



# Shasta County

"Water Matters"

## BOARD OF SUPERVISORS

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July 19, 2016

The Honorable Gregory Gaul  
Presiding Judge, Shasta County Superior Court  
1500 Court St., Rm. 205  
Redding, CA 96001



Dear Judge Gaul:

**Re: Response of Board of Supervisors to Fiscal Year 2015-2016 Grand Jury Report**

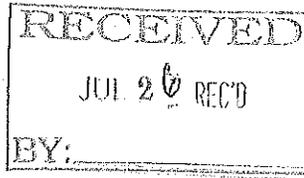
The Shasta County Board of Supervisors appreciates the time and dedication which the 2015-2016 Grand Jurors contributed to their charge. The following findings and recommendations are under serious consideration and discussions are being held regarding solutions to any unresolved problems.

In providing this response, it must be noted that the Shasta County Grand Jury has failed to clarify whether it is seeking a response from the Board of Supervisors acting on behalf of the County, or whether it is also seeking a response from the Board of Supervisors acting as the Board of Directors for the Shasta County Water Agency. The Shasta County Water Agency is a separate legal entity from the County. *See Water Code Appendix § 83-21.* By statute, the Board of Supervisors serves as the Board of Directors of the Shasta County Water Agency. *See Water Code Appendix § 83-22.*

For purposes of ease of reference and clarity, the Board of Supervisors shall separate its responses by referring to "County" when it is responding on behalf of the County of Shasta and "Water Agency" when it is responding on behalf of the Shasta County Water Agency. A combined response shall refer to both the "County" and the "Water Agency."

It should also be clarified that the County Service Areas (CSAs) discussed in this response are not separate legal entities. They are part of the County of Shasta.

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**RESPONSES AND FINDINGS**

**A. Troubled Waters, Water Matters**

**FINDINGS**

*FI. The Water Agency/CSA Master Contracts with reference to U.S. Bureau of Reclamation Master Contract #14-06-200-3367A are outdated.*

**Response:** The County and the Water Agency disagree partially with the finding in so far as it relates to CSA contracts and to the extent it is suggested that the contracts are not enforceable or effective.

Response as it relates to CSA No. 3-Castella and CSA No. 6-Jones Valley.

The Shasta County Water Agency initially entered into a Master Contract with the U.S. Bureau of Reclamation for water from the Central Valley Project (CVP or Project) on June 30, 1967 (The 1967 Master Contract).

Subsequent to entering into that 1967 Master Contract, the Shasta County Water Agency entered into subcontracts in 1980 with the County of Shasta relating to the provision of Project Water from the CVP for CSA No. 6-Jones Valley and for "Replaced Water" for CSA No. 3-Castella. "Replaced Water" is Project Water being provided at times when CSA No. 3-Castella is not otherwise entitled to divert water.

While the Master Contract between the Shasta County Water Agency and the Bureau of Reclamation was renewed in 2005 (the "2005 Master Contract"), the Bureau of Reclamation, the County of Shasta, and the Shasta County Water Agency have all continued to recognize the ongoing validity of the 1980 subcontracts relating to Replaced Water and Project Water from the CVP for CSA 3 (Castella) and CSA 6 (Jones Valley). In that sense, the subcontracts are not "outdated."

The County and the Water Agency agree it would provide clarity to update the 1980 subcontracts for CSA 3 (Castella) and CSA 6 (Jones Valley) for Replaced Water and Project Water from the CVP to reflect the 2005 Master Contract.

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Response as it relates to CSA 23 (Crag View)

In 1973, the Shasta County Water Agency entered into a subcontract to provide Replaced Water from the CVP to the Crag View Community Services District. In 1992, the Crag View Community Services District was dissolved and it became County CSA 23, with the County assuming this subcontract.

While the Master Contract between the Shasta County Water Agency and the Bureau of Reclamation was renewed in 2005 (the "2005 Master Contract"), the Bureau of Reclamation, the County of Shasta, and the Shasta County Water Agency have all continued to recognize the ongoing validity of the subcontract relating to Project Water for CSA 23 (Crag View). In that sense, the subcontract is not "outdated."

The County and the Water Agency agree that it would provide clarity to update the subcontract for CSA 23 for Replaced Water from the CVP to reflect the 2005 Master Contract.

Response as it relates to CSA 25 (Keswick)

In 1964, the Keswick Community Services District had a contract with the Bureau of Reclamation for Project Water (the "Keswick Contract"). Upon the dissolution of the Keswick Community Services District, the County of Shasta assumed the Keswick Contract with the Bureau of Reclamation for the benefit of CSA 25.

In 2005, the County of Shasta assigned the Keswick Contract to the Shasta County Water Agency. This assignment was reflected in the 2005 Master Contract between the Bureau of Reclamation and the Shasta County Water Agency. This assignment was done in order to avoid having both the Water Agency and the County be contractors on the 2005 Master Contract, but was not intended to disturb the ongoing distribution of water to CSA 25.

The County and the Water Agency agree that it would provide clarity to establish a subcontract with the County and the Water Agency for CSA 25 for water from the CVP.

**F2. *The Water Agency had no contractual right to purchase and charge water beyond the specific months (June and July) identified under Crag View CSA "Replaced Water Contract."***

**Response:** The County and the Water Agency disagree wholly with this finding.

The Crag View CSA "Replaced Water" Contract addresses the provision of CVP water by the Water Agency to the County (for distribution to Crag View CSA) through the Water Agency's Master Contract with the Bureau of Reclamation. It, in no way, places any sort of restraint on the Water Agency to contract for water through another source, such as the McConnell Foundation, and then provide that water to the County for distribution to Crag View CSA.

**F3. *The Water Agency over-purchased water from McConnell Foundation during 2014 and 2015 on behalf of Crag View CSA 23 and Keswick CSA 25, causing the CSAs to be overcharged. In addition the Water Agency absorbed losses from over-purchases.***

**Response:** The Water Agency and the County disagree wholly with this finding.

In 2014 and again in 2015, the Water Agency purchased 250 acre-feet of water from the McConnell Foundation for resale to the County (and subsequent distribution to the CSA's). Those purchase volumes were established in advance in accordance with industry practice ("use it or lose it"). The Water Agency provided this water to the County, which parceled out this water to four CSA's on an as-needed basis. They required 183 acre-feet and 193 acre-feet of additional supplies in 2014 and 2015 respectively, most of which came from McConnell Foundation transfers. The CSA's were charged in arrears based upon their actual consumption. Expenses for unused water were not charged to the CSA's but were absorbed by the Water Agency. Had the Water Agency under-purchased, the CSA's would have had to divert without right and potentially become subject to substantial fines and penalties or shut down. The unused water largely arose from conservation in Keswick and Jones Valley and represented a prudent safety margin.

**F4. *The 2014 overcharge for Crag View CSA 23 totaled \$1,450.69, and Keswick CSA 25 totaled \$16,872.34. Both Crag View CSA 23 and Keswick CSA 25 are due a refund. The projected amount of over-purchase and refund due to the CSAs will contractually occur for 2015.***

**Response:** The County and the Water Agency disagree wholly with this finding.

CSA #23 Crag View is not entitled to a refund. The Grand Jury's calculations are shown on Page 5 of the Grand Jury report. Those calculations contain a math error ("2.10 acre-feet @ \$52.65/acre-foot = \$1,105.65"), contain an incorrect volume (34.63 acre-feet), contain an incorrect billing amount (\$4,274.25), and overlook the fact that the CSA was only entitled to divert 5.75 acre-feet at the bargain rate of \$52.65/acre-foot. The rest of their demand had to be met from other sources and/or at greater cost. The Crag View CSA master meter recorded 45.05 acre-feet of water use during the 2014 curtailment period (May to November). Monthly reports to the Bureau totaled to a similar value (44.22 acre-feet). The Water Agency charge to the CSA was \$3,279.17. Subsequent analysis has shown that the charge should have been \$10,295.76; therefore CSA 23 Crag View was undercharged by \$7,016.59 for 2014. No refund was or is appropriate.

On April 26, 2016, the Water Agency found that CSA #25 Keswick had been overcharged by \$11,703.43 for its water use in 2014. The Board of Supervisors, acting as the Board of Directors for the Water Agency, granted a corresponding credit to the CSA. No further refunds are appropriate.

The 2015 billings have been prepared, reviewed and processed. The Water Agency reviewed them at its April 26, 2016 meeting. No deficiencies in the 2015 billings have been noted. Because of the need to forecast actual water use when entering into a purchase contract some over-purchasing will occur.

**F5.** *The total loss absorbed by the Water Agency for 2014 is projected to similarly occur for 2015.*

**Response:** The Water Agency disagrees partially with this finding.

The Grand Jury report concluded that the Water Agency absorbed losses of \$31,654.43 annually on water sales to the CSA's. As reported to the Board of Supervisors at its April 26, 2016 meeting, the Water Agency actually incurred losses of \$23,985 and \$18,225 in 2014 and 2015 respectively. Using water for which the Water Agency has no allocation can result in heavy fines. Because of the need to forecast water demand as well as purchase sufficient water to prevent exceeding the legal allocation when negotiating a purchase contract, it is almost inevitable that some excess water will be purchased, resulting in a loss

to the Water Agency but such excess purchases are generally preferable to heavy fines or a loss of ability to provide water.

**F6.** *The same employee preparing the annual water agency billings to the CSAs is also approving the billings for payment. This lack of segregation of duties does not provide proper checks and balances to prevent errors.*

**Response:** The County and the Water Agency disagree wholly with the finding.

CSA utility staff reads the meters and provides the data to Water Agency accounting staff. Water Agency accounting staff prepares monthly reports to the U.S. Bureau of Reclamation and prepares annual billings to the County. Water Agency engineering staff reviews and approves the annual County billings.

**F7.** *The Board of Supervisors acting as the Board of Directors of the Water Agency appears to be in possible violation of Government Code 53756, as it does not comply with all four elements for an automatic rate increase. Automatic rate increases can only occur for wholesale water purchases from a "public agency" (emphasis added). The McConnell Foundation water purchases appear to violate the provisions of the Government Code, because the McConnell Foundation is a private entity.*

**Response:** The County and the Water Agency disagree wholly with this finding.

First, the finding indicates that there may be a possible violation of Government Code section 53756 by "The Board of Supervisors acting as the Board of Directors of the Water Agency." However, Government Code section 53756 deals with the setting of water fees or charges by a public agency. The Water Agency has not set any fees or charges for the use of water. The Water Agency has provided water to the County (for distribution to the County's CSA's) and it is the County that has established fees or charges on the users of that water.

Second, the Grand Jury Report suggests that a rate imposed by the County of Shasta might be in violation of a state law because the water it purchased did not come from a public entity. The assertion is incorrect. The County of Shasta obtained the water at issue from the Water Agency which is a separate, independent, legal and public entity. The Water Agency, in turn, provided the water to the County of Shasta. The Water Agency did not impose the rates at issue. It was the Water Agency, not the County, that contracted for purchasing water from the McConnell Foundation. The Grand Jury either appears

to have misunderstood the transaction or failed to acknowledge the separate and independent status of the two public entities involved.

In any event, Government Code section 53756 only comes into play when an agency providing water service adopts a schedule of fees or charges authorizing automatic adjustments that pass through increases in wholesale charges for water. The County, in establishing the rates charged to the various CSA's has not adopted any schedule of fees with automatic adjustments. When something is "automatic," it operates independent of external influence or control. Instead, certain rate ordinances adopted by the County provide for charges for extraordinary commodity costs when certain contingencies are satisfied, as identified in the applicable ordinances. If the contingencies are not satisfied, there is no extraordinary commodity cost. As such, the extraordinary commodity costs are not "automatic" and are not subject to Government Code section 53756.

**F8.** *Public Works failed to schedule timely inspection of the newly installed Crag View CSA 23 Water Treatment Plant with the State Water Resources Control Board.*

**Response:** The County disagrees wholly with the finding.

The State Water Resources Control Board, Division of Drinking Water (DDW) oversees Crag View CSA. It is an autonomous state agency. It schedules and conducts inspections at its sole discretion.

**F9.** *Public drinking water for Crag View CSA 23 has contaminant levels reported in the 2014 Consumer Confidence Report for both TTHM at 88.40, and HAA5 at 100, which exceeds the allowable levels of the State Drinking Water Regulations for safe drinking water.*

**Response:** The County disagrees wholly with the finding.

Crag View CSA 23 diverts raw water out of Little Castle Creek. Chlorine is added for disinfection. TTHM and HAA5 are byproducts of the resulting chemical reactions. Our state and federal governments have determined that TTHM and HAA5 may be harmful to certain populations if consistently consumed in concentrations in excess of the Maximum Contaminant Limits (MCL) of 80 ppb and 60 ppb respectively. Compliance shall be evaluated based upon the running annual arithmetic averages of the test results (California Code of

Regulations Title 22, Division 4, Chapter 15.5, Article 3, Section 64535.2(b)).  
The CSA has consistently met this standard.

Date	TTHM (ppb)	HAA5 (ppb)
03/02/14	54.2	74.0
05/27/14	28.4	30.3
09/01/14	20.2	12.0
09/01/14	16.7	11.7
11/30/14	88.4	100
Average	41.6	45.6
MCL	80.0	60.0

**F10.** *The Board of Supervisors appears to have failed to ensure that the CEO worked with staff and Jones Valley residents to see if some of the issues identified could be resolved.*

**Response:** The County disagrees wholly with the finding.

Over the last ten years, Public Works staff have attended over a hundred public meetings in the Jones Valley Fire Hall. These meetings were duly noticed per the Brown Act. Jones Valley items have been heard before the Board of Supervisors on a similar number of occasions. Mr. Lees has attended many of these meetings and has actively participated in the discussions.

**F11.** *The Shasta County Water Agency financial records reflect that it is sufficiently funded and covers expenses with appropriate cash flow to function independently from Public Works.*

**Response:** The County and the Water Agency disagree wholly with this finding.

Water Agency resources are insufficient to support an independent staff contingent. The Water Agency and related functions received substantial general fund support prior to their merger with Public Works.

It must be remembered that California law specifically authorizes the use of County employees to operate the Water Agency.

Water Code Appendix section 83-27 states that the "Director of Public Works," and other county officers, "and all their assistants, deputies, clerks, and employees, shall be ex officio officers, assistants, deputies, clerks and employees,

respectively” of the Water Agency “and shall respectively perform, unless otherwise provided by the Board, the same various duties for the Water Agency as for the County” in order to carry out the provisions of the Shasta County Water Agency Act.

Water Code Appendix section 83-28 also provides that the Board may, in its discretion, appoint county officers, agents, and employees, for the Water Agency and no county officer, agent or employee shall receive additional compensation for acting as a Water Agency officer, agent, or employee, except his actual and necessary expenses.

### RECOMMENDATIONS

**R1.** *The Grand Jury recommends that no later than September 30, 2016, the Board of Supervisors adopts a plan to ensure that the Shasta County Water Agency replaces all contracts for CSAs for wholesale water supply, as the U.S. Bureau of Reclamation Master Contract #14-06-200-3367A was replaced with Master Contract 14-06-200-3367ALTR1.*

**Response:** The recommendation will be implemented by June 30, 2017 by the County and the Water Agency, with the caveat that the County and the Water Agency cannot control the amount of time it may take for Bureau of Reclamation review and approval.

**R2.** *The Grand Jury recommends that no later than December 31, 2016, the Board of Supervisors conducts an audit of all CSA Master Contracts with the U.S. Bureau of Reclamation to ensure that water purchases are made as provided under the provisions of the Master Contracts.*

**Response:** The recommendation will not be implemented as it is not warranted.

There are no CSA Master Contracts with the U.S. Bureau of Reclamation. The Water Agency has a Master Contract with the U.S. Bureau of Reclamation and the Water Agency provides CVP water to the County CSA's through various subcontracts.

**R5.** *The Grand Jury recommends that no later than September 30, 2016, the Board of Supervisors initiates an internal audit of all financial transactions with the Water Agency to identify any and all losses not identified in the Grand Jury Report as a result of the over-purchase of water.*

**Response:** The recommendation has been implemented by the Water Agency. On April 26, 2016, the Board of Supervisors, acting as the Board of Directors for the Water Agency, reviewed 2014 and 2015 water purchases and sales and provided direction to staff

**R6.** *The Grand Jury recommends that no later than December 31, 2016, the Board of Supervisors reviews current practices to ensure that Public Works employees do not perform duties that allow both approving and overseeing their own work. This includes creating a policy to segregate duties to avoid conflicts of interest, loss of revenue, and mismanaged billing/purchasing procedures.*

**Response:** The recommendation has been implemented by the County and the Water Agency.

Public Works has consistently segregated the duties of preparing and approving the Water Agency billings. CSA utility staff reads the meters and provides the data to Water Agency accounting staff. Water Agency accounting staff prepares monthly reports to the U.S. Bureau of Reclamation and prepares annual billings to the County. Water Agency engineering staff reviews and approves the annual County billings.

**R7.** *The Grand Jury recommends that no later than September 30, 2016, the Board of Supervisors revises applicable County Ordinances for Castella CSA 3, Jones Valley CSA 6, and Keswick CSA 25 to remove any automatic rate increases if determined through legal review to be in violation of Government Code 53756. The recommendation includes review of all other CSA County Ordinances to ensure that the County is in compliance with the Government Code.*

**Response:** The recommendation will not be implemented as it is not warranted, as explained in the response to Grand Jury Finding F7. The rate ordinances comply with applicable law.

**R8.** *The Grand Jury recommends that no later than December 31, 2016, the Board of Supervisors obtains proof that corrective action was taken regarding the five findings in the State Water Resources Control Board 2015 Inspection Report of Crag View CSA 23 Water Treatment Plan.*

**Response:** The recommendation has been implemented by the County.

On November 25, 2015, a Corrective Action Plan (CAP) was submitted to the State Water Resources Control Board. That CAP has been implemented. The County has also tested and verified all customer-owned Backflow Prevention Devices.

**R9.** *The Grand Jury recommends that no later than September 30, 2016, the Board of Supervisors instructs the Public Works Director to develop written policies and procedures directing that all State Water Resources Control Board inspections of CSA facilities be scheduled and conducted in a timely manner to ensure public health and safe drinking water. The Grand Jury also recommends the Board of Supervisors annually review an inspection schedule of all CSAs under its authority.*

**Response:** The recommendation will not be implemented as it is not reasonable.

The California State Water Resources Control Board is an independent state regulatory agency. The County and the Water Agency lack oversight authority to compel their performance as explained in the response to Finding F8.

**R10.** *The Grand Jury recommends that the Board of Supervisors establishes and implements a plan for Crag View CSA 23 for immediate corrective action to reduce, now and in the future, levels of TTHM and HAA5, which exceed the State Drinking Water Regulations maximum contaminant levels for safe drinking water. Because the levels are hazardous to the public, contaminant levels should be brought within allowable levels by September 30, 2016.*

**Response:** The recommendation will not be implemented as it is not warranted.

The CSA has consistently complied with State Drinking Water Regulations related to TTHM and HAA5 as explained in the response to Finding F9.

**R11.** *The Grand Jury recommends that no later than December 31, 2016, the Board of Supervisors develops a written procedure that establishes a timeline when addressing concerns (such as the Community Advisory Board's request from April 3, 2013, meeting regarding a feasibility study where follow-up is required by staff to conclusion).*

**Response:** The recommendation will not be implemented as it is not warranted.

The Board of Supervisors has adopted Resolution 84-6 which sets forth procedures for the formation and operation of Community Advisory Boards.

*R12. The Grand Jury recommends that no later than December 31, 2016, the Board of Supervisors initiates a feasibility study to establish an independent Water Agency, separate from any County structure such as the Public Works, with its own independent staff.*

**Response:** The recommendation will not be implemented as it is not warranted.

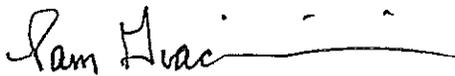
The Water Agency lacks a dedicated funding stream sufficient to support an independent staff contingent as detailed in the response to Finding F11. The Water Agency presently utilizes engineering and financial expertise from within Public Works on an as-needed basis. The Water Agency has undertaken large projects which would be beyond the resources of a small unit. The significant technical, managerial and financial challenges associated with the proposal clearly outweigh any potential benefits.

Furthermore, as explained in the response to Finding F11, state law specifically authorizes the use of County employees to staff the Shasta County Water Agency, without any additional compensation, except reimbursement for actual and necessary expenses.

This concludes the responses of the Shasta County Board of Supervisors on behalf of the County of Shasta to the FY 2015-2016 Grand Jury Report, Troubled Waters, Water Matters.

This also concludes the responses of the Shasta County Board of Supervisors acting as the Board of Directors of the Shasta County Water Agency to the FY 2015-2016 Grand Jury Report, Troubled Waters, Water Matters.

Sincerely,



PAM GIACOMINI, Chairman  
Board of Supervisors  
County of Shasta



PAM GIACOMINI, Chairman  
Board of Directors  
Shasta County Water Agency