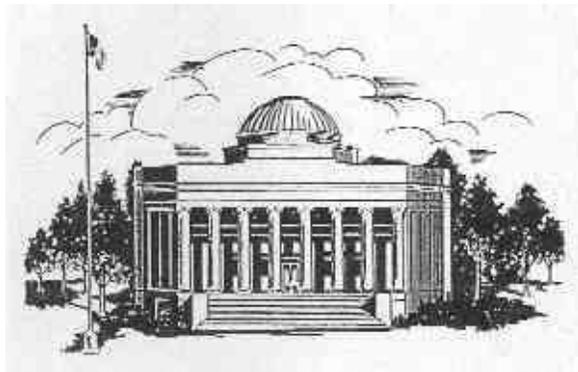


Modoc County Grand Jury

FY 2002/03 Report



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Functions of the Grand Jury

The Grand Jury is part of the judicial branch of government, mandated by the California Constitution, and an arm of the Superior Court. The primary function of the Grand Jury is to examine local government. The Penal Code states the Grand Jury is specifically:

Mandated to conduct civil investigations and audits of City and County Government, to insure efficient and proper operation of all local government, and to detect and expose fraud and malfeasance.

The Grand Jury addresses citizen complaints and conducts investigations to act as a "watchdog" for the citizens of Modoc County.

The Grand Jury reviews and evaluates performance of local government officials and entities, focusing on *procedures, methods and systems* not policies), to determine if more efficient and economical measures might be employed and if procedures are being followed. The Grand Jury has three ways to exercise its powers:

1. Reports - Published report evaluating local government conditions, generally addressing specific issues, with findings and recommendations. The County Board of Supervisors, City Council or affected agency must comment on each recommendation. (When crimes are not charged but suspected, special reports with documentation may refer specific issues to another authority.)
2. Accusations - Formal written complaints accusing a government official or employee of misconduct. (Conviction would result in removal from office/duties rather than criminal penalties.)
3. Indictments - Formally charging a person with a crime.

The Grand Jury is specifically authorized to:

- Inspect and audit local entity records, ensuring proper and legal accountings of public funds.
- Investigate and report on performance of special districts or commissions.
- Evaluate conditions of jails and detention centers within the county.
- Investigate charges of misconduct by public officials or employees.
- Investigate and report on "questionable practices" of such agencies.

The Grand Jury also receives complaints from citizens alleging mistreatment by officials, suspicions of misconduct, or government inefficiencies. While keeping all complaints confidential, each is acknowledged and considered by the panel; those accepted under Grand Jury jurisdiction are investigated carefully before any actions are taken.

Modoc County Superior Court

205 SOUTH EAST STREET
ALTURAS, CA 96101
(530)233-6515

JOHN P. BAKER
SUPERIOR COURT JUDGE
(1996-2002)

LARRY L. DIER
SUPERIOR COURT JUDGE

July 8, 2003

Members of the Grand Jury

Dear Ladies and Gentlemen:

It is my pleasure to write you as you near the end of your service on the 2002-2003 Modoc County Grand Jury.

We got off to a slower start than we should have. I have been impressed from the beginning with your enthusiasm and willingness to work very hard.

This year has been a difficult one for the Grand Jury. I know that there have been some very contentious matters that you have considered and investigated. I congratulate you on the job you have done and the report you have prepared.

Thanks for the good work. I hope I can persuade some of you to serve a second year as grand jurors for the 2003-2004 Grand Jury.

Very truly yours,
Larry L. Dier

Acknowledgments

The Grand Jury acknowledges the following individuals for their counsel on matters both legal and practical: Superior Court Judge Larry Dier, Superior Court Executive Officer Vickie Hughes, Modoc County District Attorney Jordan Funk, Modoc County Counsel Vickie Cochran, and California Deputy Attorney General Sean McCoy.

We express thanks to the City of Alturas Council and staff for their generous help in providing the Jury with comfortable and secure quarters for assembly; and for having plenty of coffee available for our often-lengthy meetings.

We make special note of the support given by the Modoc County Counsel Office for meeting with the Jury on several occasions, for giving legal opinions, and for providing timely legal research on matters that did not constitute any conflicts of interest to the Office of County Counsel.

We appreciate the Modoc County Record for helping to make this Grand Jury report more widely available to concerned citizens than in prior years, and for keeping within our very limited budget.

Modoc County Grand Jury

Modoc County Grand Jury

205 South East Street
Alturas, California 96101

July 8, 2003

Citizens of Modoc County, and The Honorable Lawrence Dier, Presiding Judge Modoc County Superior Court 2095 East Street Alturas, CA 96101

Dear Citizens and Judge Dier:

The Modoc County Grand Jury (Jury) for the fiscal year 2002-2003 agreed to exercise its authority by producing reports: a written report to the public, and special reports with documentation to the U.S. Attorney General, Internal Revenue Service, California State Department of Justice, Franchise Tax Board, Contractors License Board, Water Resources Control Board and Attorney General. Jurors spent many more hours than anyone expected-attending meetings, conducting interviews, researching and reviewing documents, and writing reports. In all, the panel convened sixteen times between November 7, 2002 and July 8, 2003; conducted scores of investigative meetings and interviews by two or more Jurors; and collectively invested more than 3,000 person hours.

The Jury received eleven citizen complaints, addressing issues affecting two different local entities: the Hot Spring Valley Irrigation District and Public Guardian/Conservator. The Jury also investigated particular issues involving these entities: County Road Department, Modoc Medical Center, Surprise Valley Health Care District, County/City Planning Department, Modoc County Library and County Auditor/Recorder Office.

The California Penal Code requires each Grand Jury to review conditions annually for confinement at detention facilities within the county. Jurors evaluated inmate services and facilities by touring the Modoc County Jail and Devils Garden Conservation Camp.

This 2002-2003 Grand Jury encountered many obstacles pursuing citizen interests, key among them:

- 1) 7-month term of office because the Modoc County Superior Court was lacking one judge.
- 2) Insufficient budget to obtain independent counsel, or potentially pursue criminal investigations after District Attorney, County Counsel and Superior Court Judge declared conflicts.

Members of this Grand Jury assembled as nineteen individuals with varying ages, interests and backgrounds, taking an oath of office bound by law and strict confidentiality. All participated as equals, respecting the institution of the Grand Jury, where decisions are made by the panel (at least twelve of nineteen members in agreement). Thus, the 2002-2003 Grand Jury submits this final report speaking with one voice.

Sincerely,
Pam Couch
Foreperson

2002-2003 Modoc County Grand Jury

Susan Bunyard	Peggy Page
Pam Couch	Robert C. Pedotti
Sharon Crabtree	Mary E. Rose
Eleanor Dorton	Carol Sharp
Ernest Hawes	Sophie Sheppard
Richard Hughes	Gerald Thomas
Todd King	Jamie Wheeler
Jim Laacke	Sandra J. Wilson
Michael Mason	Toni Ziegler
Harold Montague	

Notice to Respondents

Response Requirements

On January 1, 1997, an extensive change in the legal requirements affecting respondents and responses to Grand Jury Findings and Recommendations took effect (California Penal Code § 933.05). Each Respondent identified in this report should become familiar with the law and, if in doubt, should consult legal counsel before responding.

How to Respond to Findings

For the assistance of all Respondents, California Penal Code § 933.05 is summarized as follows:

The Respondent (person or entity) must respond to Findings in one of two (2) ways, stating that:

1. You agree with the Finding.
2. You disagree wholly or partially with the Finding, in which case the response shall specify the portion(s) of the Finding that is disputed, and shall include an explanation of the reasons for disagreement.

How to Report Action in Response to Recommendations

Recommendations by the Grand Jury require action(s). The Respondent must identify action(s) on all recommendations in one of four (4) ways, stating that the recommendation:

1. Has been implemented, with a summary of activities.
2. Has not yet been implemented, but will be implemented in the future, with activities and time frame for implementation.
3. Requires further analysis. In such case, the law requires a detailed outline of the analysis or study and time frame not to exceed six (6) months. Further, the complete analysis or study must be submitted to the officer, director or governing board of the entity being investigated.
4. Will not be implemented, because it is either unwarranted or unreasonable with an explanation(s) and supporting facts.

Grand Jury Reports--

Audit

Areas of Study

County Auditor and Recorder,
County Department of Social Services (DPS S)
County Library
County Public Guardian/Conservator (PG/C)

General Resort

Grand Jurors met separately with the County Auditor/Recorder, Librarian, and Public Guardian/Conservator to review these respective functions:

1. General operations of the Auditor/Recorder's Office;
2. Handling and accountability of endowment funds received by the County Library; and
3. Handling and accountability of Conservatee assets managed by the DPSS and PG/C.

Issues

1. *Auditor/Recorder*- Jurors toured the department, and examined the following specifics:
 - a. Departmental organization
 - b. Financial structure
 - c. Hiring practices
 - d. Fees charged to each department
 - e. Existing "checks and balances"
2. *Librarian* - Jurors met with the County Librarian to discuss endowment funds, their handling and accountability by the Auditor/Recorder.
3. *Public Guardian/Conservator*-Jurors met with the PG/C to discuss Conservatee funds and property management.

Findings

1. *Auditor/Recorder*
 - a. Office Organization - Jurors observed that the office functioned at a professional level. The procedures for accounting of blank checks, for Orders to Draw (OTD), and for mailing warrants were found to be exemplary.
 - b. Financial Structure - Jurors learned that the Auditor/Recorder received recognition from the California State Controller's Office for achieving excellence in financial reporting for each of the past three years.
 - c. Auditor/Recorder Hiring Practices- Jurors discovered that when a position needs to be filled, the Auditor/Recorder advertises in the local paper and on the County Supervisors Association of California web site. After the closing date, applications are screened

in-house for qualifications. A background check and later panel interview are conducted of qualified applicants, before the position is filled.

- d. Administrative Fee- Once per year, each department is charged an administrative fee for accounting services, based on OMB Publication A-87 Guidelines for Cost Analysis.
- e. Check and Balances"- Proper safeguards exist for accuracy and fraud protection.

2. *Library*

- a. Endowment Funds- Jurors found that the County Board of Supervisors must approve bequeathals and donations prior to acceptance for deposit into Library funds. The Library codes each OTD to track spending of specific funds.
- b. Accountability of Auditor/Recorder- The Librarian had no complaints with the Auditor/Recorder office.

3. *Public Guardian/Conservator and Social Services*

- a. During an interview with the PG/C, Jurors learned that Conservatee funds are mingled in one bank account outside jurisdiction of the Auditor/Recorder. Further, no evidence was provided to show that an independent auditor ever examined the external bank account.
- b. The Director of Social Services and one account-technician are responsible for managing Conservatee funds. Jurors found that bills were not paid in a timely manner historically, causing late charges to be assessed against Conservatee funds.
- c. Jurors were advised that the DPSS and PG/C offices lack staffing and resources to handle Conservatee affairs and finances effectively and efficiently.

Recommendations

1. Auditor/Recorder Office- No recommendations
2. County Library - No recommendations
3. Department of Social Services and Public Guardian - The Grand Jury recommends that an independent audit be conducted annually of all Conservatee funds; that written procedures be developed with specific roles, responsibilities and time frames for actions; and that additional staff hours be assigned to meet demands for timely payment and improved accountability.

Respondents

1. County Auditor/Recorder
2. County Librarian
3. Department of Social Services with copies of independent audit report of Conservatee funds and detailed procedures for timely payment of their obligations.
4. Public Guardian/Conservator with copies of independent audit report of Conservatee funds and detailed procedures for timely payment of their obligations.

General Government

Area of Study

Hot Spring Valley Irrigation District (HSVID or District)

Issues

Three (3) separate complaints were received during this Grand Jury term from individuals alleging that the HSVID Board of Directors and employees committed various acts of misconduct.

1. On January 5, 2003, the Jury met with the first complainant to detail issues of the complaint, identified as the following questions:
 - a. Do HSVID employees and/or Water Master coordinate the release of water into the Pit River?
 - b. Is the District responsible for damages caused to complainant because of such actions?
 - c. Is HSVID required to provide records of the water releases and resulting payments to the public?
 - d. Is the HSVID Board of Directors required to be elected by the residents of the division members represent, or can Board Members be appointed?
 - e. Can Board Members perform work for the District, and receive compensation?
 - f. Does HSVID have an established bidding policy and procedure to hire contractors to perform work for the District? What is that policy and procedure? Was it used? If not, why not?
 - g. Is the current Water Master a District employee or an independent contractor?
 - h. Is the current presiding Judge of the Modoc Superior Court biased against the complainant?
 - i. Is HSVID an independent or dependent Special District?
 - j. As such, are there conflicts of interest when a District Board Member also serves on the Modoc County Board of Supervisors?
2. On January 6, 2003, Jurors met with the second complainant to clarify complaint issues, detailed by the following questions:
 - a. Must residents of each division elect members of the HSVID Board of Directors to represent them, or can they be appointed?
 - b. Can Board Members perform work for the District, and receive compensation?
 - c. Does HSVID have an established bidding policy and procedure to hire contractors to perform work for the District? What is that policy and procedure? Was it used? If not, why not?
 - d. Is HSVID required to provide records of the water release and resulting payments to the public?
3. On March 14, 2003, the Jury met with the third complainant to understand complaint issues, identified through these questions:
 - a. Did HSVID "conspire" to withhold water from Big Valley water users?
 - b. Do Big Valley Ranches and/or Malacha Power own property in Modoc and/or Lassen counties?
 - c. Does/did HSVID use increased channel storage (resulting from dam rehabilitation financed directly by Big Valley Ranches) to "deprive" downstream users, and simultaneously retain water in the Big Sage Reservoir and later facilitate surge releases for power production after the irrigation season?

- d. Does/did HSVID Board Members, staff or contractors receive payments to release or coordinate water release for downstream power production?
- e. Are/were such payments equitably distributed to all members of the HSVID?
- f. Can these payments be seen as "incentives" for HSVID and related parties to purposefully coordinate water release for power production, and not for irrigation and stock uses?
- g. Have HSVID Board Members and/or employees received compensation or monies from any hydroelectric company or related entity for goodwill, goods or services?
- h. If so, what were amounts of and reasons for such compensation or monies? For delivered or promised goodwill, goods, services or whatever reasons?

Procedures Followed

During their investigations, Jurors carried out these activities for the following defined purposes:

1. Interviews with three complainants in order to:
 - a. Establish the nature and meaning of issues addressed in each complaint.
 - b. Confirm Juror understanding of issues and complaint.
 - c. Clarify recent activities or actions taken to address matters of concern.
2. Consultations with the California Department of Justice, Office of the Attorney General to:
 - a. Request legal advice and alternatives for possible Jury actions;
 - b. Solicit clarifications about the California legal system, and locate or interpret governing statutes, laws and regulations;
 - c. Request counsel for recommendations or avenues to obtain independent counsel and legal advice for the Grand Jury.
3. Interviews with Modoc County District Attorney
4. Interviews with Modoc County Counsel
5. Interviews with Hot Spring Valley Irrigation District Board Members and staff, plus several visits to the District office to obtain information about these subjects and District practices:
 - a. Election procedures
 - b. Water regulation and release methods
 - c. Bidding and contract procedures
 - d. Bookkeeping system and records
 - e. Policy and procedure manual
 - f. Incompatible offices
 - g. Current District bylaws and conformance
6. Collect information and documents from various complainants, private individuals, State agencies, acting counsel and many other sources.

Findings

1. HSVID follows established election procedures, although there have been no contested elections in more than ten years.
2. Water regulation and release methods of the HSVID have compromised water rights of downstream users.
3. HSVID Board has violated State and County policies and procedures for competitive bidding and contract award, which may also include violations of State Contractors Board regulations by a HSVID Board Member.
4. HSVID has not conducted an independent audit during the past ten years.
5. The District Board Members:
 - a. Did not comply with appropriate conflict of interest policies and regulations;
 - b. Have not filed timely Statements of Economic Interest (California Fair Political Practices Commission, Form 700), as none could be located, and previous requests for exemption have not been granted according to counsel.
6. District does not have a complete procedure manual.
7. The California State Attorney Generals Office has granted a Quo Warranto procedure to a private attorney to proceed with the incompatible-office charge.
8. District bylaws are outdated and do not conform to current statutes.

Recommendations

1. HSVID should continue to follow election procedures. Voting members and Board Members must be resident owners as named on property deeds. District should continue to thoroughly advertise any openings and allow all candidates equal opportunity.
2. Board Members should refrain from performing compensated work and contracts for District. HSVID should solicit bids for contracts over \$10,000.
3. HSVID should have an annual independent audit as required by District bylaws.
4. The HSVID Board Members should complete Form 700 Statement of Economic Interests.
5. HSVID should update bylaws to conform to current statutes and should update District Procedures Manual.

Action

1. Information on HSVID actions collected by the Grand Jury has been forwarded to the appropriate Federal and State agencies with requests for further investigation.

Respondent

Hot Spring Valley Irrigation District

Areas of Study

County Planning Department
City planning functions
County Economic Development
City economic development activities

General Report

The Grand Jury interviewed the County Planning Director, who also serves as City Planning Director, Modoc County Economic Developer and City Economic Developer, and oversees the Local Agency Formation Commission. Jurors also interviewed the City Clerk and City Attorney.

Issue

There is potential for conflicts of interest serving multiple governing boards and interest groups while performing similar or related professional activities, particularly when interests and ordinances differ among public entities.

Findings

I. The Doctrine of Incompatible Offices does not cover positions held as employment, only public officials and offices. 2. The County of Modoc and City of Alturas created a Joint Power Agreement for services with annual payment and they continue to support it.

Recommendations

The County and City should consider crafting separate or joint resolutions, or public information materials to define their agreement with respect to planning and economic development activities, as citizens present this issue to Grand Juries in Modoc County annually.

Respondents

County Board of Supervisors
City Council
County (and City) Planning Director/Economic Developer

Health and Human Services

Area of Study

County Department of Social Services (DPSS)

General Report

The Grand Jury received six formal and two informal complaints pertaining to the Modoc County Public Guardian/Conservator (PG/C). Jurors interviewed the County Director of Social Services, PG/C and staff of the Surprise Valley Health Care District; reviewed hiring procedures and citizen complaints within DPSS and visited the DPSS and Surprise Valley Health Care facility.

Issues

Collectively, complaints questioned the following issues:

1. Legality of Conservatee placement
2. Lack of communication with clients, families and health institutions
3. Qualifications of current Public Guardian
4. Timely payment of Conservatee bills
5. Family visitation rights
6. Potential conflicts involved with familial relationship between Modoc County Counsel and Public Guardian/Conservator
7. Inventories, audits and management of Conservatee assets

Findings

1. Placement of individuals into Conservatorship was legal.
2. Individuals relinquishing Conservatorship to the State are clearly informed of their rights. Further, individuals may petition the Court to secure Conservatorship.
3. However, lack of communication and understanding exists between DPSS and interested parties.
4. The DPSS followed proper procedures during recruitment of the current Public Guardian, who was hired subject to successful completion of education requirements.
5. The DPSS has not made timely payments of Conservatee bills.
6. Conservatee property has not been properly inventoried, and is stored at County expense.
7. The Public Guardian/Conservator is supervised directly by the Director of Social Services.
8. There are incomplete records of Conservatee assets.
9. Family visitation rights are administered legally.

Recommendations

1. Prepare educational materials to inform individuals relinquishing Conservatorship to the State, emphasizing that they carefully read Public Guardianship Provisions (Probate Code § 2351-2358).
2. Develop procedures to effectively and efficiently manage Conservatee funds, paying their obligations in timely manners.
3. Any late charges incurred are the financial responsibility of the County and not the Conservatee.
4. Complete Conservatee asset inventories within time period required by law.
5. Inventory, properly identify, manage and dispose of Conservatee property according to law.
6. Provide training in public relations to employees.
7. Dedicate additional resources to support Conservatorships.
8. Conduct independent audits of all Conservatee accounts annually and when staff change positions.
9. County of Modoc ensures that PG/C has independent (and non-familial) legal counsel.

Respondents

County Board of Supervisors
Department of Social Services
Public Guardian/Conservator

Hospitals

Modoc Medical Center (MMC)

General Report

Grand Jurors interviewed the MMC Administrator twice, and conducted a brief tour of the hospital and Skilled Nursing Facility. In addition, jurors attended MMC Board of Trustees meetings from November 2002 through June 2003.

Issues

1. Billing Procedures
2. Clinic reorganization

Findings

1. The Grand Jury's requests to review the MMC billing were not honored by the Administrator. 2. The Jury was given a tour of the clinic, which has been reorganized to accommodate the addition of permanent doctors.

Recommendations

1. This Grand Jury recommends that the 2003-2004 Grand Jury review the billing department, procedures and performance in depth. 2. MMC should provide regular updates (press releases) to the community about the clinic reorganization process in addition to reports during County Board of Supervisors meetings.

Respondent

Modoc Medical Center

Surprise Valley Health Care District

General Report

Grand Jurors met informally with the Administrator and key employees at the facility. Jurors also attended Board meetings from September 2002 through May 2003.

Issues

Physician recruitment

Findings

After one year of service, the permanent doctor resigned and moved from the area. Another doctor has been recruited who is scheduled to arrive in August. In the interim, full-time care is provided through contract physician services.

Recommendations

None

Respondent

Surprise Valley Health Care District

Law Enforcement

Areas of Study

Modoc County Sheriffs Office- Modoc County Jail
State Department of Corrections - Devils Garden Conservation Camp

General Report

The Grand Jury visited both correctional facilities in Modoc County. There were no complaints regarding law enforcement filed during the fiscal year.

Modoc County Sheriff's Office

Issue

Required annual inspection of Modoc County Jail

Procedure and Findings

Members of the Grand Jury met with the Sheriff and Under-Sheriff, who discussed ongoing operations of the jail, answered questions, and pointed out that courthouse security was a matter of concern. The week before the Grand Jury visit, the California Board of Corrections conducted a biennial inspection of the county jail; its recommendations are being addressed. Jurors toured the jail. Jurors learned about We 911 System, which serves most areas of the county except isolated places without hard phone lines.

Recommendations

None

Respondent

Modoc County Sheriff

Devils Garden Conservation Camp

Issue

Required annual inspection of detention facility

Findings

Members of the Grand Jury visited the Devils Garden Conservation Camp, and observed excellent cooperation and working relationships between the California Departments of Corrections and Forestry staff. Additionally, jurors noted concerted efforts to purchase as many supplies as possible from local businesses.

Recommendations

None

Respondent

California Department of Corrections

Public Works

Areas of Study

City of Alturas Public Works
Modoc County Road/Public Works Departments

General Report

The Grand Jury interviewed the City Public Works Director and reviewed job descriptions, hiring procedures, status of past, ongoing, and future projects, and available funding sources. Jurors interviewed the Modoc County Road Commissioner/Director of Public Works, Deputy Road Commissioner and Deputy Public Works Director. Jurors reviewed organization charts, job descriptions, hiring procedures, status of projects and available funding sources.

Issue

Clarification about procedures for inclusion of substandard roads into County-maintained system following such Board of Supervisor action and subsequent reversal.

Findings

1. City of Alturas

- a. City has a stable workforce.
- b. Streets are primarily funded by Federal Transportation Enhancement Activities funds that will not be available until August 2003, delaying some projects.
- c. Ninety-five percent of the City's water system is less than five years old and back-up generators are being installed on some wells to insure water availability in emergencies.
- d. The sewer treatment plant is old and in violation of its discharge permit. Grant funding is being pursued to install a state-of-the-art "zero discharge" facility.
- e. The Department finds the City Council responsive. The team effort in government citywide is excellent, and the shared equipment policy with local contractors is mutually beneficial.

Modoc County Road Department/Public Works

2. The combined workforce has a very low turnover.

- a. Fifty percent of Public Works effort is expended on solid waste management.
- b. County roads are maintained by 51.5 % federal, 42 % state and 6.5 % county funds (with 0% from property taxes).
- c. Uncertainty of Federal Surface Transportation Act funding constrains Road Department financially.
- d. Equipment upgrades to improve productivity and worker safety are a priority.
- e. Seventy-five percent of road contracts go to local contractors with a \$1,000 bid preference.
- f. Both departments rate the Board of Supervisors as cooperative and the collective labor force as excellent.

- g. The County of Modoc has now established standards for acceptance of roads into the maintained-mileage system.

3. *In general*

- a. Hiring procedures and practices for these City and County departments follow standards for public agencies.
- b. Turnover in the workforce occurs primarily upon retirement and upon promotion from within.
- c. The City and County departments rely heavily on State and Federal financial support; they are currently seeking all available funding.

Recommendations

- 1. The City Council should continue to support efforts to update the sewer treatment plant.
- 2. The County Board of Supervisors should continue to cooperate with Public Works Department and support recommendations of Road Department.

Respondents

City Council
City Public Works
County Board of Supervisors
County Road Department