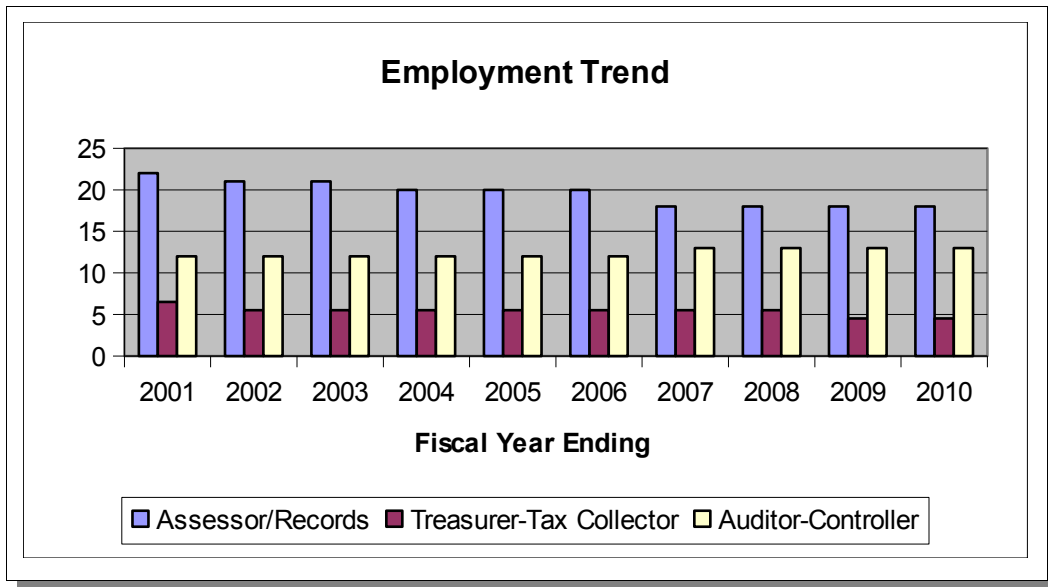
Facts

Work and Process Flow

The Jury created a Work And Process Flow Chart to illustrate the work place activities of the departments involved in the property tax process (See Exhibit #2). All three departments mentioned in the Background section are actively involved in the process either by determining the taxable roll, the value, the tax rates and collection. The employment of the departments has declined over the years, mostly due to the County’s financial state, but the management team has been in place a number of years. In 2000-01, the total employment for all three departments was 41 full-time and in 2009-10 that number was 36 employees¹⁰, which is a 12% reduction.

9 *The Union Democrat*, February 7, 2011-“Future growth topic of map”

10 Auditor’s Annual Report 2009-2010-Schedule 17



The valuation of property is initiated by a property change in ownership, property improvement or the application of the CCPI Factor against that property, which is determined by the Board of Equalization. At points in the process of evaluating ownership transfers and improvements, decisions are made by senior and/or clerical staff who determine whether the property is subject to value adjustment and/or may require an on site inspection by a State certified County Assessor.

Changes to property values, as result of an evaluation or on site inspections by assessors, are made, generally by a clerical person into a common financial data base, and this information is accessible by all three departments through a common server. The historical information on the property parcel, such as parcel location and drawings, are data entered into another data base for future reference by the assessors.

The property value data base is referred to as “Crest”. Crest is a product of the Crest Software Corporation, which is headquartered in Redding, CA. The program is specifically designed for property tax processing. The version (IMS) used by the County is MS DOS based and because of the length of time that has passed, the exact date of installation is not known, but it is accepted by the users that installation was in the mid 1980’s. Crest records all taxable County properties and once the Assessor applies the valuation Factor calculates the new value for taxation. The software also is used by the Treasurer to print the tax bills, handle the escrow electronic billings and payments (CORTAC) and payments made directly by owners. The Auditor/Controller uses Crest to report financial data. There are nine (9) other California counties that use Crest. All of these nine other counties are small and “rural” locations similar to Tuolumne.

There is minimal formal contact with other counties by Tuolumne on the tax assessment and collection to share common interest, problem solving and new advancements. The Jury interviewed all nine counties using Crest and found no

formal user committees in place to exchange common issues. The interviews also found that three counties upgraded to a newer version (DL4) of Crest to take advantage of Window based applications and additional features.

Assessed Property Values

In year ending 2001 assessed property values continued the steady rise that began in 1997 reaching a highest of percent increase from the previous year of 11.36% in 2006. Since 2007, the assessed value percent increase from year to year has been in decline with negative growth in year ending 2010 and 2011¹¹.

County Property Assessment Value

Fiscal Year Ending	Assessed Total Value	% Change Previous Year
2001	\$ 3,521,987,793	5.48%
2002	\$ 3,718,196,728	5.57%
2003	\$ 3,958,794,154	6.47%
2004	\$ 4,274,971,508	7.99%
2005	\$ 4,645,109,429	8.66%
2006	\$ 5,147,204,442	10.81%
2007	\$ 5,732,012,453	11.36%
2008	\$ 6,211,056,221	8.36%
2009	\$ 6,584,817,938	6.02%
2010	\$ 6,527,113,539	-0.88%
2011	\$ 6,206,308,370	-4.91%

Change in ownership values in the County are also on the decline. Interviewed Realtors estimate that in excess of 50% of home sales are “distressed sales” and this distressed inventory will continue and optimistically begin to stabilize in 2014.¹²

County Home Sales and Value

Ending Fiscal Year	Unit Sales	Median Price	% Change Previous Yr	Ave Price
2005	831	\$339,450		\$366,242
2006	608	\$349,000	2.81%	\$384,598
2007	505	\$327,750	-6.09%	\$366,664
2008	481	\$280,000	-14.57%	\$312,950
2009	586	\$225,000	-19.64%	\$247,400
2010	618	\$203,000	-9.78%	\$221,005
2011	NA	N/A	NA	NA

¹¹ Assessor Annual Report 2010-2011

¹² Tuolumne County Association of Realtors

Economic Development Plan

In 1996 the Tuolumne County Board of Supervisors adopted as part of the County General Plan the Economic Development Element (EDE). The EDE is a broad charter for the County of the economic plan and is specific in goals, policies and implementation programs. One of the defined purposes of the EDE is to “increase revenues for local public services through an expansion of the tax base”.¹³

In support of EDE and a similar economic element plan by the City of Sonora, in September 2008 the County and the City of Sonora, signed a Joint Powers Agreement, creating a Economic Development Authority, which is known as the Tuolumne County Economic Development Authority (TCEDA). In December 2009, the TCEDA published its 2010-2015 Work Plan, which details the Authority’s purpose and plans, which are designed to be “generally consistent” with both the City and County Economic Element Plans.¹⁴

At the end of calendar year 2010, the TCEDA issued an annual report on the first year priorities: Business Retention and Expansion; Business Attraction; Infrastructure; Administration; Partnerships.

The report summarized the accomplishments and measurable outcome of activities in each of the priorities.

Board of Supervisors Strategic and Tactical Goals

In 2010, and again in 2011, the Board of Supervisors adopted a set of Strategic and Tactical goals. These goals are designed to keep the Government focused on issues that will enhance the services of the County. The Strategic goals are related to the Board’s governance and the Tactical to operational. In dealing with taxable revenue, the Jury focused on the following:

- 2010 & 2011 Board Strategic Goal #1- Promote economic development within Tuolumne County
 - 1a. Provide financial and staff support of activities of the Tuolumne County Economic Development Authority
 - 1b. Update and implement the Economic Development of the Tuolumne County General Plan.
- 2010 Board Tactical Goal #5- Begin systematic use of management audits or systemic evaluation of department operations using comparisons with peer agencies, best practices and use of performances measures.

At the end of each fiscal quarter, a status report is issued by the CAO’s office and the TCEDA, summarizing the activities that took place in support of the goals. In reports issued in 2010, there was little status reported directly related to the TCEDA or progress on the EDE.

¹³ Tuolumne County General Plan; Chapter 10 Economic Development Element, pg 10-1

¹⁴ TCEDA Work Plan 2010-2015 at www.tceda.net

On Goal #5, in the 4th quarter report noted that there was no “specific plan to implement it”. This goal was removed from the 2011 Board’s approved goals.

Findings

F1. Work Instructions and Procedures

In creating the Work and Process Flow Chart, it was noted in the Assessor function that at the point of document receipt and review, decisions are made by both senior and clerical staff that determine the direction the document is to flow, which may result in increased or decreased assessment valuation. Yet there are no written instructions for making these decisions. The process in the Assessor function revolves around data entered into the Crest system. There are no written instructions on the proper method or which menu to select, to enter data into Crest. Nor are there operational manuals available on the use of Crest. None of the departments involved in the process have written Work Statements and Procedures.

In February, 2011, the Assessor department advertised for a new Assessor. This employee will be certified by the State, but there is no written statement on how that job will be performed in the Assessor’s office.

The Human Resource Department has detailed job descriptions and qualification requirements for all County job classifications. These job descriptions are not designed to describe how the job is performed and therefore, should not be a substitute for Work Instructions and Procedures.

F2. Crest Software-IMS Version

The Crest version used by the County is clearly outdated. It is DOS based and any internal IT efforts to modify the program will require programming skills that are dated. In conversations with the President of Crest Software, they are marketing a newer windows based version DL4. Crest recognizes that they have customers using the IMS version and has not set an official date to eliminate support, but any development to enhance the operation or provide addition features for the version has ended.

Three California counties, out of the other nine (9) using Crest, have converted to the DL4 version at a cost less than \$25k for software and requiring slightly more than a weekend to convert to the newer DL4 version. As a result, these counties are taking advantage of newer windows technology such as the remote access features. One county has taken advantage of the ability to have assessors in the field update Crest remotely, using hand held devices.

In order to deal with the demands of County’s IT users for additional programs and updates of current programs and hardware, the County’s CAO office established the Tuolumne County Information Technology Governance. This Information System Steering Board, chaired by the Assistant CAO, reviews all requests for additional and upgrades to software and hardware.

The Property Tax Evaluation project (Crest) was placed on the Board List (ITSB), (Exhibit #3A & 3B) for consideration in August, 2009 and has been carried forward in each subsequent year including the 2011 ITSB. In interviews with the Assessor and IT Departments, there is concern with the long term viability of Crest and the difficulty the IT group would have in supporting the program without continued supplier support. Neither department has any open project to investigate upgrades or replacement of the Crest program even though the Crest system has been on the ITSB List for three (3) years. The Property Tax Evaluation project, according the Chairperson of the steering board, has a high probability of being included on the 2012 ITSB project list. The Chairperson confirmed that there are no plans to actively investigate replacement or upgraded versions of Crest this year.

F3. Economic Strategic Goal and TCEDA

The County's management team has clearly recognized, due in part to decrease property tax revenue, the need to improve the tax base. The Board's number one strategic goal in 2011 is to update and implement a revision to the 1996 EDE. An integral part of this goal is the support of the TCEDA. The Board and TCEDA are commended for their vision and commitment.

During the year both the CAO's office and the TCEDA submit quarterly and/or annual reports to the Board summarizing activities for the period(s).

The CAO summary report to the Board provides "notable activities" for each quarter such as: "...voters approved the TOT (Transient Occupancy Tax) increase which will in part provide more funding for promoting Tuolumne County through the Visitor's Bureau; approved designation of roads as the John Muir Highway to enhance marketing; ...established Youth Commission which can provide input into economic development issues".

The TCEDA's annual report summarizes the activities in all areas of involvement in Business Retention and Expansion; Business Attraction; Infrastructure; Administration; Partnerships. In Business Attraction accomplishments the annual report included: Reopening of Sierra Pacific Industries; Sandvik, Inc expansion; Avalon Health Care expansion.

While the CAO's and TCEDA's involvement in and facilitating of these economic development activities are measurable accomplishments, neither report addresses the quantitative measurement of real or estimated value of these successful activities in the increased dollar value to the County's tax base and thus its potential increase in needed revenue.

Recommendations

R1. Work Instructions and Procedures

The Work and Process Flow Chart defines each step in the valuation of property and collection of property taxes. As noted in this report, at several

of these steps defined in the Chart, decisions must be made on specific data on each property that has ownership changes or improvements. These changes are entered into the data base, which is used to calculate property value and taxes due on that property. Because this is sensitive information and requires levels of employee interpretation of the documents, it is recommended that detail work instructions be created for each job position that is responsible for decision steps shown on the Chart. The instructions would included a general Statement of Work performed by the position, and then detail 'how to' perform the step with specific options for the employee depending on the information provided. Sample documents should be included or in the case of data entry, sample copies of the pertinent menu selections and screens used for data entry.

The process of developing the instructions will aid management in evaluating the flow of work and work assignments. Employees will be able to work in an environment that is clearly defined and potential errors will be minimized. To new employees or employees filling in for absent co-workers the instructions would be a most valuable reference.

The Jury, in conversation with Crest, has been informed that manuals are being created. If these are usable for the IMS version, it is recommended that an appropriate number of manuals be purchased from Crest and used to create the Instructions and reviewed to identify potential advantages of the current system that are not being fully utilized.

R2. Property Tax System Evaluation

Cursory investigations by the Jury indicated that there are current Crest software replacement options used by other counties in California. There is one replacement option under development and Crest has an available upgrade. The Jury is not suggesting that the upgrade version of Crest or any specific replacement version currently on the market be implemented. The evaluation and selection of a new system is the responsibility of the County users of the tax system.

Since the County has not launched a formal investigation into County's requirements, it is not known what system configuration is suitable and what cost would be attached to the requirements of the County.

It is clear, not only to the Jury, but also to the users, that the current version of Crest has a limited supportable life and does not offer an expanded usefulness in efficiency in operations nor in technology.

The Jury, because the " technological clock is ticking" on the current version of Crest and the project has been on ITSB list for review and action for three years, recommends that the County immediately launch a three step project on a Property Tax System Evaluation within the estimated time to complete.

Step #1-Definition of Requirements (Estimated Time-3 Months)

In compliance with the Tuolumne County Information Technology

Governance Charter, a Business Solution Team must be formed to define the County's needs in property tax software that considers the operational requirements of the three departments at the current level, operational enhancements available with current technology such as Internet capabilities and be compatible with County's IT hardware strategy.

The Team should survey, and visit as necessary, similar counties of rural locations and size, but also larger metropolitan counties that have implemented newer systems, even if these are programs internally developed by these entities, to reference operational efficiency and technological enhancements. This would also be consistent with the Board's 2010 Tactical Goal #5 of "...systemic evaluation of department operations using comparisons with peer agencies".

This report from the Team would then be used as a guide in the next step.

Step #2-Recommendations and Cost (Estimated Time-5 Months)

Using the report from Step #1, the Team would then develop the recommended system configuration. Identified qualified sources can be contacted and purchase costs of the software and hardware can be created. The report should not exclude the possibility of partnership with other counties for a joint purchase to leverage costs in negotiations with potential suppliers.

There was much concern on the part of the users that the County cannot afford a new tax system. The cost concern is mostly based on informal conversations with other counties doing investigations, but not based on any cost of a configuration developed by the County. Until this step is completed, it is not possible for the BOS to consider allocation of funds.

Step #3-Board Approval and Implementation-As Required

Summary:

These recommended process steps are certainly familiar to the professional staff's of the Assessor's office and the County's IT team. It is the Jury's concern that the Property Tax System Evaluation request was submitted in August 2009 and a formalized Definition of Requirements, as defined in Step #1, has not been completed and until that step is taken the initial tax system evaluation request will languish and as additional operational hardware and software are purchased to support ancillary County activities, the needs of the County's property tax assessment, collection and financial reporting capabilities and it's future operational effectiveness will be ignored.

R3. Economic Development and Strategic Goals

As mentioned, the Jury commends the Board, the COA's office, and the staff of the TCEDA for defining strategies and development of a Work Plan that have as the objective, as stated in the EDE, to improve the County's tax base,

which results in increased tax revenue to support the County's programs and improve the quality of life in the County.

The significant phrase is "results in". The COA's and TCEDA's period reports list several activities and accomplishments in which each has been involved in that reporting period, but does not specify what the activities resulted in creating expected or achieved increase tax revenue.

The Jury recommends that the Board consider specific "resulting in" goals. Initially, since in management interviews there were concerns, these goals could be numerical objectives such as reducing a specific number of unoccupied commercial buildings and identifying and contacting a specified number of business in the category of attraction and expansion of business. Then move to more quantitative measurements of stating results in tax revenue.

Remarks

In summary, the Jury found that the Secured Property Tax Valuation and Tax Collection process works well. The Jury's recommendations deal with the enhanced effectiveness and potential efficiency of the involved departments and reporting to the citizenry measureable accomplishments. And while these recommendations may require substantial efforts to implement and potentially substantial expense, the Jury is confident they represent "best practices and use of performance measures" and trust the Board of Supervisors will support each of the Jury's recommendations.

The Jury found that employees in the County departments interviewed were cooperative and more importantly, were qualified in their assignment and had loyalty to the department in which they worked and to the citizens of Tuolumne County. The Jury commends and thanks each for their frankness.

Request for Response

According to the penal code 933(c), no later than 90 days after the grand jury submits a final report on the operation of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has jurisdiction pursuant to section 914.1 shall comment within 60 days to the presiding judge of the superior court.

The Jury suggests the following respond to the recommendations:

R1- County Assessor

R2- Assistant County Administrator

R3- County Administrator

Exhibits

Exhibit 1A



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
480 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0084
916-445-4982 • FAX 916-323-6765
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHSANO
State Controller

BARBARA ALBY
Acting Member
Second District, Sacramento

KRISTINE CAZARO
Interim Executive Director

December 16, 2010

LTA 2010/069

TO COUNTY ASSESSORS:

FINAL CCPI ANNOUNCED FOR 2011-12

Revenue and Taxation Code section 51 provides that base year values determined under section 110.1 shall be compounded annually by an inflation factor, not to exceed 2 percent. Section 51(a)(1)(C) provides that, for any assessment year commencing on or after January 1, 1998, the inflation factor shall be the percentage change, rounded to the nearest one-thousandth of 1 percent, from October of the prior fiscal year to October of the current fiscal year in the California Consumer Price Index (CCPI) for all items, as determined by the California Department of Industrial Relations.

Information from the Department of Industrial Relations shows that the CCPI increased from 226.035 in October 2009 to 227.737 in October 2010. Rounded to the nearest one-thousandth of 1 percent, this is an increase of 0.753 percent.

Accordingly, please prepare your 2011 assessment roll using an inflation factor of 1.00753.

The final inflation factors announced for this and prior years are enclosed. If you have any questions, please contact our Assessment Services Unit at 916-445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:grs
Enclosure

Exhibit 1B

FINAL INFLATION FACTORS

Year	CCPI % Change	Base Year Value Change ¹	Factor
2011-12	0.753%	0.753%	1.00753
2010-11	-0.237%	-0.237%	.99763
2009-10	3.477%	2%	1.02
2008-09	3.38%	2%	1.02
2007-08	2.269%	2%	1.02
2006-07	4.596%	2%	1.02
2005-06	3.665%	2%	1.02
2004-05	1.867%	1.867%	1.01867
2003-04	2.459%	2%	1.02
2002-03	3.215%	2%	1.02
2001-02	4.172%	2%	1.02
2000-01	3.214%	2%	1.02
1999-2000	1.853%	1.853%	1.01853
1998-99	2.0807%	2%	1.02
1997-98	2.3995%	2%	1.02
1996-97	1.1148%	1.11%	1.0111
1995-96	1.194426%	1.19%	1.0119
1994-95	2.31%	2%	1.02
1993-94	3.44%	2%	1.02
1992-93	3.04%	2%	1.02
1991-92	6.4%	2%	1.02
1990-91	4.758%	2%	1.02
1989-90	4.73%	2%	1.02
1988-89	5.16%	2%	1.02
1987-88	2.095%	2%	1.02
1986-87	4.4%	2%	1.02
1985-86	5.1%	2%	1.02
1984-85	5.0%	2%	1.02
1983-84	1.0%	1%	1.01
1982-83	11.14%	2%	1.02
1981-82	7.13%	2%	1.02
1980-81	17.32%	2%	1.02
1979-80	9.83%	2%	1.02
1978-79	8.23%	2%	1.02
1977-78	7.17%	2%	1.02
1976-77	6.25%	2%	1.02

¹ Increase to base year value is limited to 2 percent pursuant to California Constitution, article XIII A, section 2(b).

Exhibit 2

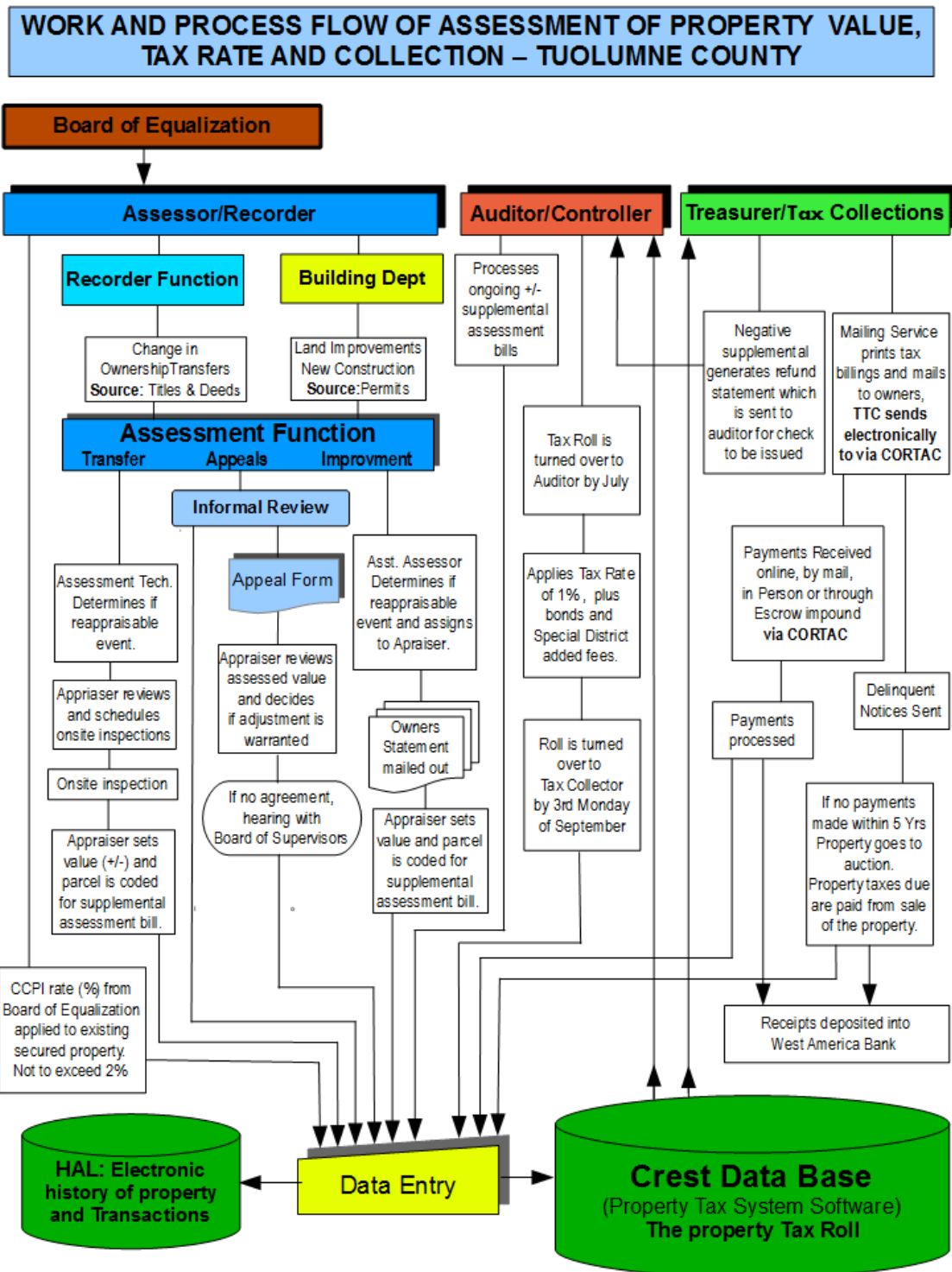


Exhibit 3A

6/7/2010		Proposed FY 2010-11 ITSB List											
First Year of Implementation	Project Name	BOS Goal	Mandate	Outside Funding	COI Rank	Department	PeopleSoft	App Dev & Support	Network Services	Service Desk	IT Grand Total	Client Hours	Capital Expense
FY 10/11 RECOMMENDED PROJECTS													
Carry-over of Approved Projects from FY 2009-10													
18/10	CLETS Security Upgrade	Y		LJ	2 SO			16	185		201		\$51,300
18/10	Offender Electronic Monitoring - BRS	Y		LJ	4 SO			65	23		88	45	
18/10	Relocate TH CSU to Cal Fire	Y		PS	3 SO			21	28	4	51	20	\$2,000
4/05	Peoplesoft Finance 9.0 Upgrade				0 AUD		200				200		
18/10	Peoplesoft Budget 9.0 Implementation				AUD		100				100		
7/08	Peoplesoft Time & Labor BST			AF	4 AUD		40				40	63	
4/05	Peoplesoft HCM Upgrade			ENT	26 Net-Ent		1000		18		1018	100	**\$50,000/year if not done
18/07	Airport Accounting System Implementation			FAC	6 AIR		113	18			131	54	
18/09	Property Tax System Evaluation			AF	0 ASR		40				40		
18/07	TRAKITSYNC (MobileTrak)			DR	1 CDD			34	2	4	40	28	\$17,000
18/10	Radio Upgrade / Pager	Y	Y	PS	1 EMS			No IT time anticipated			0		
18/10	EMS/SO Volar Selection Radio	Y	Y	PS	2 SO/EMS			No IT time anticipated			0		
19/10	Electronic Health Records		Y	HS	10 BH			300 HCIS			0	782	MHSA Funds: 40 billable IT hrs
19/10	Physicians Home Page		Y	HS	11 BH			304 HCIS			0	379	Funds: \$35,000 + 80 billable IT hrs
18/08	SharePoint Evaluation for Doc Mgmt, Imaging, and			ENT	18 Net-Ent			50			50	20	
19/10	Meditech Retirement BRS	Y		HS	8 TGMF					72	72	168	
19/10	WinCare Financials Implementation	Y		HS	7 TGMF					87	87	103	TG: \$10,000

Exhibit 3B

ITSB Initial Project Summary			
COI Priority:		Size	
Project Name	Property Tax System Evaluation	Project #	
Project Manager	Ann Knight	Sponsor	Ken Caetano
Project Mandate	None		
Background	The current property tax system has been in use since the 1980's. It uses old technology and is not compatible with most of the newer "Windows-based" programs. Although it is currently working for Assessor, Auditor, and Tax Collector, it is a critical piece of the county's financial program that cannot be ignored.		
Business need and business benefits	To safeguard to county's cash-flow, we need to continue to investigate alternatives that would guarantee the continued reliable operation of the complete cycle of property tax assessment and collection.		
Objectives	To evaluate possibilities for the replacement of the current system with a "state-of-the-art" system that meets the needs of all three departments by contacting various software vendors or visiting counties with systems that might work for us.		
BOS Goals	S7		
Funding Considerations	The evaluation process will not require spending large amounts of time or money.		
ESTIMATED Costs	IT Application Development and Support Hours		40
	IT Network Services Hours		0
	Service Desk Hours		0
	Client Hours		0
	Capital Expense		0
Scope	In Scope	Out of Scope	
How might you measure the success of this project?	Get data on vendor's records in providing service to other counties along with some info on relative costs.		
Project Dependencies	Dependency Type	Project #	Project Name
Deliverables	Deliverable	Due Date	
		None mandated.	
		None mandated.	
		None mandated.	
Key considerations	Assumptions & Constraints	Category	Risks Risk Description
Project Alternative	To continue using the same software that we have used for the past 20 years.		

SPECIAL DISTRICTS REPORTS

Prologue

The Grand Jury (the Jury) audited 13 of the 17 independent special districts currently providing services in all the communities of Tuolumne County. The City of Sonora and school districts were excluded.

As a result of that first audit the Jury became concerned about the operations of special districts serving the community of Tuolumne City. The Jury investigated the potential of combining those special districts into a Community Services District (CSD).

Citizen Complaints, interviews, and media attention combined with information gathered for the investigation above and led the Jury to investigate operations of the Tuolumne City Sanitation District.

The three phases of Jury investigation follow in chronological order. They are:

- Tuolumne County Special Districts
- Potential formation of a Tuolumne Community Services District
- Tuolumne City Sanitation District



Tuolumne Utilities District Headquarters, Sonora California (Rendition)

Tuolumne County Special Districts

Reason For Investigation

Tuolumne County has a variety of special districts established over many years providing services to widespread communities. Because the Grand Jury (the Jury) had not audited these districts in recent years, such a review was needed.

Methodology

The Jury had to research special districts generally, how they are created, for what purposes and how they are managed. Independent Special Districts elect governing board members for specified terms. Tuolumne County has 17 special districts. School districts and the City of Sonora are not part of this review. The Jury decided to interview elected board members from all districts in an effort to answer the question, “What is a **good** special district?”

A questionnaire was developed for each Jury member to use when conducting interviews, [Appendix A]. The list of current Special District Boards was divided among the Jury and of the total 17 districts, 13 were contacted. A graph of those results was created to simplify comparisons, [Appendix B]. Tuolumne County Local Agency Formation Commission (LAFCO), completed Municipal Service Reviews for all Special Districts within the County. The Jury relied on those MSRs for basic information, [Appendix C].

Background

Special districts are a form of local government used by communities to meet a variety of needs. Most provide a single service but some may provide a combination of services. Their functions range from essential services such as providing water, sewage treatment, fire protection and similar needs to parks and recreation, libraries, lighting, hospitals, airports and transit.

There are two ways special districts receive funding. One is defined as an “enterprise district”. It operates like a business by charging its customers for services. Water and sewage treatment districts are good examples. The second is a “non-enterprise district.” These districts rely primarily on taxes to support them. Fire protection, parks and recreation, mosquito abatement and similar services that provide benefit to the entire community are examples of non-enterprise districts. Some districts combine elements of both, such as a park district that charges fees to access ball fields or pools.

A variety of services that might be provided by several special districts may combine under a single district called a Community Service District. Tuolumne County has two Community Service Districts. Groveland CSD and Twain Harte CSD were formed by combining a number of pre-existing special districts into a single district. The Jury included those CSDs in this review.

Facts

Special Districts are subject to the same rules and regulations that govern cities and counties. They are accountable to the voters and their customers. Districts are required to submit financial reports to the County Auditor-Controller and State Controller every year.¹ The Ralph M. Brown Act applies to special districts. All districts must post an agenda for their meetings and preserve any minutes taken during their meetings.² Conflict of interest laws,³ ethics codes,⁴ public contracts and bidding rules⁵, the California public Records Act⁶ and other regulations designed to insure good government apply to all Special Districts.

The Jury interviewed a total of 20 Special District Board members. Some of the Jury’s questions were designed to determine if the board members had an understanding of these responsibilities,(Appendix A). Results of those interviews have been summarized in the following points: (Appendix B)

- Districts should adopt and update a policy and procedures manual (of any title), to provide organization and performance details. The Jury discovered that some districts could not find their manual or

1 GC §53891

2 GC §54950 et seq

3 GC §87100 et seq

4 GC §53232 et seq

5 GC §22000-22045 and Calif. Public Contract Code

6 GC §6250-6276.48

had not updated the document in many years

- All special districts must have defined boundaries⁷. Some districts find it difficult to provide maps of their boundaries for public review.
- Special districts are subject to public records and information laws, some districts have not always preserved a record of board actions.
- Special district board members are subject to educational requirements related to Ethics and the Brown Act⁸. Some districts are unsure about how these requirements apply to their boards.
- Many of the special districts either do not have a full board or some, many, or all of the board members have been appointed because enough candidates were not available through the election process.
- The majority of special districts reported low attendance at meetings. Attendance increases in response to crisis or controversy. Community attendees report frustration in finding information about meetings and about meeting management.
- Several special districts have websites. Websites are useful to the community if they are kept up-to-date and if the information is easily accessible.

Findings

- F1.** Special districts often find it difficult to persuade enough qualified candidates to run for their boards. This results in limited voter choice and sometimes forces appointment to vacant board positions.⁹
- F2.** Newly elected board members sometimes have difficulty participating in board business because they lack background about the issues and/or operations policies.¹⁰
- F3.** Some board members have a limited understanding of how the Brown Act, ethics and conflict of interest law pertains to their actions.¹¹
- F4.** Some special districts have not updated their policy and procedures manuals for many years. Without regular updates such manuals fail to guide decisions of the board relative to existing law and regulation.¹²
- F5.** Some special districts do not have updated maps of their boundaries readily available.¹³
- F6.** Community participation in board decision making is generally sporadic for

7 GC §56000-57550

8 GC §53234

9 County Clerk & Auditor-Controller Deborah Russell; recent general election; history of Board member appointments by Tuolumne Board of Supervisors

10 Interviews with Individual Boards members

11 Interviews with Individual Boards members

12 Interviews with Individual Boards members

13 Interviews with Individual Boards members

all special districts. Poor management of board meetings contributes to low attendance.¹⁴

- F7.** Budgets and other financial details are becoming more complicated. Board members are not always sufficiently informed about how their decisions will affect the community served. Poor fiscal management has negatively affected several special districts.¹⁵
- F8.** Special districts and Community Service Districts (CSDs) can make use of a website to encourage community participation. Updating a website regularly seems to be a key to successfully engaging the public. Some districts have agendas for their next meeting, minutes from past meetings and information regarding various issues on their websites, this is a good model.
- F9.** Special district boards usually act as managers of personnel and operations. Lack of expertise and availability may cause a variety of problems that cost their customers unnecessarily. Community Service Districts usually have a General Manager, a person that provides expert advice to the board and day to day management of operations.
- F10.** Consolidating into a Community Service District addresses several of the problems of special districts.

Recommendations

- R1.** Special districts need to educate the community about services they provide and the importance of having committed, knowledgeable and enthusiastic people making district decisions.
- R2.** Special districts should provide orientation to all newly elected board members in a timely manner.
- R3.** Education on how to meet the requirements of the Ralph M. Brown Act is available from the County annually. All district board members would benefit from these classes. Board members require education regarding ethics and conflict of interest to perform well. Newly elected board members should receive information about complying with these laws as part of orientation and be notified of any course offerings. The *California Special Districts Association*¹⁶ is a source for more information. Special districts need to be vigilant regarding adherence to these laws.
- R4.** Policy and Procedure Manuals (by any title), should be kept available where board members, district personnel, and the public may review them. It is important that districts have a system in place to annually review Manuals and determine if changes are necessary in response to new laws and regulations. Board members should acknowledge receipt of the Manual and

¹⁴ Interviews with Individual Boards members

¹⁵ Interviews with Individual Boards members

¹⁶ www.csda.net

agree to act under its guidelines.

- R5.** All special districts should have boundary maps available.
- R6.** Posting the agendas for special district meetings in areas of high traffic, in at least one consistent location, and in a manner that brings attention to them will encourage attendance. Boards should schedule meetings at a time and place that makes it easy for the public to attend. Board Chairmen should run meetings efficiently and on topic with guidelines for public participation.
- R7.** An easily understood form of financial report should be presented at least quarterly to every board during public meetings. At a minimum, this report should provide a record of performance-to-date relative to the adopted budget. If there is construction or other projects ongoing the Board and public should be advised as to progress relative to the project's budget.
- R8.** Developing and regularly updating an informative website is a useful tool. Informing and engaging the public leads to decisions supported by the customers of the district.
- R9.** Communities served by several special districts should explore the potential advantages of creating a Community Services District. Tuolumne City and Jamestown have a variety of special districts serving their communities and may find establishing a Community Service District useful.
- R10.** Same as Recommendation 9.

Remarks

It appears to the Jury not all special districts follow the applicable local, State and Federal laws and regulations. While recognizing it can be difficult to track and adhere to so many rules, more effort should be made in this regard.

Carter Cemetery District appears to be fiscally well managed and benefits from the services of a dedicated Sexton. Both the Twain Harte CSD and Tuolumne Utilities District (TUD) have excellent new member orientation programs. The Tuolumne City Parks and Recreation District and TUD use exceptional policy and administration manuals.

TUD is an example of a special district doing many things well. The size of this district is a factor by providing resources not available to smaller districts. An energetic and dedicated General Manager contributes much to this district's success.

Groveland and Twain Harte Community Services Districts maintain informative websites.

Request for Response

Pursuant to Penal Code §933.05 the Jury requests response from the following list of Independent Special Districts in Tuolumne County:

Carters Cemetery

Columbia Cemetery
Columbia Fire Protection
Jamestown Cemetery
Jamestown Fire Protection
Leland Meadows Water
Mi-Wuk Fire Protection
Oak Grove Cemetery
Shaws Flat Springfield
Strawberry Fire Protection
Tuolumne Fire Protection
Tuolumne Sanitary

Each of the districts should explain how they meet the following recommendations: R2. (new member orientation), R3. (continuing education on Brown Act, on ethics and on conflict of interest), R4. (policy and procedure manuals), R5. (current boundary map), R6. (agendas and meetings) and R7. (financial reports).

Appendix A

District Board Member questionnaire

Special District Board Member Questions

Please remember to introduce yourself. "We are a group chosen to look into Special Districts. We are hoping you can help us learn more about your district. We have a few general questions that will take about 10 minutes. I will be keeping notes; and our conversation and my notes are kept strictly confidential. "

Grand Jury member name:

Date and time of interview:

Board Member:

First group of questions:

How many people are on your board? _____ How long is a typical term? _____ How long have you been on this board? _____ Is your Board elected or appointed? _____
What are your responsibilities?

Second Group of questions: *(remember, we are studying operation and management of the board, not the technical aspects of the district)*

Do you have some kind of charter or guidelines?
Do you believe you operate under those guidelines?
Did you get training?

For the chair - Could we get a copy?

Third Group of questions:

Do you have knowledge of the Brown Act?

Do you believe your board operates under the Brown Act? For example?

Fourth Group of questions:

How often does your board meet? _____ How many people usually attend the meetings? _____
How many of them are the board or employees? _____
What kind of public participation do you get?

Fifth Group of questions:

Is there some sort of financial report at each meeting?
What type of report is it?
How does your budget work?

Where does your money come from?
Where does it generally go?

And finally! Do you have any questions for me? (Be sure to write down what questions were asked.)

Appendix B

Graph of Questionnaire results

Districts	phone #	responses	board	by-law/copy	Training	Brown Act	Public	Budget	Comments
Carters Cemetery	928-4867	1	5	yes/yes	no	yes	no	yes	policy&procedures well done
Columbia	532-8673	1	5	yes/yes	no	yes	almost none	yes	would like training
Columbia Fire Protection	532-3772	1							
Jamestown Cemetery									
Jamestown Fire protection	984-5623	1	3	yes	no	yes	no	see county	it would help
Jamestown Sanitary	984-5177	1	5	yes/state req	ethics	yes	no	yes/qrly rep	to consolidate these
Leland Meadows Water	951-0573	3	5	yes	no	yes	annual mtg-yes	yes	three districts in Jamestown
Groveland Community Services	962-7161	1	5	yes	yes ethics/safety	yes	some	not at mtg	
Mwuk - SP Fire protection	586-5256	1	5	yes				yes	new revd policies, budget ?
Oak Grove Cemetery									
Shaws Flat Springfield	532-3057								
Strawberry Fire protection	965-3513								
Tuolumne Fire Protection	928-4505		5/4filled	no	no	yes	yes	no	poorly managed
Tuolumne Park & Recreation	928-1214	3	5	yes/yes	yes	yes	yes	yes	well organized
Tuolumne Sanitary	928-3517	1	5	?	yes	yes recently		yes	
Tuolumne Utilities	532-5536	3	5	yes/yes	brief/eth.Brwn	yes	yes	consent agenda	
Twain Harte Community Services	586-3172	4	5	yes/yes	yes!	yes	varies	consent agenda	do orientation training

Appendix C

For copies of the LAFCO Municipal Reviews please email
Larry Houseberg, Assistant Executive Officer, LAFCO at
lhuseberg@co.tuolumne.ca.us



Tuolumne Community Services District

Reason For Investigation

The Grand Jury (the Jury) survey of independent special districts indicated that the special districts providing services in the Tuolumne City area are good examples of districts needing improvement in order to serve their respective tax and rate payers more effectively. It is clear that mismanagement has cost this community both money and resources without related improvements to services.

There is a process for combining services to areas outside incorporated cities. This combined district is called a *Community Services District* (CSD). A CSD may be composed of sewer, water, parks, lighting, cemetery, planning and other community needs often served by individual special districts and boards. The Jury investigated combining all special districts currently serving the area known as Tuolumne City into a single Community Services District.

Methodology

The Jury gathered current financial reports¹, district board meeting minutes, Local Agency Formation Commission (LAFCO) Municipal Reviews², geographic boundaries³ and other pertinent data. The Jury interviewed board members, both past and present, of the five special districts, employees, county administrators and members of the general public. More than nineteen documented interviews were conducted discussing CSDs and specifically a CSD in Tuolumne.

1 Financial reports provided by Deborah Russell, County Clerk & Auditor/Controller

2 LAFCO Municipal Reviews, lhuseberg@co.tuolumne.ca.us

3 District boundary maps

Background

Five independent special districts currently serve the community of Tuolumne City, this number excludes school districts. The districts are:

- Carter Cemetery District
- Tuolumne Lighting District
- Tuolumne Fire Protection District
- Tuolumne Park and Recreation District,
- Tuolumne City Sanitation District.

Existing Tuolumne City special districts do not have common boundaries. Tuolumne Lighting District is unusual in that the Tuolumne County Board of Supervisors acts as its governing Board. All other special districts named above elect board members that serve various terms.

Facts

Tuolumne City Sanitation District (TCSD) and *Tuolumne Fire Protection District* (TFPD) are currently experiencing fiscal difficulties (Appendix A). TCSD has recently passed a rate increase to address its fiscal emergency and they have asked *Tuolumne Utilities District* (TUD) to perform an assessment of the potential to consolidate TCSD with TUD. This assessment is proceeding.

Tuolumne Fire Protection District is addressing its budget difficulties by adopting a variety of solutions. Tuolumne County Clerk & Auditor/Controller Deborah Russell is working with the TFPD board to address the past mismanagement of funds. TFPD benefits from special funding paid by the *Tuolumne Economic Development Authority* (TEDA), the economic arm of the Tuolumne Band of Me-Wuk Indians. TFPD is a “non- enterprise” special district, meaning it relies on property tax revenue for operations and expenses. TFPD is participating in the *Tuolumne County Fire and First Responder Fire Study*⁴ (TCFFRS). This study hopes to define measures Tuolumne County may take to improve fire protection services and maximize use of existing resources. Consolidations, expansion, and other changes are being considered in this effort.

Tuolumne City Park and Recreation District has made changes to address past issues with operations and fiscal management. They are currently on track toward fiscal stability.

Carter Cemetery District is fiscally sound and benefits from the efforts of a dedicated Sexton.

Tuolumne Lighting District is funded by an apportionment of the ad-valorem tax and managed by the Tuolumne County Board of Supervisors. The district appears to be

4 Tuolumne County Fire and First Responder Study

fiscally sound. There are unused funds in this account, some of which might be useful to a CSD.⁵

Tuolumne City Sanitation District is experiencing fiscal difficulties largely due to an aging system and the expansion of the Wastewater Treatment Plant to serve various projects launched by TEDA. As an enterprise special district, TCSD may raise user fees to meet financial obligations. (The Grand Jury made an in depth study of the TCSD in a following report.)

Special Districts tend to have low attendance at board meetings until times of crisis or controversy. Public involvement adds broader perspectives, brings accountability to the community, and creates an atmosphere for better decision making. The board members act more responsibly when monitored by people they come in contact with at the grocery store, library or parks. The Ralph M. Brown Act ⁶ requires posting of agendas, but the public may not be aware of important decisions because it is difficult to track the business of several districts. Elections for district board members attract fewer qualified candidates than are necessary to perform the business of the districts when there are several districts serving a small community. There is seldom real competition for these seats and low voter turnout is common.⁷

In today's environment these boards are often expected to be managing board members. This means board members must see to the day-to-day operations of the district and directly manage personnel. Elected persons often lack the experience, education and other qualifications to make these decisions in today's demanding regulatory environment. Board members acting as managers are only supervised by community scrutiny.

Creating a CSD can address these issues. There are three ways to initiate formation of a Community Service District. They are:

- by petition of either registered voters or landowners in the affected territory
- by resolution of the affected local agency (County of Tuolumne or the effected existing special districts)
- initiation by LAFCO⁸

Findings

- F1.** Recent history of three special districts in Tuolumne City demonstrates problems associated with the lack of board-member training in the legal and procedural aspects of the position. Those special districts are Tuolumne City Sanitation District, Tuolumne Fire Protection District, and Tuolumne City Park and Recreation District. Problems were compounded by little community participation in the decision making process. Professional advice was often unavailable or, if available, poorly implemented.

⁵ TLD Financial Report, Tuolumne County ID# TCGL008, 2010

⁶ Government Code §54950

⁷ Deborah Russell, Tuolumne County Clerk/Auditor/Controller

⁸ AFCE Assistant Executive Officer, Larry HousebergL

Boards made mistakes in directing district personnel. The fiscal challenges always present, whether it is good or bad economic times, require sound decision making and constant attention by qualified persons. These challenges overwhelmed the three boards. Mismanagement by past boards has clearly wasted the community's money and resources. In the past few months all three districts have addressed a number of these issues and made good progress.

Two communities in Tuolumne County, Groveland and Twain Harte, have combined the special districts that served them into Community Service Districts (CSD).

Tuolumne City tax and rate payers would benefit from combining existing special districts into a CSD. A CSD benefits the public by:

- improving community participation in decisions because a single elected board's business is easier to access
- providing a general manager to advise the board and direct personnel on a daily basis
- bringing a qualified professional to guide the CSD in today's demanding regulatory environment
- using the power of improved purchasing and management of supplies and equipment
- consolidating clerical, financial, and maintenance positions
- fewer elected board positions to fill with interested, qualified and experienced persons from the community⁹

F2. Some board members of all the Tuolumne City Special Districts have expressed concerns about the formation of a single Community Service District. Those concerns include: loss of control, loss of revenue, increased costs to support a general manager, new fees or other service revenue increases, use of fiscally sound districts' funds to "bail out" districts that are in financial crisis, cost of the required fees, reports, studies and election to process a Project Application, and how to change or integrate districts' boundaries.¹⁰

F3. Whenever change is proposed, tax and fee payers are immediately concerned about how that change will affect their costs. The existing districts are funded by taxes and/or fees, creating a CSD does not increase those taxes or fees.¹¹

F4. District boundaries must be reconciled to create a CSD (Appendix B). Existing differences may be addressed by use of benefit zones. Benefit zones within a CSD provide a mechanism to ensure only those users who benefit from a service pay for it.¹²

9 California Special Districts Association

10 Interviews of Special District Board members

11 Deborah Russell, Tuolumne County Clerk & Auditor/Controller; Larry Houseberg, Assistant Executive Officer, LAFCO

12 Larry Houseberg, LAFCO Assistant Executive Officer

- F5.** It is difficult to determine how the Tuolumne Lighting District operates. Excess budget funds should be made available to assist with hiring a Community Service District general manager.

Recommendations

- R1.** a) The Jury recommends forming a study group organized by concerned citizens. This is the most important first step. In Tuolumne City the citizens group will need to do the following to determine viability of a CSD for the area:
- gather all necessary information in its most current form
 - analyze options as a package that includes boundaries, funding, services, and operational guidelines. Create the best proposal based on available information in that package.
 - review funding and select a “draft funding proposal” (LAFCO defined), to meet application requirements
 - draft boundaries and include any “zones of benefit” (LAFCO defined)
 - have a firm grasp on the legal procedures so they can address the community’s questions and concerns
 - know as much as possible about ALL the costs to create a CSD
 - determine how best to finance the needs of the first few years. Be as flexible as possible in this plan
- b) After doing all of the above and other actions they determine useful, the citizens group needs to take their study to the community. The success of a proposed CSD depends on an excellent educational process that can address the fears, reservations and concerns of the community. Benefits such as increased savings, professionalism and better service should be highlighted. Financial questions are often the “make or break” considerations for public decision making. A “resolution of application” from two of the existing special districts may be the result of this process. Such a resolution makes the consolidation process easier.
- R2.** a) A CSD should be considered as soon as possible. The community, a concerned citizens group or the various special district boards need not wait for all the issues of the existing districts to be resolved before initiating a CSD. The study group should begin by including all five existing districts, as well as others as appropriate, in the options studied. The Jury recommends including the Tuolumne City Sanitation District in the CSD.
- b) The Jury recommends the Tuolumne County District Three Supervisor (representing the area of Tuolumne City) hold a town-hall meeting within 90 days of the release of the Grand Jury Report to begin this process.
- R3.** The study group should provide the community with a clear understanding of the costs in relation to benefits for property owners within the CSD. The

study group should also consider comparing the CSD costs with the costs of districts' past five years of mismanagement.

- R4.** Make use of the study process to provide adequate information for boundary integration.
- R5.** The appropriate Tuolumne County department should prepare a brief report of the purpose, operations, revenue sources, current expenses, maintenance plan, capital improvement plan and boundaries of the Tuolumne Lighting District (some basic information is contained in the LAFCO Municipal Review). A report specific to this district would be useful to the public and helpful for decision making purposes relative to the formation of a CSD. This report should address the availability of funds to assist hiring of a general manager for the potential CSD.

Remarks

During the preparation of this report the Jury relied upon the enthusiasm and expertise provided by Larry Houseberg, Assistant Executive Officer, LAFCO; Deborah Russell, Tuolumne County Clerk & Auditor/Controller; Pete Kampa, General Manager of the Tuolumne Utilities District; and John Feriani, current TCSD Board Chairman.

Request for Response

According to California penal code 933(c), no later than 90 days after the grand jury submits a final report on the operation of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has jurisdiction pursuant to section 914.1 shall comment within 60 days to the presiding judge of the superior court.

R1. through R4. All five of the Special Districts serving Tuolumne City

R2(b). Tuolumne County Board of Supervisors

R5. Tuolumne County Board of Supervisors

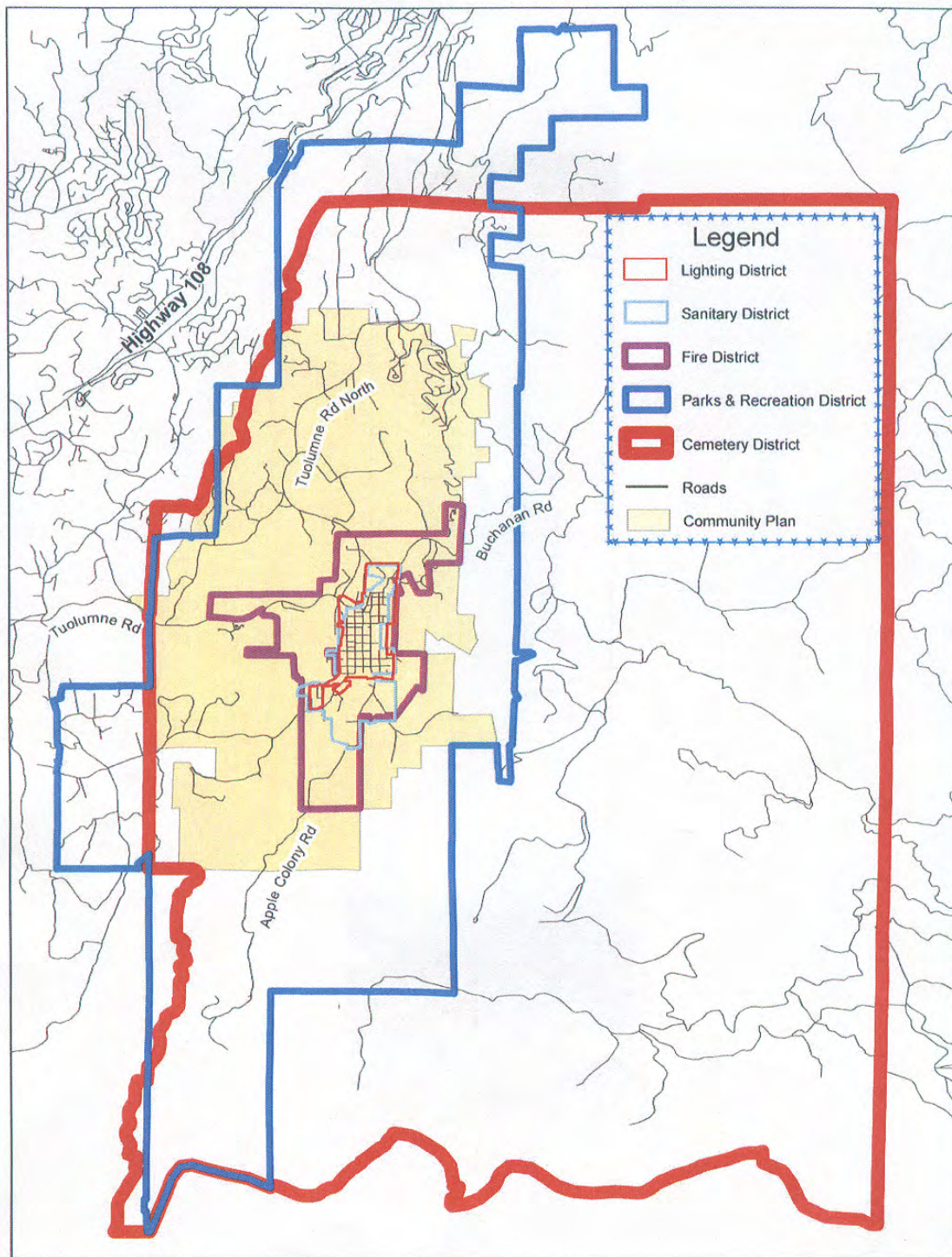
Appendix A

Tuolumne Fiscal Balances (as of July 1, 2010)

Districts	TFirePD	Parks&Rec	Cemetery	Lighting	Sanitation
Income Total	560,818	247,629	57,095	33,287	804,992
Expense Total	682,667	271,999	50,006	11,264	1,030,481
difference	-121,849	-24,370	7,089	22,023	-225,489
Districts	TFirePD	Parks&Rec	Cemetery	Lighting	Sanitation
Income Total	560,818	247,629	57,095	33,287	804,992
Property Taxes	65,215	149,895	48,410	33,287	57,775
Fees*	493,682	7,489	7,710		745,598
Misc.	1,921	90,245	975		1,614
Expense Total	682,667	271,999	50,006	11,264	1,030,481
Labor**	482,318	149,706	22,714		290,655
Maintenance	14,084	12,888	4,537		46,934
Utilities	6,976	16,590	4,100	10,314	24,469
Misc.	61,430 *	44,690	7,198	950	31,422
Equipment & Buil	40,580	48,125			
Int. & Long Term	77,279		11,457		*****
*Fees: different sorts of fees depending on service					Problems show up in 2010
**Labor: includes wages, ins., FICA etc.					

Appendix B

Current Tuolumne Special Districts





Tuolumne City Sanitary District

Reason For Investigation

The Grand Jury (the Jury) received more Citizens Complaint Forms about this special district than any other topic. Tuolumne City Sanitary District (TCSD) was experiencing fiscal emergencies, issues with staff, and management desertion. The Jury determined that customers of Tuolumne City Sanitation District and the community deserve to understand how TCSD got into trouble.

Note to Readers

This document includes a number of acronyms which are explained when first used and then periodically explained again throughout the text. The primary acronyms in use are "TCSD" and "TEDA". TCSD is the Tuolumne City Sanitary District and TEDA is the Tuolumne Economic Development Authority.

There are a number of Appendices which are excerpted from one large document known as the "Settlement Agreement." Rather than reproduce the entire primary document, we have reproduced the relevant pages and paragraphs here. The public may obtain the entire Settlement Agreement between TCSD and TEDA by applying to Tuolumne City Sanitary District at 18050 Box Factory Road, Tuolumne, California 95379 or by calling 209-928-3517.

The Facts outlined in this Report are both a timeline of events and a presentation of details the Jury believes are major contributors to TCSD's problems.

Methodology

The Jury collected information and conducted interviews relative to all Tuolumne City special districts while performing earlier special district reviews. That information provided a base for this investigation into the Tuolumne City Sanitary District. The Jury requested TCSD board minutes and used them, together with other documents, to create a timeline of events. The Jury reviewed the history of sewage treatment services to the community and read construction documents relative to the new treatment plant. Interviews of past and present board members, TCSD consultants and staff, representatives of Tuolumne Economic Development Authority (TEDA, the economic arm of the Tuolumne Band of Me-Wuk Indians), other agency experts and customers of the district provided details and insight into the complicated workings of this troubled district.

Background

TCSD was established June 8, 1941. Ordinance 89-240 was adopted July 6, 1989. That Ordinance established rates, fees and other service particulars. Much of the collection system's condition is unknown but dates back to as early as 1951.¹ The district operates under a Central Valley Regional Water Quality Control Board permit issued May 26, 1995.² The system occasionally experienced disposal capacity and infiltration problems but appears to have been sufficient to meet community needs until opening of the first Black Oak Casino, May 15, 2001. The number of residential customers, approximately 850 to 900, has remained stable over the past 15 years.³

Facts

The First Contract

The first Agreement between the district and "Black Oak Casino" was signed February 20, 2001. It outlined design standards for connection to the district. A Memorandum of Understanding (MOU) dated April 12, 2001 between then "Tuolumne Gaming Department" (known today as TEDA) and Tuolumne City Sanitary District (TCSD) documents a commitment to provide treatment for 60,000 gallons per day of sewage generated by the Casino (this represented the remaining capacity of the plant). The "connection fee" totaled \$266,666. Other charges were outlined, including annexation fees and minor maintenance fees. [Appendix A] The first Casino structure was opened May 15, 2001. The Tuolumne Band of Me-Wuk Indians (TBMWI) development plans for the Black Oak Casino caused TCSD to begin a process to update and enlarge the sewage treatment plant.

Shortly after the Casino came on-line, problems with service connections and existing lines became apparent. TCSD hired a District Engineer to advise them on how to

1 History: LAFCO 2007 MSR

2 Permit to Operate: LAFCO 2007 MSR

3 Population Stability: LAFCO 2007 MSR

address these problems and to help plan for the new treatment plant necessary to serve the TBMWI's expansion plans.⁴

Wastewater Treatment Plan

The District Engineer recommended a Waste Water Treatment Management Plan (WWTMP) be prepared. It would guide planning of new facilities needed for the potential growth of the community currently served as well as for the development and expansion plans of the Tuolumne Band of Me-Wuk Indians (TBMWI). Such a Plan was completed August of 2005 and addresses projected growth through the year 2025. The Plan attributes approximately 97% of district growth through the year 2010 to the development plans of the TBMWI. Those plans include a hotel, golf course and Phase I of the West Side residential subdivision. Projected connection fees for these developments are the primary source of revenue needed to finance critical components of the WWTMP.⁵

The new and larger Black Oak Casino opened May 18, 2005. The district worked with the Tuolumne Band of Me-Wuk Indians to make improvements to the existing treatment system ahead of the increases in flow and load expected from the new Casino. TCSD was aware the new Casino's demand would put a strain on the existing facilities before the Waste Water Treatment Master Plan's (WWTMP) scheduled improvements could be completed. On March 1, 2006, TCSD and Tuolumne Economic Development Authority (TEDA, the economic arm of the Tuolumne Band of Me-Wuk Indians) signed a resolution for a connection-fee payment totaling \$4,265,000. This was to be paid in four installments. The resolution also addressed various items related to operational details. [Appendix B] Phasing of the new treatment plant was staged to match the peak flow demands of TEDA's development plans.

Flow and Strength

In early 2007, it was determined higher than anticipated flows were coming to the treatment plant.⁶ The Casino implemented a variety of water conservation measures to help address this concern. These measures resulted in less water to the plant but increased the strength (solids to water ratio) of the flow. The increased strength brought its own set of problems to the plant.⁷

Construction Contract

Nolte and Associates completed "Plans for Improvement Plant Construction Drawings Phase I & II" dated April 29, 2008. During the pre-design phase, Nolte revised the initial project's plans in order to address an anticipated rise in demand for treatment resulting from TEDA's accelerated development schedule.⁸ A construction contract

4 Hiring District Engineer: Interviews

5 Waste Water Treatment Master Plan: LAFCO 2007 MSR

6 Higher than Expected Flows: August 13, 2007 letter to TEDA

7 Increased Strength: Interviews

8 Development Schedule: Interviews and Memo

for the Plant in the amount of \$5,700,000 (the “Base Bid,” which included no “additive items”) was signed June 10, 2008 and work started in July of 2008.

The bid award process was subject to a claim of wrongdoing surrounding the issue of whether or not proper procedures had been followed regarding the lowest responsible bidder.⁹ The TCSD Board had been advised during a public meeting by both the District Engineer and the board’s Attorney that the bid must be awarded to the lowest responsible bidder. This dispute was settled out of court.

Unsigned MOU

In an unsigned “Draft Memorandum of Understanding (MOU)” between the Tuolumne City Sanitary District (TCSD) and Tuolumne Economic Development Authority (TEDA) dated February 29, 2008 [Appendix C] TEDA proposed prepaying the connection fees for the Westside project as funding “to obtain the necessary wastewater services for its projects in a timely and appropriate manner.”

Furthermore, the MOU specifies how the pre-paid Equivalent Dwelling Units (EDUs), [Appendix D] might be used and how the monthly service fees were to be paid. This document becomes important later when the district and TEDA begin arguing about strength and flow of the wastewater. They also could not agree about how many EDUs TEDA had paid for and how or where those EDUs could be used. On March 07, 2008, TCSD sent a letter to TEDA that is an Invoice for \$2,196,000 due on receipt for pre-purchase of 305 EDUs to be used exclusively by the Westside Projects. [Appendix E]

Flow and Strength Again

A letter invoicing the Tuolumne Economic Development Authority (TEDA) from Tuolumne City Sanitary District (TCSD) and dated November 10, 2008, discussed the results of 15 months of data collection. The letter states that TEDA is using treatment plant capacity not yet purchased and demands additional connection fees totaling \$2,916,000. Payment was expected by December 15, 2008. [Appendix F] This letter initiated about six months of frequent conversations between TCSD, TEDA, and engineers from both sides about peak flows. In dispute were both the total peak flow and the calculation of how that flow affected the treatment plant’s design capacity. Connection fees (based on EDUs) reflect how much of the treatment plant’s total capacity is being used by a customer. In simple terms, TCSD’s calculations indicated the casino was using more of the plant’s total capacity than originally anticipated. Therefore, more EDUs must be purchased by the Casino. These important discussions occurred outside of the public forum.

Early in 2009 TEDA began parallel testing of Casino waste water. TEDA’s test results were significantly different than TCSD’s test results. That difference led TEDA to reconsider payment of the November 10, 2008 Invoice for \$2,916,000.¹⁰ On June 10, 2009 Tuolumne City Sanitary District sent a letter to TEDA demanding payment for the November 10, 2008 Invoice. [Appendix G]

⁹ Lowest Responsible Bidder: Interviews

¹⁰ Reconsider payments of November: 2008 Invoice, Interviews

On July 01, 2009 Tuolumne Economic Development Authority filed a legal Claim. [Appendix H] The action of filing a Claim brought any further discussions out of the public hearing process and into closed sessions of the TCSD Board. The Claim asserted the following wrongdoings:

- The District Operator was manipulating sample data from the Casino.
- Flow data was being manipulated in favor of TCSD.
- The district was not using industry-standard methods for sampling.
- Operation and maintenance expenses were inflated due to fraud and misappropriation of TCSD property.
- TCSD had violated pre-existing contract agreements.

Sampling Differences

It should be noted here TCSD records show a third party laboratory found the sampling data questioned by TEDA did, in a minor way, under-report the flow and strength in favor of the Casino. TEDA does not accept this conclusion. Unfortunately, the issues surrounding sampling and testing results did significant damage to the relationship between TEDA and the TCSD.

The Agreement

In an effort to avoid litigation, Tuolumne City Sanitary District (TCSD) authorized their Chairman and Vice-Chairman to meet with Tuolumne Economic Development Authority (TEDA). These meetings resulted in what is known as “The Agreement” dated November 18, 2009. Negotiations to settle TEDA’s Claim against TCSD occurred in private (outside of public hearings). TCSD’s interests were represented by the two board members and TCSD’s attorney. TEDA’s interests were represented by two TEDA members, two attorneys and an engineering consultant.¹¹ TCSD’s District Engineer was excluded from all but the earliest meetings. His concerns and recommendations were ignored by the board and its attorney.¹²

Provisions of The Agreement between TEDA and TCSD continued to create problems for the district.¹³

- The Agreement states that payment of “service fees” for the 305 EDUs purchased by TEDA (for the Westside Projects), in March of 2008 is not due until “change of use” occurs. Such a delay in payment is not allowed by the Tuolumne City Sanitary District’s operating Ordinance. TEDA believes these EDUs were not purchased under the normal “application for service” and, therefore, the provision for payment of service fees (TCSD Ordinance 89-240 section 5.01.2) does not apply.

¹¹ Number of people in Negotiations Meetings: Interviews

¹² Engineer’s Concerns: Interviews

¹³ Settlement Agreement: November, 2008

- The exact number of EDUs Tuolumne Economic Development Authority (TEDA) has purchased since 2001 have never been agreed upon. TEDA estimates the number of EDUs required for ALL its planned developments, including Westside Subdivision Unit 2 and 3, to be a total 210.7. (TEDA used Tuolumne Utilities District's (TUD's) "Water Service User Classification Schedule" in this estimation. TUD's schedule is different than TCSD's Ordinance but may still be useful as a comparison.)¹⁴ Tuolumne City Sanitary District (TCSD) calculates that TEDA has purchased a total of 986 EDUs for the Casino and 305 EDUs for the Westside Cherry Valley project.¹⁵
- TCSD and TEDA have not agreed on how many of the new treatment plant's total EDUs are to be dedicated to the Casino's use. A formula for calculating Casino service charges is part of the Agreement. The formula is based on current operation and maintenance costs using specific strength and flow.

Distractions

Personnel issues were creating controversy and confusion at TCSD during these troubled times. TCSD has a Personnel Policy Manual. Failure to update that Manual and to follow even its outdated policies contributed to mismanagement of employees. Some TCSD board members were advised of potential conflict-of-interest issues regarding personnel management but failed to recuse themselves from decisions.¹⁶

Current Events

The Tuolumne Band of Me-Wuk Indians and TEDA have paid TCSD several million dollars (and made other contributions) to pay for treatment plant capacity. That capacity was intended to be sufficient for the Black Oak Casino and other TEDA developments both current and proposed. TEDA states they have paid over \$8,000,000 to TCSD.¹⁷ The amount is disputed by TCSD. By the end of 2010, TCSD had a plant construction debt of approximately \$1,000,000 and no funds left to pay the contractors.¹⁸

TCSD's new board has made progress addressing this shortfall. They have secured a loan to pay all "balances due" relative to Phase I & II of the treatment plant. Another approved, but not yet funded, loan will provide money to complete the plant. On January 19, 2011, customers of the district agreed to an increased rate (up to a maximum of \$52.75 monthly) to pay for these loans. Some elements of the treatment plant project are being re-evaluated in hopes of reducing costs. TCSD continues to have difficulty maintaining a full roster of board members.¹⁹

14 EDUs Purchased: Interviews

15 EDUs Purchased: Board Presentation

16 Personnel Conflicts: Minutes

17 TEDA Total Payments: Interviews

18 Current Finances: TCSD Minutes 1/5/11

19 Maintaining Full Roster: Minutes

Tuolumne Utilities District

As of early 2011, Tuolumne Utility District (TUD) is proceeding with studies and evaluations necessary for a decision about consolidating Tuolumne City Sanitation District (TCSD) with TUD. Tuolumne Economic Development Authority (TEDA) has indicated support for a consolidation.²⁰ TUD is performing sampling at the Casino. It is anticipated that the system evaluation will be completed by early July 2011. The new treatment plant's ability to meet Regional Water Quality Control regulations must be clarified prior to any consolidation proposal. Adequate funding to repay loans acquired for completion of the plant must be in place. Existing TUD customers cannot be responsible for Tuolumne City Sanitary District's financial obligations.

Findings

The Tuolumne City Sanitary District (TCSD) has two major areas of difficulty:

- The breakdown of the friendly working relationship between the district and the Tuolumne Band of Me-Wuk Indians.
- The current financial quagmire faced by the district.

These areas of difficulty are narrowly related. The district would like to receive service fees for the 305 pre-paid EDUs. Tuolumne Economic Development Authority (TEDA) disagrees about when those fees should be paid. On this, and several other details, the district and TEDA have reached an impasse. The financial difficulties are almost solely the burden of TCSD's past board members because waste, mismanagement of funds and poor planning have led to a significant shortfall of dollars necessary to complete the current treatment plant project.

- F1.** The Grand Jury finds that consolidating Tuolumne City Sanitary District (TCSD) with Tuolumne Utility District (TUD) would result in the best value for dollars paid by the community within the TCSD's boundaries.
- F2.** TCSD past board members' mismanagement has resulted in the community paying for improvements primarily benefiting TEDA. A history of under-estimating costs or extent of improvements required for the treatment plant and collection system has caused many of today's problems.
- F3.** Tuolumne Economic Development Authority (TEDA) and Tuolumne City Sanitary District (TCSD) do not have a sound framework for a good business relationship. Success for both entities will require mediation of the Settlement Agreement with TEDA dated November 18, 2009. A new contract defining service by industry-standard terms which both sides understand and can agree to must be the goal of mediation. Failure to negotiate a new contract jeopardizes the interests of both TCSD and TEDA. A new contract must be clearly defined, fair to ALL the community served, reviewed by registered professional engineers and by legal counsel for both parties.
- F4.** TCSD sometimes failed to properly compose and post Agenda notices and to

²⁰ Support for Consolidation: Interviews

maintain Minutes taken during meetings. Sadly, the community must bear a share of responsibility for the district's mismanagement. The community failed to hold the board responsible for its actions or to demand fiscal and personal accountability.

- F5.** During the planning process for a multimillion dollar wastewater treatment plant intended to serve the community of Tuolumne City for many years, TCSD did little to introduce the plans to the community. No significant effort was made to involve or educate the community about the project.
- F6.** The TCSD board members authorized to negotiate a Settlement of TEDA's Claim appear to have been closely aligned with TEDA's position from the beginning of negotiations. This appearance is enhanced due to business-dealings between those board members and TEDA. All TCSD board members failed to recognize the inequality in some provisions of the Settlement Agreement.
- F7.** At the request of Tuolumne Economic Development Authority, the attorney representing Tuolumne City Sanitary District (TCSD) agreed to exclude TCSD's District Engineer from settlement negotiations for TEDA's Claim. TCSD's failure to request their Engineer's review and comment regarding specific Settlement Agreement provisions was a major disservice to the district's customers. Some Agreement provisions required evaluation from a person with engineering expertise.
- F8.** The attorney employed for many years by TCSD repeatedly assumed a passive role in offering legal advice to the board. He failed to point out provisions of the Settlement Agreement that were not in compliance with the Ordinance governing TCSD operations. The same failure occurred regarding State law and ex-officio board member positions. The attorney's usefulness to TCSD was hampered by the board's failure to request advice of counsel prior to making crucial decisions.
- F9.** TCSD's attorney admits to deliberately aiding the board in withholding of signed copies of the Settlement Agreement from the community in an effort to defuse public anger. This delayed public access to the document for two months while the Tuolumne Band of Me-Wuk Indians were kept fully informed by their representatives. This failure to provide access to the Settlement Agreement appears to be a violation of the Brown Act.²¹
- F10.** TCSD suffers from problems relative to being a "managing" board. Past members did not make good day-to-day management decisions. A sewer district is difficult to operate under today's multitude of regulations and need for oversight. Environmental protection laws require expertise to understand and follow.
- F11.** Lack of effective personnel management by the TCSD board resulted in lawsuits and grievances which cost the district untold time and money in legal fees and settlements. These issues detrimentally affected the district's

21 Failure to promulgate the signed Settlement Agreement: Brown Act Govt. Code

operating efficiency. Conflict-of-interest regulations appear to have been disregarded when dealing with personnel issues. Complex employee protection regulations demand expertise in personnel management.

- F12.** Payment to settle a Claim that protested awarding the treatment plant construction contract to other than the lowest responsible bidder increased costs. Customers of TCSD must bear part of the costs of settlement but gain no improvement in services for those dollars.
- F13.** A Community Services District combining existing special districts serving Tuolumne City could provide a general manager and address the problem of maintaining a full roster of board members.

Recommendations

- R1.** Tuolumne City Sanitary District (TCSD) should continue to pursue consolidation with Tuolumne Utilities District (TUD) at the earliest possible date.
- R2.** TCSD should use expert professional advisors, both legal and engineering, to re-negotiate with TEDA. The primary goal of this re-negotiation should be to insure new sewer-plant capacity is paid for by use at a fair ratio between the businesses demanding service and the district's residential customers.
- R3.** Same as R2.
- R4.** TCSD Board members should attend classes offered on the Ralph M. Brown Act and maintain attendance throughout their terms of office. Every effort should be made to be sure the public is properly notified and informed about the business of the district. Further, the district should make their meetings as convenient to the public as possible and encourage public participation by having a time on their Agendas for comment on the business of the district.
- R5.** Special meetings should be held whenever large sums of money or major changes to operations are considered. These meetings must be well advertised in a manner designed to attract the attention of the public, held in a central location large enough accommodate the district's customers, at a time convenient to the public, with materials explaining the issue readily available for everyone and with adequate time allowed for concerned citizens' participation.
- R6.** TCSD Board members should attend ethics classes and make every effort to avoid even the appearance of conflict-of-interest in decision making.
- R7.** Because board members are usually not qualified to evaluate engineering proposals or operations, TCSD should utilize the expertise of professional engineers hired to advise the district. Such professionals should be included early, often and throughout any discussion of decisions within their area of expertise. This will help protect customers of the district from costly mistakes.

- R8.** The TCSD should employ well-qualified legal advisors. Expert knowledge of the Brown Act and ethics regulations is essential. The board should seek the advice of their attorney prior to taking actions with legal consequence. Board members must be sure they understand such advice and carefully consider the recommendations of counsel.
- R9.** Same as R6.
- R10.** TCSD should employ a well-qualified general manager.
- R11.** TCSD should follow the Personnel Policy and Procedure Manual updated and adopted in April of 2010. TCSD should review that manual annually for compliance with applicable laws and update the manual as required. Special effort should be made by board members to avoid even the appearance of a conflict-of-interest when dealing with personnel. A well-qualified general manager is helpful in dealing with personnel issues.
- R12.** TCSD should have all documents relative to offering contracts for services reviewed by well-qualified individuals employed by the district. The district should have those reviews presented in writing to the board prior to any action on the contract. The reviews should be kept as part of the Record. The TCSD should follow all public contracting laws and guidelines.
- R13.** TCSD should participate in a proposal to create a Community Services District combining special districts serving Tuolumne City.

Remarks

Brenda Bonillo, TCSD Secretary, has been exceptionally helpful. She provided requested documents (at no cost) promptly and with a positive attitude.

Evan Royce and John Feriani were very informative and remain committed to the success of TCSD. All TCSD staff contacted by the Jury were helpful, friendly and informative.

TEDA staff was extremely cooperative and informative. They provided many documents for the Jury's review and at no cost.

Pete Kampa, TUD General Manager, and other TUD staff helped address questions about sewage treatment and the consolidation study.

TCSD's past District Engineer made his personal records available and promptly addressed all questions from the Jury.

In an unusual move, TCSD made their past Attorney available to answer questions.

Request for Response

According to the penal code 933(c), no later than 90 days after the grand jury submits a final report on the operation of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has jurisdiction pursuant to section 914.1 shall comment within 60 days to the presiding judge of the superior court.

The Jury suggests the following respond to the recommendations:

R1. Through R13. Tuolumne City Sanitary District

R1. Tuolumne Utilities District

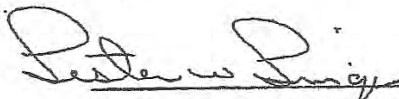
R1., R2., R3., and R13. Tuolumne Economic Development Authority

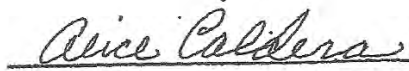
Appendix A: February, 2001 Contract

MEMORANDUM OF UNDERSTANDING

The Tuolumne City Sanitary District (TCSD) resolves to provide sewer service to the Tuolumne Gaming Department, hereinafter referred to as "Casino", per the following conditions:

1. The construction, operation, and maintenance of the Casino sewer tie-in to the TCSD shall be accomplished according to the TCSD approved plans dated 3-2-01 by Lochsa Engineering, and any TCSD approved revisions.
2. The Casino shall pay a Connection Fee of \$266,666 to the TCSD. This connection fee will secure a wastewater treatment and disposal capacity from the TCSD of 60,000 gallons per day.
3. The Casino shall pay an Annexation Fee of \$ 2000.00 per acre to the TCSD. The area to be annexed shall be as required by Tuolumne County LAFCO. For the entire 39 acres, the fee will be 78,000.
4. The Casino shall measure the wastewater flow monthly, and report the flow results to the TCSD. Upon prior notice, the Casino shall access for qualified TCSD maintenance personnel to read the pump Elapsed Time Meters (ETM,s) The Casino shall advise and invite qualified TCSD maintenance personnel when an ETM drawdown flow calibration measurement is performed.
5. The Casino shall allow the TCSD to tie-in the existing single family house lateral into Private Casino force main near the new Private Casino maintained manhole. The TCSD shall be the responsible party for the design and construction of the lateral force main tie-in. Such design shall be submitted to the Casino, and the tie-in shall be accomplished such that service to the Casino shall not be interrupted. In the event that this force main lateral is constructed, the responsibility of the operation and maintenance of the Private Casino force main and manhole shall remain the responsibility of the Casino. The TCSD shall be the responsible one to operate and maintain the single family force main and tie-in to the Private Casino force main.
6. The Casino shall pay an annual Sewer User Fee of \$12,006 based on 30,000 gpd.. An annual fee of \$ 5000.00 shall be paid to TCSD to have the TCSD six inch line flushed. These Fees will be due and payable upon receipt of an invoice sent by TCSD.
7. The connection fees for the additional requested 30,000 gallons per day shall be \$ 133,333 and terms of payment shall be as follow A non-refundable down payment of \$ 13,333.30 shall be paid now and the balance of \$ 119,990.70 is to be paid in 60 days. At that time the additional gallionage will be reserved for the Casino.


Tuolumne Gaming Department


Tuolumne City Sanitary Distri

Date: April 12/2001

Appendix B: March 2006 Resolution

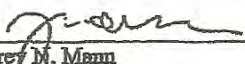
Tuolumne City
TC
SD
Sanitary District

The Tuolumne City Sanitary District (TCSD) resolves to provide sewer service to the Tuolumne Economic Development Authority, hereinafter referred to as Black Oak Casino Phase II per the following conditions;

1. Black Oak Casino shall pay a one time connection fee of \$4,265,000 to TCSD (Tuolumne City Sanitary District) in order to secure wastewater treatment and disposal of Black Oak Casino's Phase II sewage. The connection fee, as agreed by both parties, was determined by the TCSD Master Plan study and flow/strength tests of Phase II Casino sewage. The TCSD received and approved a commitment from Black Oak Casino to pay the connection fee over a four year period per the following schedule.

• Payment #1	\$1,500,000	On or before March 31, 2006
• Payment #2	\$ 921,667	On or before March 31, 2007
• Payment #3	\$ 921,667	On or before March 31, 2008
• Payment #4	\$ 921,667	On or before March 31, 2009
2. The TCSD personnel shall measure the wastewater flow daily to determine flow totals. TCSD will sample effluent at the Black Oak Casino lift station on a monthly basis to determine sewer strength. The Casino shall pay sewer service charges quarterly, based on flow totals and sewer strength calculated using the formula in the TCSD Master Plan. TCSD will submit the quarterly flow and strength data to the Black Oak Casino with their quarterly bill.
3. The Black Oak Casino shall on a quarterly basis perform a pump down test on the Casino lift station to determine flow meter calibration. Black Oak Casino personnel will advise and invite qualified TCSD maintenance personnel when a drawdown flow calibration measurement is performed.
4. The Black Oak Casino shall allow the TCSD to tie-in the existing single family house lateral into the 10" Casino sewer main. The TCSD shall be the responsible party for the design and construction of the lateral force main tie-in. Such design shall be submitted to the Casino, and the tie-in shall be accomplished such that service to the Casino shall not be interrupted. In the event that this force main lateral is constructed, the responsibility of the operation and maintenance of the Casino sewer main and manholes, from the connection point downstream, and the single family force main and tie-in into Casino sewer main shall become TCSD's responsibility.
5. The Casino 10" sewer main on Tuolumne Rd North and Cherry Valley Blvd will be flushed on an annual basis at the expense of Black Oak Casino. TCSD personnel will arrange the flushing and videoing. Black Oak Casino personnel will be advised and invited to attend the preventative maintenance. Black Oak Casino personnel will be responsible for flushing and/or videoing any sewer mains still maintained by Black Oak Casino.

The above represents the agreement between the Tuolumne City Sanitary District and the Black Oak Casino

 MARCH 1/06
Jeffrey M. Mann
Sanitary District Manager
Tuolumne City Sanitary District

 March 1/06
Lester Lingo
Tuolumne Economic Development Authority
Black Oak Casino

Appendix C: February 29, 2008 Draft MOU

FINAL DRAFT

(2/29/08)

MEMORANDUM OF UNDERSTANDING

Between

TUOLUMNE CITY SANITARY DISTRICT

And

TUOLUMNE ECONOMIC DEVELOPMENT AUTHORITY

This Memorandum of Understanding ("MOU") is entered into by and made effective between Tuolumne City Sanitary District, a political subdivision of the State of California ("District") and Tuolumne Economic Development Authority ("TEDA"), a governmental agency of the Tuolumne Band of Me-Wuk Indians, a federally recognized Indian tribe. The District and TEDA are collectively referred to as the "Parties," and individually as a "Party."

RECITALS

A. TEDA has developed, and plans to develop additional, projects within the District that require sewer service. Existing projects include the Black Oak Casino, the Mercantile TEDA offices, and the Tribal Clinic. Future proposed projects include a hotel, Westside Subdivision, 18-hole golf course with a clubhouse, some commercial associated with the Westside development, and an RV park.

B. The District is a community services district formed under California law and is the public agency that provides the community of Tuolumne with sewer services.

C. Effective July 1, 2007 the Tuolumne City Sanitary District adopted revised Connection Fees and Sewer Service Charges. A Copy of Exhibit B (Revised 7-1-07) to Ordinance 89-240 is included in this MOU as Attachment A. The revised Connection Fee for purchase of capacity was set at \$7,200 per EDU.

D. On August 13, 2007 the District Engineer transmitted to TEDA, via email, a "Connection Fee Re-calculation" for the Black Oak Casino. The August 13, 2007 correspondence provided an estimate of the Connection Fees associated with existing Casino wastewater flows and loads based on data from the 2006 calendar year and estimates of future Connection Fees for proposed Tribal projects. The correspondence showed that the District is due additional Connection Fees from the Casino for higher than anticipated wastewater flows and loads. That correspondence is included in this MOU as Attachment B.

E. The District has limited existing capacity to serve additional connections and has planned and designed facilities to upgrade and expand its capacity ("WWTP Improvements") pursuant to its August 2005 Wastewater Facilities Master Plan.

Appendix C.2: February 29, 2008 Draft MOU

F. To obtain the necessary wastewater services for its projects in a timely and appropriate manner, TEDA agrees to provide funding to the District in the form of prepaid Connection Charges at the rate of \$7,200 per Equivalent Dwelling Unit ("EDU"), subject to the terms of this MOU.

AGREEMENT

Section 1. Incorporation by Reference of Preamble and Recitals. The preamble and the Recitals are hereby incorporated in full into this Agreement.

Section 2. EDU Connection Charge. For the purposes of this MOU the Connection Charge for one EDU of capacity is \$7,200. This fee is based on the average residential wastewater flow of 160 gallons per day and the average residential wastewater loading of 0.193 lbs per day as measured by the average of the Biochemical Oxygen Demand and the Total Suspended Solids measurements.

Section 3. Prepaid Connection Fees. TEDA shall pay to the District a one-time amount of \$2,200,000, which shall be placed in the District's capital improvement fund for the sole purpose of funding the WWTP Improvements. When the funds are deposited into the District's account, TEDA shall receive 306 EDU's of wastewater conveyance, treatment and disposal capacity, which shall be accounted for separately. Requests to use the prepaid connections shall be processed by the District according to district ordinances.

Section 4. Waiver of Sewer Service Charges. The District waives the Sewer Service Charge, as currently structured, or may be structured, on each prepaid connection until the sewer service is actually provided or until the end of the 24th month beyond the date of the execution of this MOU, whichever occurs first. On the first day beyond the 24-month period and thereafter, all unused prepaid connections will begin accruing the Sewer Service Charge then in effect.

Section 5. Limitation on use of the Prepaid Connections. All 306 prepaid connections are only valid for use in the Westside Project area.

Section 6. Limitation on use of Interest Earned on the Prepaid Connections. Interest generated on all connection fees paid pursuant to this agreement shall be accounted for and applied to the District's capital improvement fund and shall only be used for District capital improvements.

Section 7. WWTP Improvement Project Processing Tasks. The District, through its staff, legal, engineering and other consultants, and Board of Directors, shall perform and undertake the WWTP Improvements. The District's staff and consultants shall work directly for the District and be responsible only to the District. As requested by TEDA and agreed to by the District, TEDA shall have the right to monitor the conduct of the WWTP Improvements construction project through attendance at regularly scheduled progress meetings established by the construction management team.

Appendix C.3: February 29, 2008 Draft MOU

Section 8. Re-evaluation of Casino EDU Service Charges. The District agrees that upon completion of the WWTP Improvements project the District will recalculate the EDU basis for establishing Connection Fees and Sewer Service Charges for the Black Oak Casino. The District's intention is to use three years of wastewater flow and loading data collected during 2006, 2007 and 2008. All analytical data and District calculations of Casino EDUs shall be made available to TEDA for review prior to any changes to the current EDU determination.

Section 9. General Provisions.

(a) **Amendments of MOU.** This MOU may be modified or amended only by a subsequent written agreement approved and executed by both Parties. Amendment by the District requires approval of the Board of Directors and execution by the Board President.

(b) **Transfer and Assignment Rights.** This MOU shall be transferable or assignable with the prior written approval of the District, which shall be granted upon a proposed successor's written assumption of all of TEDA's obligations under this MOU.

(c) **Notices.** Any notice or communication required hereunder between the District and TEDA must be in writing, and may be given either personally, by facsimile or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice or communication shall be deemed to have been given and received when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next business day. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to District to:

Tuolumne City Sanitary District
Atten: Michelle Brick, Board Clerk
P.O. Box 1238
18050 Box Factory Road
Tuolumne, CA 95379

If to TEDA to:

Tuolumne Economic Development Authority
Atten: Lester Lingo, President
P.O. Box 1300
17807 Tuolumne Road
Tuolumne, CA 95379

(d) **Integration.** This MOU constitutes the sole, final, complete, and integrated statement of the terms of this contract among the Parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this MOU, except those other documents that are expressly referenced and incorporated in this MOU.

Appendix C.4: February 29, 2008 Draft MOU

(e) Counterpart Execution. This MOU may be executed in any number of counterparts and shall be deemed duly executed when each of the Parties has executed and delivered such a counterpart.

(f) Severability. If any provision of this MOU is held invalid, void or unenforceable but the remainder of this MOU can be enforced without failure of material consideration to either Party, then such remainder of this MOU shall not be affected and it shall remain in full force and effect, unless amended by mutual consent of the Parties.

(g) Attorney's Fees. In the event any legal or equitable action is brought to enforce or construe this MOU, the prevailing party shall be entitled to an award of reasonable attorney's fees, expert witness and consulting fees and costs, litigation costs and costs of suit, including any appeal.

(h) Further Assurances. Each Party shall execute and deliver to the other Party all such other further instruments and documents and take all such further actions as may be reasonably necessary to carry out this MOU and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

(i) Governing Law. This MOU shall be governed by, and interpreted in accordance with, the laws of the State of California. Venue for any disputes under this Agreement shall be in the Superior Court for the County of Tuolumne, California.

(j) Authority. The persons who have executed this MOU represent that they have been authorized to do so by the Party on whose behalf each person is signing. All documents to be delivered under this Agreement shall be executed by an authorized person. Each Party represents that it is authorized to enter into this MOU and to perform all obligations of that Party contained in this MOU.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and year first above written.

TUOLUMNE CITY SANITARY DISTRICT

TUOLUMNE ECONOMIC
DEVELOPMENT AUTHORITY

By: _____
President, Board of Directors

By: _____
President, Development Manager

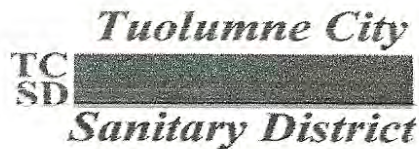
ATTEST:

ATTEST:

Secretary, TCSD Board of Directors

Secretary, TEDA Board of Directors

Appendix C.5: February 29, 2008 Draft MOU



DRAFT FOR TEDA REVIEW

March 5, 2008

Tuolumne Economic Development Authority
P O Box 1300
Tuolumne, CA 95379

Attention: Lester Lingo

Subject: Prepaid Connection Fees for the Westside Project.

TEDA has requested that it be allowed to pre-purchase 306 EDU of capacity in the TCSD wastewater facilities to be use exclusively for the Westside Projects. Each EDU is equivalent to the average flow and waste strength of a typical residential dwelling. Specifically, that is 160 gpd of flow and 0.193 lbs per day of waste strength. The current Connection Fee is \$7,200 per EDU.

Although TEDA will be required to follow all of the District's normal policies and procedures related to acquiring sewer service, TEDA will not be required to pay the Sewer Service Fee on prepaid connections for the Westside Projects until the connection to the District is made. The Sewer Service Charge will be at the rate in place at the time of the actual connection.

The amount of this Invoice is \$2,203,200. The total amount is due upon TEDA's receipt of this invoice.

Michelle Brick, District Clerk
Tuolumne City Sanitary District

Cc Harold Welborn, District Engineer

Appendix D: EDU Brief Definition

Note: Following is a general definition and may be different in any service area.

An ***Equivalent Dwelling Unit*** (EDU) is sewer usage by a typical residential family in the local service area. There is a specific EDU formula developed for each service area.

Sewer Fees are a system of locally developed dollar charges that have been established whereby users of the system are charged sewer user fees to pay for the costs of constructing, operating and maintaining District sewage facilities, as well as costs for wastewater treatment and disposal. Likewise, a periodic fee(monthly/bi-monthly) is charged to all undeveloped, buildable parcels located within the Sanitary District boundaries to pay for the expense of maintaining a sewer system available to vacant properties.

There are normally three types of fees

- **Connection Fees:**
Fees for planning and construction(upgrades) of the local sewer facility to keep it up to Local and state standards for *peak* usage. Commercial connection fees are based on the local EDU formula for a service area.
- **Monthly Fees:**
Fees for operating and maintaining the sewage facilities to current state and local standards. Residential customers are charges a fixed monthly fee. Large commercial businesses are charged for actual usage based on the local EDU formula.
- **Standby Fees:**
Fees charged when connection fees have been paid but the parcels have not been connected to the sewer within the time period established by the local service area.

Appendix E: March 7, 2008 Invoice for \$2.9 million



November 10, 2008

RECEIVED IN OFFICE
JUN 19 2009
M. HARPER

Tuolumne Economic Development Authority
P O Box 1300
Tuolumne, CA 95379

Attention: Mr. Lester Lingo

Subject: Casino Sewer Service Fees and Charges

As was agreed to by the District Board of Directors we have collected and analyzed an additional year's worth of wastewater data prior to reevaluating the Connection Fee for the existing Casino wastewater capacity requirement. Actually we have put off the reevaluation until we now have 15 months (June 2007 thru August 2008) of data following the implementation of the Casino water conservation program. The reevaluation includes the daily flow records and the monthly composite water quality data from the Casino. During the 15-months the average daily flow was 46,083 gpd, the peak 48-hour flow averaged 70,968 gpd and the strength, as measured by BOD and TSS, averaged 710 mg/L.

During this period of time the District's non-casino flow and strength were also re-evaluated to take advantage of the additional period of record. The result was a confirmation of the 160 gpd of flow per EDU and an increase in the average strength from 134 to 145 mg/L, which equates to 0.193 lb/day. The change in the strength resulted in a decrease in the Casino EDUs.

The resultant calculation of the Casino's equivalent flows and loads over the 15-month period was 1258 EDU of capacity utilized. Subtracting the 853 EDU of capacity previously purchased leaves 405 EDU of capacity being used but not yet purchased. The Connection Fee for the additional capacity is \$2,916,000 (405 EDU @ \$7,200 per EDU).

The additional Connection Fee is due at this time. Please arrange to pay the additional Connection Fee by December 15, 2008. If this is not possible, please submit a formal response to this letter with a clear commitment for when the payment can be expected.

It is my understanding that all of the backup data and analyses for the above fee calculation have been provided to you by the District's Engineer, Harold Welborn. If there is any additional information required, please feel free to contact Harold or me.

Sincerely,

Signed and sent 11/12/08

Kevin Burns, President
Tuolumne City Sanitary District

Cc TCSD Board Members
Harold Welborn

Appendix F: November, 2008 Letter

Apr 25. 08 03:17p

TUOLUMNE CITY SAN DIST

209-928-4550

p.2



March 7, 2008

Tuolumne Economic Development Authority
P O Box 1300
Tuolumne, CA 95379

Attention: Lester Lingo

Subject: Prepaid Connection Fees for the Westside Project.

TEDA has requested that it be allowed to pre-purchase 305 EDU of capacity in the TCSD wastewater facilities to be use exclusively for the Westside Projects. Each EDU is equivalent to the average flow and waste strength of a typical residential dwelling. Specifically, that is 160 gpd of flow and 0.193 lbs per day of waste strength. The current Connection Fee is \$7,200 per EDU.

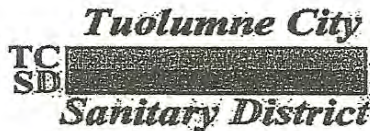
Although TEDA will be required to follow all of the District's normal policies and procedures related to acquiring sewer service, TEDA will not be required to pay the Sewer Service Fee on prepaid connections for the Westside Projects until the connection to the District is made. The Sewer Service Charge will be at the rate in place at the time of the actual connection.

The amount of this Invoice is \$2,196,000. The total amount is due upon TEDA's receipt of this invoice.

Michelle Brick, District Clerk
Tuolumne City Sanitary District

Cc Harold Welborn, District Engineer

Appendix G: June 10, 2009



RECEIVED IN OFFICE
JUN 10 2009
M. H. RIVER

June 10, 2009

Black Oak Casino
P O Box 1300
Tuolumne, CA 95379

Attention: Lester Lingo

Subject: Connection Fee for Additional Casino Wastewater Service

Attached is the November 10, 2008 Connection Fee invoice for the additional capacity used by the Casino above the capacity paid for previously.

The District has made every effort to accommodate the Casino by putting off the invoicing for the additional Connection Fees. This delay allowed the Casino to implement water conservation measures while the District collected additional data on flows and loads.

The District has on many occasions relaxed its conformance with the policies and procedures spelled out in the District's Ordinance, No. 89-240, in order to work with the Tribe, TEDA and the Casino. Our mutual understanding has always been that the Casino would pay its fair share of all cost associate with providing wastewater collection, treatment and disposal. It is also our understanding that the intention of the Tribe was to lessen its impact on the District by avoiding district borrowing to build facilities to be used primarily by the Tribe.

According to Ordinance No. 89-240, Chapter 5, Article 5.02.1, Collection of Delinquent Accounts, we are hereby invoking the 1.0% per month charge on the delinquent account. At this time we are choosing not to invoke the 10% "administrative charge." The interest began to accrue 30 days after the date on the invoice. Accrued interest from December 10, 2008 to June 10, 2009 is \$174,960. This amount has been added to your delinquent account, which now totals \$3,090,960. Please arrange for the prompt payment of your account.

Sincerely,
Tuolumne City Sanitary District

Kevin Burns
Board President

Attachment

Cc Board Members, TCSD
Harold Welborn, District Engineer
Patrick Greenwell, Attorney

Handwritten signatures of Kevin Burns, Harold Welborn, and Patrick Greenwell. The signature of Kevin Burns is at the top, followed by Harold Welborn's, and then Patrick Greenwell's.

Appendix H: Legal Claim

LAW OFFICES

Hiroshima, Jacobs, Roth and Lewis

A LAW CORPORATION

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H. VINCENT JACOBS, OF COUNSEL

FILE NO. 38194

July 1, 2009

Sent Via Facsimile, Personal Service to TCSD, and First Class Mail

Board of Directors
ATTN: Kevin Burns, President of the Board
Tuolumne City Sanitary District
P.O. Box 1238
Tuolumne, CA 95379

Dear Mr. Burns:

Please consider this letter a claim pursuant to the Government Claims Act, Government Code section 900 et seq. If you have a designated form for this purpose, please provide it to our office at your earliest convenience so that we may submit this claim on your designated form.

Our office has been retained to represent the following claimants for purposes of this claim:

Tuolumne Economic Development Authority, Inc. (TEDA, Inc.)
Post Office Box 1300
Tuolumne, California 95379

Tuolumne Band of Me-Wuk Indians
Post Office Box 699
Tuolumne, California 95379

Black Oak Casino
19400 Tuolumne Road North
Tuolumne, California 95379

TEDA, Inc. is a federally chartered tribal corporation of the Tuolumne Band of Me-Wuk Indians and it operates the Black Oak Casino located in Tuolumne, California.

The Tuolumne City Sanitary District (TCSD) provides wastewater treatment services for the Black Oak Casino under a series of Contracts attached as Exhibit A. TCSD bills the claimants for connection fees and quarterly service charges based on effluent flow and strength, as well as other factors. It has recently come to the claimants' attention that claimants have been significantly overcharged by TCSD for connection fees and quarterly service charges due to the following:

Appendix H.2: Legal Claim

Kevin Burns, President of the Board
Tuolumne City Sanitary District
July 1, 2009
Page 2

1. TCSD employee Danny Tuel has regularly manipulated wastewater samples taken from the Black Oak Casino's effluent in such a way that the lab test results obtained by TCSD indicate that Black Oak Casino's wastewater is significantly "stronger" than it actually is, such as having significantly higher Biochemical Oxygen Demand (BOD) levels. Though the complete extent of Mr. Tuel's manipulation is unknown at this time, claimants have obtained a sworn statement from a former TCSD employee who states he has personally observed the following on several occasions between approximately August 2007 and March 2008:

Mr. Tuel would collect a sample of Black Oak Casino's effluent from a refrigerated sampler at the Black Oak Casino approximately once per month. Mr. Tuel would bring the sample back to the TCSD plant and allow the sample to settle. Then he would pour off the clear liquid at the top, mix the remaining liquid, and pour it into a container to send to the lab for testing. This resulted in a much more concentrated sample. Mr. Tuel's stated reason for doing this was to manipulate and increase the Black Oak Casino's BOD levels in the lab report.

Data obtained from the Black Oak Casino's parallel testing program has revealed that TCSD's BOD data for the Casino is significantly higher than what it should be and this supports the sworn statement above.

2. TCSD employees have also manipulated flow data from the Black Oak Casino. Claimants have obtained a sworn statement from another former TCSD employee who states that between January 2005 and October 2007 he noticed on several occasions that Black Oak Casino flow data he had entered into TCSD's computer database on a given day appeared different and more favorable to TCSD the following day (i.e. higher flows). It is unknown which TCSD employees were responsible for this manipulation but the former employee states that, other than himself, he believes only Danny Tuel and Michelle Brick had access to the database.
3. In addition, TCSD has not been following the requirements and procedures set forth in "Standard Methods for the Examination of Water and Wastewater" (Standard Methods). Standard Methods is the industry standard and adherence to it is required by TCSD's own Wastewater Discharge Ordinance Number 89-240. It is also required by the Contracts between TCSD and claimants. TCSD has violated Standard Methods with regard to samples taken from Black Oak Casino in at least the following ways:
 - a. The period for sample compositing is significantly longer than recommended. For example, Standard Methods requires 24 hour sample periods and TCSD was utilizing 48 and 72 hour sample periods.
 - b. TCSD did not maintain proper sample temperatures.
4. Claimants also have reason to believe that TCSD's calculation of ongoing operation and maintenance expenses are inflated due to fraud and misappropriation of TCSD property, equipment, and material by TCSD employees. At a minimum, claimants are informed and believe through the sworn statements identified above that TCSD employees use TCSD gas cards for personal vehicles, use TCSD tractors for personal use, and use TCSD material, such as gravel, for personal use.

Appendix H.3: Legal Claim

Kevin Burns, President of the Board
Tuolumne City Sanitary District
July 1, 2009
Page 3

5. Finally, the methodology TCSD is using to determine connection fees is in violation of the February 20, 2001, and the April 12, 2001, Contracts. The Casino agreed to purchase and already paid for connection fees for 60,000 gallons per day. When actual flow is considered, absent TCSD manipulation, the Casino is not exceeding the 60,000 gallons per day that they already paid for with a one time connection fee. The result is that the March 1, 2006 contract is based not only on faulty and fraudulent flow and strength data, but in fact wrongfully charges the Casino a connection fee for services that the Casino has already purchased pursuant to the earlier Contracts. Now, according to TCSD's November 10, 2008, and June 10, 2008, letters received by claimants on June 19, 2009, TCSD is seeking additional connection fees which are again based on faulty and fraudulent flow and strength data, as well as inappropriate methodology which seeks to charge the Casino for connections they have either already purchased or additional connections they are not actually using. This is also in violation of Contract with claimants.

A number of legal claims against TCSD are supported by the issues described above. Though not intended to be an exhaustive list, potential legal claims include breach of contract, fraudulent breach of contract, misrepresentation based on contract, breach of implied covenant of good faith and fair dealing, and conversion. The claimants also have a right to injunctive relief which is not covered by the California Government Claims Act and thus claim presentation is not required. This list of potential causes of action is only for demonstrative and informative purposes. Claimants reserve all rights to bring any and all causes of action which arise from the actions described above.

Claimants have been injured in that the TCSD has significantly overcharged claimants for connection fees and quarterly service charges for Black Oak Casino. TCSD's bills to the Black Oak Casino are based on faulty and fraudulent flow and strength data, and ongoing operation and maintenance costs are likely inflated by employee misuse of TCSD property.

Pending the evaluation and resolution of this claim, claimants hereby demand that TCSD take the following actions immediately:

1. Cease and desist from any and all improper handling and manipulation of Casino effluent flow and strength data, whether by tampering with samples, improper record keeping, or other methods;
2. Ensure strict adherence to Standard Methods in obtaining flow and strength data for the Black Oak Casino;
3. Preserve all evidence related to claimants and this claim, such as all records related to TCSD's services to claimants and the Casino. This would include, but is not limited to, the Casino's effluent sample test results, databases or records keeping track of Casino flows and strength, correspondence with Harold Wellborn, records reflecting billing methods or calculations of the connection fees or service charges of the Casino, TCSD employee records and files, correspondence between the Board and TCSD employees, and other similar materials. All evidence, whether hard copy or electronic, must be preserved.
4. Refrain from all collection actions on outstanding bills for additional connection fees.

Appendix H.4: Legal Claim

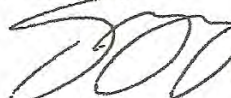
Kevin Burns, President of the Board
Tuolumne City Sanitary District
July 1, 2009
Page 4

Thank you for your attention to the above. Please forward this claim to your legal counsel. Please deliver all notices relative to this claim or relative to claimants' request for bill review to our office using the contact information provided in our letterhead above. We look forward to your prompt response.

Very truly yours,

HIROSHIMA, JACOBS, ROTH AND LEWIS
A Law Corporation

By

 For:
PHIL HIROSHIMA

cc: TEDA, Inc. Board
Kevin Day, Chairman, Tribal Council
David Lundgren, Attorney

