

NEVADA COUNTY UTILITY FRANCHISES

REASON FOR INVESTIGATION

The Grand Jury wants to make certain that appropriate procedures and practices are in place to ensure that the county is receiving agreed-to fees from utility franchises operating within the county.

This report is a follow up on the recommendations from the 2000-2001 and the 2001-2002 Grand Jury reports on Nevada County Utility Franchises and on the continued lack of results by the Board of Supervisors (the Board) in accomplishing the recommendations outlined in the Grand Jury reports.

Additionally, two of the six utilities franchisees have now been audited, with significant underpayments discovered.

PROCEDURES FOLLOWED

The Grand Jury reviewed:

- County Code Chapter II: Franchises, revised March 7, 2000.
- Legal agreements with the six franchisees.
- California Integrated Waste Management Act of 1989, Government Code sections 40000-49602.
- The most recent annual reports from the franchise utilities.
- Past Board responses to the 2000-2001 and 2001-2002 Grand Jury reports of Utility Franchises.
- Minute Orders (MO) ¹ issued by the Board regarding Utility Franchises.

The Grand Jury conducted interviews with the current County Executive Officer (CEO), the Auditor-Controller and the County Counsel.

BACKGROUND

On June 13, 2001, the 2000-2001 Grand Jury issued a report on Nevada County Utility Franchises with recommendations as follows:

The responsible county officials should:

- 1. Review and update the County Code (Nevada County General Code Chapter II: Franchises) to:**
 - **Include all utility franchises operating within the county.**
 - **Establish a definitive method for calculating each franchise fee.**

¹ Minute Order is a directive by the Board to the County Executive Officer, a county agency, and/or a county department head

- **Establish procedures to insure that the county is receiving all agreed-to fees from franchises operating within the County. These procedures should include audits and/or other reviews of each franchise.**
2. **Perform the required audits and/or reviews, as stated in the updated County Code, of each franchise at the earliest opportunity.**

The 2001-2002 Grand Jury again investigated the Nevada County Utility Franchises and on June 18, 2002 the 2001-2002 Grand Jury issued a report with the following recommendations:

1. **The County Executive Officer should spearhead updating the existing County Code.**
2. **Once the County Code is updated, the Auditor-Controller should conduct regular audits of all county franchise fees.**
3. **The Auditor-Controller should have an employee in his department to audit and verify the accuracy of these franchise fees.**
4. **A realistic deadline should be established to get the analysis completed and the audits performed to ensure the county collects franchise fees correctly and in accordance with existing agreements.**

FINDINGS

1. The 2000-2001 Grand Jury in recommendation No.1 of the Franchise Utility Report stated:

“The responsible county officials should: Review and update the County Code (Nevada County General Code Chapter II: Franchises) to: include all utility franchises operating within the county; establish a definitive method for calculating each franchise fee; establish procedures to insure that the county is receiving all agreed-to fees from franchises operating within the County. These procedures should include audits and/or other reviews of each franchise.”

The Board on September 11, 2001 responded: “The recommendation has not been acted upon and requires further analysis to be completed by January 31, 2002. Implementation is anticipated by June 30, 2002.”

Subsequently the following occurred: The Board issued MO 01-70 on September 11, 2001 directing the County Administrator, the County Counsel and the Auditor-Controller to review the Grand Jury’s recommendations with implementation of the recommendations anticipated by June 30, 2002. On May 14, 2002 the Assistant CEO presented a report dated May 9, 2002 to the Board regarding late MO’s. This report included MO 01-70. The status presented on MO 01-70 was as follows: “Currently in

progress, we are currently updating many of the County Codes.” The Board accepted the Report and MO 01-70 was closed. Also, on May 14, 2002, the Assistant CEO signed off that he had complied with the MO. On June 10, 2002, the County Counsel signed off that he had complied with the MO with a note that he was “awaiting draft changes.” In addition, on June 10, 2002, the Auditor-Controller stated in an e-mail to the Clerk of the Board: “I am concerned about signing off as completed. To my knowledge, my office has not been working with the County Counsel and CEO, and I have not seen any proposed changes to the Admin or Personnel Code. I think that someone should call a meeting to discuss what, if any, work done on this issue?”

On May 29, 2002, the Assistant CEO provided an update to the 2001-2002 Grand Jury Foreman regarding MO 01-70. He stated that the status of MO 01-70 was as follows: “Currently in progress, we are reviewing and drafting updates to some of the County Codes, including the Administration and the Personnel Code.” The Assistant CEO also stated: “We believe that the purpose of these minute orders has been substantially fulfilled and recommended that the Board formally close them at the May 14th regular Board of Supervisor’s meeting.”

2. The 2000-2001 Grand Jury in recommendation No. 2 of the Franchise Utility Report stated:

“Perform the required audits and/or reviews, as stated in the updated County Code, of each franchise at the earliest opportunity.”

On September 11, 2001, the Board in response to this recommendation stated: “The County Administrator is additionally directed to review other county utility franchise agreements and County Code requirements and determine if and to what extent an audit or examination of franchises books is justified. Any required financial reviews or audits are also to be completed by June 30, 2002.”

In addition, on September 11, 2001 the Board issued MO 01-71, 01-72 and 01-73 directing the County Administrator to carry out the Board’s response to the 2000-2001 Grand Jury recommendation No. 2 by June 30, 2002.

3. The 2001-2002 Grand Jury issued *another* report on Utility Franchises with four recommendations. The first recommendation stated:

“The County Executive Officer should spearhead updating the existing County Code.”

The Board on September 10, 2002 responded to this recommendation by stating: “The recommendation has not yet been implemented but a plan and schedule to update the Code will be developed by the CEO and presented to the Board by January 14, 2003.” In addition, on September 10, 2002, the Board closed MO 01-71, 01-72, and 01-73 that were issued as a result of the 2000-2001 Grand Jury recommendations on Utility Franchises which had return dates of June 30, 2002 but had yet to be acted upon. The

Board then issued a new MO 02-38 that incorporated MO 01-71, 01-72 and 01-73. This new MO directed the CEO, the Auditor-Controller, and the County Counsel to take action on Recommendations No. 1 & No. 4 of the 2001-2002 Grand Jury report. The CEO was directed to report to the Board by January 14, 2003 with a plan and a schedule for accomplishing the review and update of the Code.

On February 4, 2003, the Board accepted a report from the CEO addressing the requirements in MO 02-38 (see Addendum A). Pursuant to this report the Board closed MO 02-38.

4. The report on Utility Franchises by the 2001-2002 Grand Jury issued recommendation No. 2:

“Once the County Code is updated, the Auditor-Controller should conduct regular audits of all county franchise fees.”

The Board responded on September 10, 2002 by stating: “The recommendation will not be implemented as stated.”

The Board issued MO 02-38 that directed the CEO, in coordination with the Auditor-Controller as follows: “You are hereby directed, in coordination with the Auditor-Controller, to evaluate the Grand Jury response and make a recommendation to the Board as to the implementation of a regular franchise fee audit program and/or other alternatives to regular formal audits.” A return date of January 14, 2003 was specified on MO 02-38.

On February 4, 2003, the Board accepted a report from the CEO addressing MO 02-38 (see Addendum A). Pursuant to this report the Board closed MO 02-38.

5. The report on Utility Franchises by the 2001-2002 Grand Jury issued recommendation No. 3:

“The Auditor-Controller should have an employee in his department to audit and verify the accuracy of these franchise fees.”

The Board on September 10, 2002 responded to this recommendation by stating: “The recommendation requires further analysis to be completed by February 28, 2003.”

On September 10, 2002, the Board issued MO 02-39 directing the CEO as follows: “You are hereby directed in cooperation with the Auditor-Controller and the Director of Personnel, to determine and report back to the Board by February 28, 2003 if there is a need for additional staffing in the Auditor-Controller’s office to audit and verify the accuracy of the franchise fees. If additional staffing is required, the staffing increase will be considered as part of the FY 2003/2004 budget process.”

On February 4, 2003, the Board accepted a report from the CEO addressing MO 02-39 (see Addendum A). Pursuant to this report the Board closed MO 02-39.

6. The report on Utility Franchises by the 2001-2002 Grand Jury issued recommendation No. 4:

“A realistic deadline should be established to get the analysis completed and the audits performed to ensure the County collects franchise fees correctly and in accordance with existing agreements.”

On September 10, 2002, the Board responded to this recommendation by saying: “The recommendation has not yet been fully implemented, but will be as stated in the Board response to Recommendation Number 1. The CEO has been directed to develop, in cooperation with concerned departments and the Auditor-Controller, a work plan and schedule for accomplishing a review and update of the County Code regarding franchises and report back to the Board by January 14, 2003. The franchise fee audits are presently scheduled to be completed on September 30, 2002.”

On September 10, 2002, the Board issued MO 02-38, which directed the CEO, the Auditor-Controller and the County Counsel to take action on Recommendations No. 1 & No. 4 of the 2001-2002 Grand Jury report. MO 02-38 incorporated MO 01-71, 01-72 and 01-73 which were addressed to the County Administrator and were issued because of the 2000-2001 Grand Jury recommendations on Utility Franchises and which had return dates of June 30, 2002. No action had been taken on MO 01-71, 01-72 and 01-73. MO 02-38 directed the CEO to report to the Board by January 14, 2003 with a plan and a schedule for accomplishing the review and update of the Code.

On February 4, 2003, the Board accepted a report from the CEO addressing requirements in MO 02-38 (see Addendum A). Pursuant to this report the Board closed MO 02-38.

7. On July 12, 2002, in a letter to the Honorable Judge Ersel Edwards, the Auditor-Controller reported that he had received funding of \$20,000 on March 26, 2002 to perform franchise audits of AT&T and USA Media. He further reported that the county purchasing agent had approved two contracts with the Buske Group to perform the audits and that the expected completion date of the audits was August 31, 2002.
8. On October 30, 2002, C2 Consulting Services, Inc. provided a review of the cable services franchise fees received by the County of Nevada from USA Media Group LLC for the period April 1999 through June 2002. This review found an underpayment to the County of Nevada of \$24,837 including interest.
9. On January 13, 2003, C2 Consulting Services, Inc. provided a preliminary report of a review of the cable services franchise fees received by the County of Nevada from AT&T for the period October 1998 through September 2002. Although this report is still preliminary, it found an underpayment to the County of \$63,064 including interest.
10. The USA Media Group LLC and AT&T reviews were not concluded by the Board’s committed date of June 30, 2002 or by the expected completion date of August 31, 2002 provided by the Auditor-Controller on July 12, 2002. The Grand Jury has not received the final review for AT&T.

11. In fiscal year 2001-2002, the County of Nevada collected \$798,268.69 from franchise fees. See Table below:

County of Nevada – Franchise Fees

Type	Franchisee	FY 2001-2002
Cable	USA Media	\$52,423.58
	AT&T	<u>102,409.92</u>
		154,833.50
Garbage Collection	Waste Management	174,962.44
	Tahoe Truckee	<u>134,387.71</u>
		309,350.15
Electric	PG&E	272,161.42
	Sierra Pacific Power	<u>19,028.86</u>
		291,190.28
Gas	PG&E	42,894.76
Totals		\$798,268.69

12. At the request of the Grand Jury, County Counsel is researching if the County has the right to charge franchise fees of any other utilities, (e.g., SBC and NID).

CONCLUSIONS

1. For two consecutive years, the Board has failed to meet its commitment pertaining to the 2000-2001 and 2001-2002 Grand Jury reports on Franchise Utilities.
2. The County has been shorted approximately \$88,000 in franchise fees, as evidenced by the Cable TV reviews performed to date. Since reviews have not been performed on the other four franchise companies, we cannot ascertain what additional monies could be collected.
3. Relating to the two Grand Jury reports on Utility Franchise fees the Board issued MO's 01-70, 01-71, 01-72, 01-73, 02-38 and 02-39. The Grand Jury can find little evidence that any action resulted from these Minute Orders, with the exception of the recent reviews of two of the six franchise companies.
4. As recently as February 4, 2003, in a response from the CEO to the Board on MO's 02-38 and 02-39, we find continued procrastination and lack of specificity in accomplishing any substantial results relating to the update of the County Code regarding Utility Franchises.

5. On May 14, 2002, the Board was provided an update on MO 01-70 by the CEO's office that stated: "Currently in progress, we are currently updating many of the County Codes." Additionally, on May 29, 2002, the Grand Jury was told by the CEO's office that progress was being made in closing out MO 01-70. Specifically, the status was "currently in progress, we are reviewing and drafting updates to some of the County Codes, including the Administration and Personnel Code." Since MO 01-70 only pertains to Utility Franchises, these statements imply that updates to the Utility Franchise sections of the county code were underway. The Grand Jury has found no evidence of any such work in progress.
6. The Board on May 14, 2002, closed MO 01-70 even though the proscribed actions were not yet complete and without written responses from two of the three parties required to take action on the MO. The Board's failure to require any evidence that this MO was being complied with, and the action by the Board to close out this MO without two of the required responses cast doubt on the effectiveness of the MO process.
7. In September 2002, MO's 01-71, 01-72, and 01-73 were all past due. On September 10, 2002, these three MO's were closed so that they could be incorporated into new MO 02-38 with extended due dates. As far as the Grand Jury can ascertain, the only reason to do this was to remove overdue MO's from the record and give the appearance that the MO's were current.

RECOMMENDATIONS

1. The Board should take immediate, definitive and conclusive actions to update the County Code (Nevada County General Code Chapter II: Franchises) to:
 - Identify and include all utility franchises operating within the county.
 - Establish a definitive method for calculating each franchise fee.
 - Establish procedures to ensure that the county is receiving all agreed-to fees from franchises operating within the county. These procedures should include audits and/or other reviews of each franchise.
2. Immediately following the update to the County Code, the Board should ensure, with the Auditor-Controller, that audits are immediately initiated and concluded in a timely and appropriate manner for each franchise as stated in the updated County Code.
3. The Board should again review the MO process, to ensure that compliance of MO's is opportune, specific, detailed, and that MO's are not closed out prematurely or without the proscribed action having been concluded.

REQUIRED RESPONSES

Board of Supervisors – July 1, 2003

Auditor-Controller – June 2, 2003

ADDENDUM A

NEVADA COUNTY UTILITY FRANCHISES PLAN AND SCHEDULE Report on Minute Orders 02-38 & 02-39

The following recommendations were made by the 2000/2001 Nevada County Civil Grand Jury in its Interim Report No.14, dated June 18, 2002 relating to the investigation of the County's procedures and practices regarding utility franchises operating in the County:

The responsible county officials should:

- 1. Review and update the County Code (Nevada County General Code Chapter II: Franchises) to:**
 - **Include all utility franchises operating within the county.**
 - **Establish a definitive method for calculating each franchise fee.**
 - **Establish procedures to insure that the county is receiving all agreed-to fees from franchises operating within the county. These procedures should include audits and/or other reviews of each franchise.**

- 2. Perform the required audits and/or reviews, as stated in the updated County Code, of each franchise at the earliest opportunity.**

The County Board of Supervisors and various County Officials have responded to the Grand Jury's recommendation and, for the most part, agreed with the recommendations.

On September 10, 2002 the Board of Supervisors issued **Minute Order 02-38** directing the County Executive Officer, Auditor-Controller, and County Counsel to do the following:

You are hereby directed to accomplish updating the existing County Code in cooperation with the directors of the concerned departments and the Auditor Controller. County Counsel is also directed to assist with research and responses to legal issues as they may arise and with final drafting of ordinance amendments that may be deemed necessary by the Board. You are also directed to report back to the Board by January 14, 2003 with a plan and a schedule for accomplishing the review and update of the Code.

You are hereby directed, in coordination with the Auditor-Controller, to evaluate the Grand Jury response and make a recommendation to the Board as to the implementation of a regular franchise fee audit program and/or other alternatives to regular formal audits.

During the period since the 2000/2001 Grand Jury issued its recommendations and the date of this report, the following activities have begun and are ongoing:

PG&E Bankruptcy

The County has participated along with other counties in the state in complex negotiations with PG&E over franchise related matters in the company's "Plan of Reorganization". In association with other counties, outside counsel has been retained to represent the County in these negotiations, which are active and unresolved as of this date. If the bankruptcy court approves PG&E's "Plan of Reorganization" it will result in the company splitting into multiple entities and by some estimates result in higher franchise fees being generated for Nevada County.

Cable Television Audits

The Auditor-Controller has contracted with a consulting firm, The Buske Group, to conduct audits for the period of October 1998 to September 2002 of two Cable Television Franchises USA Media and AT&T. These audits have been completed at a cost of approximately \$20,000 and have identified underpayments of approximately \$54,000. Drafts of these audits have been provided to the Cable Television companies for their responses. The Auditor-Controller's next step after receiving final responses from the franchises will be to send the audits to the CEO for further action as needed.

Cable Television Franchise Negotiations

The County has entered into contracts with the consulting firm, The Buske Group, to conduct negotiations with the cable television companies, USA Media and AT&T, who's contracts expire in 6/03 and 4/04 respectively. These negotiations are ongoing.

Negotiations for Transfer of the Eastern Solid Waste System to Town of Truckee

The County has concluded negotiations for the transfer of the eastern County solid waste franchise to the Town of Truckee.

Audit Verification Methodology Research

The County has begun to research companies with the expertise required and with cost effective audit/verification methods for future attest of franchise fees.

On September 10, 2002 the Board of Supervisors issued Minute **Order 02-39** directing the County Executive Officer, Auditor-Controller, and Director of Personnel to do the following:

You are hereby directed, in cooperation with the Auditor-Controller and the Director of Personnel, to determine and report back to the Board by February 28, 2003, if there is a need for additional staffing in the Auditor-Controller's office to audit and verify the accuracy of the franchise fees. If additional staffing is needed, the staffing increase will be considered as part of the FY 2003/04 budget process.

Additional staffing was approved for the Auditor's Office in the Fiscal Year 2002/03 Budget. A full- time Accountant Auditor I and a temporary Senior Accounting Assistant were added to implement GASB 34 and the new accounting system. The Accountant Auditor I was approved for FY 2002/03 through 2004 and will be re-considered for 2004/05. The need for further additional staffing is currently under evaluation.

Per the Board of Supervisors Minute Orders 02-38 and 02-39, the following plan is presented:

1. The County will continue with PG&E negotiations and maximize its' future franchise fees under the PG&E "Plan of Reorganization".
2. The County will negotiate new Cable Television Franchise Agreements with USA Media.
3. The Auditor-Controller will continue to audit Cable Television Franchise Agreements as required by current County Code at least every three years.
4. The County Executive and County Counsel will update the County Code for Utility Franchises, including the following:
 - a) Review of existing Code for consistency with State Statute
 - b) Determination of franchises to be covered including additions such as telephone utilities and wireless networks
 - c) Determination of responsible County officials
 - d) Determination of consistent, effective and verifiable fee basis for each franchise type
 - e) Incorporation of applicable references to State Statute
 - f) Definition of allowable methods for independent verification of fees
5. The County Executive, Auditor-Controller will undertake the implementation, review and verification of franchisee fees on a regular basis, utilizing cost-effective methods. In addition, procedures for fee verification will occur on an on-going basis.
6. The County Executive, Auditor-Controller and Personnel Director will continue to evaluate the need for further additional staffing in the Auditor-Controller's Office to audit and verify the accuracy of the franchise fees.

Per the Board of Supervisors Minute Orders 02-38 and 02-39, the following schedule is presented:

Item 1 -To be concurrent with the PG&E bankruptcy proceedings

Item 2 -To be completed prior to contract expirations

Item 3 -First cycle of audits completed

Items 4,5,6 -To commence upon identification and approval of 2003/2004 budget Resources.

- REQUIRED RESPONSES -

COUNTY OF NEVADA

BRUCE A. BIELEFELT

**Auditor-Controller
Eric Rood Adm. Bldg.
950 Maidu Avenue
Nevada City, CA 95959
(530) 265-1244
FAX: (530) 265-1568**

May 5, 2003

Honorable Ersel L. Edwards, Presiding Judge
201 Church Street
Nevada City, CA 95959

Dear Judge Edwards,

Subject: Civil Grand Jury of Nevada County, Nevada County Utility Franchises, dated 3-28-03

Here is my response to the emboldened findings found in findings 1 through 6, and my agreement with the grand jury general statements of fact found in findings 7 through 12 in the above subject report.

Findings:

1. "The responsible county official should: Review and update the County Code (Nevada County General Code Chapter II: Franchises) to: include all utility franchises operating within the County; establish a definitive method for calculating each franchise fee; establish procedures to insure that the county is receiving all agreed-to fees from franchises operating within the County. These procedures should include audits and/or other reviews of each franchise." AGREE
 2. "Perform the required audits and/or reviews, as stated in the updated County Code, of each franchise at the earliest opportunity." AGREE
 3. "The County Executive Officer should spearhead updating the existing County Code." AGREE
 4. "Once the County Code is updated, the Auditor-Controller should conduct regular audits of all county franchise fees." AGREE
 5. "The Auditor-Controller should have an employee in his department to audit and verify the accuracy of these franchise fees." AGREE
 6. "A realistic deadline should be established to get the analysis completed and the audits performed to ensure the County collects franchise fees correctly and in accordance with existing agreements." AGREE
 7. Findings 7 through 12 are all statements of fact. AGREE
-

Recommendations:

- 1) The Board should take immediate, definitive and conclusive actions to update the County Code (Nevada County General Code Chapter II: Franchises to:

Identify and include all utility franchises operating within the county.
Establish a definitive method for calculating each franchise fee.
Establish procedures to ensure that the county is receiving all agreed-to fees from franchises operating within the county. These procedures should include audits and/or other reviews of each franchise.

This recommendation has not been implemented, but will be implemented in the future in cooperation with the County Executive, and County Counsel in a time frame set by the Board of Supervisors.

- 2) Immediately following the update to the County Code, the Board should ensure, with the Auditor-Controller, that audits are immediately initiated and concluded in a timely and appropriate manner for each franchise as stated in the County Code.

This recommendation has not been implemented, but will be implemented in the future, as soon as the County Code is updated the Auditor-Controller will immediately initiate audits to meet the requirements of the updated Code.

- 3) The Board should again review the MO (minute order) process, to ensure that compliance of MO's is opportune, specific, detailed, and that MO's are not closed out prematurely or without the prescribed action having been concluded.

This recommendation will not be implemented because it pertains to the County Executive Office, not the Auditor-Controller Office.

If you have questions, please do not hesitate to give me a call.

Sincerely,



Bruce Bielefelt

Nevada County Auditor-Controller

CC: Nevada County Board of Supervisors
Nevada County Grand Jury
Nevada County Executive Office

COUNTY OF NEVADA

STATE OF CALIFORNIA

950 Maidu Avenue • Nevada City • California 95959-8617

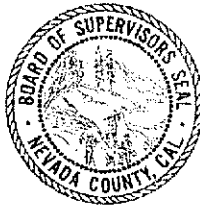
*Follow-up Item
Audit & Finance*

of 6/26/03

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<http://boardclerk.co.nevada.ca.us>

June 11, 2003

The Honorable Judge Ersel Edwards
Presiding Judge of the Nevada County Courts
Nevada County Court House
Nevada City CA 95959

Subject: Board of Supervisors Responses to the 2002-2003 Nevada County Civil Grand Jury Early Response Report No. 2, dated April 1, 2003 regarding Nevada County Utility Franchises.

Dear Judge Edwards:

The attached responses by the Board of Supervisors to the 2002-2003 Nevada County Civil Grand Jury Early Response Report No. 2, dated April 1, 2003, are submitted as required by California Penal Code §933.

These responses to the Grand Jury's Findings And Recommendations were approved by the Board of Supervisors at their regular meeting on June 10, 2003. Responses to Findings and Recommendations are based on either personal knowledge, examination of official county records, information received from the Nevada County Executive Officer (CEO), the Auditor-Controller, the County Counsel, or testimony from the Board Chair and county staff members.

The Board of Supervisors would like to thank the members of the 2002-2003 Grand Jury for their participation and effort in preparing their Report.

Sincerely,

A handwritten signature in cursive script that reads "Sue Horne".

Sue Horne
Chair of the Board

Attachment

sh:pb

cc: Foreman, Grand Jury
Bruce Bielefelt, Auditor-Controller
Rick Haffey, County Executive Officer
County Counsel

NEVADA COUNTY BOARD OF SUPERVISORS RESPONSES TO
2002/2003 CIVIL GRAND JURY EARLY RELEASE REPORT NO. 2

DATED APRIL 1, 2003

RE: NEVADA COUNTY UTILITY FRANCHISES

Responses to findings and recommendations are based on either personal knowledge, examination of official county records, review of the responses by the Nevada County Executive Officer (CEO), the Auditor-Controller, the County Counsel, or testimony from the Board Chair and county staff members.

I. GRAND JURY INVESTIGATION:

Nevada County Utility Franchises.

A. RESPONSE TO FINDINGS & RECOMMENDATIONS:

Findings:

1. **The 2000-2001 Grand Jury in recommendation No. 1 of the Franchise Utility Report stated:**

“The responsible county officials should: Review and update the County Code (Nevada County General Code Chapter II: Franchises) to: include all utility franchises operating within the county; establish a definitive method for calculating each franchise fee; establish procedures to ensure that the county is receiving all agreed-to fees from franchises operating within the County. These procedures should include audits and/or other reviews of each franchise.”

The Board on September 11, 2001 responded: “The recommendation has not been acted upon and requires further analysis to be completed by January 31, 2002. Implementation is anticipated by June 30, 2002.

Subsequently the following occurred: The Board issued MO 01-70 on September 11, 2001 directing the County Administrator, the County Counsel and the Auditor-Controller to review the Grand Jury’s recommendations with implementation of the recommendations anticipated by June 30, 2002. On May 14, 2002 the Assistant CEO presented a report dated May 9, 2002 to the Board regarding late MO’s. This report included MO 01-70. The status presented on MO 01-70 was as follows: “Currently in progress, we are currently updating many of the County Codes.” The Board accepted the Report and MO 01-70 was closed. Also, On May 14, 2002, the Assistant CEO signed off that he had complied with the MO. On June 10, 2002, the County Counsel signed off that he had complied with the MO with a note that he was “awaiting draft changes.” In addition, on June 10, 2002, the Auditor-Controller stated in an e-mail to the Clerk of the Board: “I am concerned about signing off as completed. To my knowledge, my office has not been

working with the County Counsel and CEO, and I have not seen any proposed changes to the Admin or Personnel Code. I think that someone should call a meeting to discuss what, if any, work done on this issue?"

On May 29, 2002, the Assistant CEO provided an update to the 2001-2002 Grand Jury Foreman regarding MO 01-70. He stated that the status of MO 01-70 was as follows: "Currently in progress, we are reviewing and drafting updates to some of the County Codes, including the Administration and the Personnel Code." The Assistant CEO also stated: "We believe that the purpose of these minute orders has been substantially fulfilled and recommended that the Board formally close them at the May 14th regular Board of Supervisors' meeting."

Partially agree

The Finding only reports a part of the Board's September 11, 2001 response. See the complete Board response to Grand Jury 2000-2001 Interim Report No. 14, Recommendation No.1 in the attached letter to the Presiding Judge of the Nevada County Courts, dated September 11, 2001.

Notwithstanding close out of Minute Orders, review and updating of County Codes and regulations including without limitation, General Code sections relating to franchise operations is a task that will be accomplished when time and resources permit.

2. The 2000-2001 Grand Jury in recommendation No. 2 of the Franchise Utility Report stated:

"Perform the required audits and/or reviews, as stated in the updated County Code, of each franchise at the earliest opportunity."

On September 11, 2001, the Board in response to this recommendation stated: "The County Administrator is additionally directed to review other county utility franchise agreements and County Code requirements and determine if and to what extent an audit or examination of franchises books is justified. Any required financial reviews or audits are also to be completed by June 30, 2002."

In addition, on September 11, 2001 the Board issued MO 01-71, 01-72 and 01-73 directing the County Administrator to carry out the Board's response to the 2000-2001 Grand Jury recommendation No. 2 by June 30, 2002.

Partially agree

The Finding only reports a part of the Board's September 11, 2001 response. See the complete Board response to Grand Jury 2000-2001 Interim Report No. 14, Recommendation No.2 in the attached letter to the Presiding Judge of the Nevada County Courts, dated September 11, 2001.

3. **The 2001-2002 Grand Jury issued another report on Utility Franchises with four recommendations. The first recommendation stated:**

“The County Executive Officer should spearhead updating the existing County Code.”

The Board on September 10, 2002 responded to this recommendation by stating: “The recommendation has not yet been implemented but a plan and schedule to update the Code will be developed by the CEO and presented to the Board by January 14, 2003.” In addition, on September 10, 2002, the Board closed MO 01-71, 01-72, and 01-73 that were issued as a result of the 2000-2001 Grand Jury recommendations on Utility Franchises which had return dates of June 30, 2002 but had yet to be acted upon. The Board then issued a new MO 02-38 that incorporated MO 01-71, 01-72 and 01-73. This new MO directed the CEO, the Auditor-Controller, and the County Counsel to take action on Recommendations No. 1 & No. 4 of the 2001-2002 Grand Jury report. The CEO was directed to report to the Board by January 14, 2003 with a plan and a schedule for accomplishing the review and update of the Code.

On February 4, 2003, the Board accepted a report from the CEO addressing the requirements in MO 02-38 (See Addendum A). Pursuant to this report the Board closed MO 02-38.

Partially agree

The Finding only reports a part of the Board’s September 10, 2002 response. See the complete Board response to Grand Jury 2001-2002 Interim Report No. 14, Recommendation No.1 in the attached letter to the Presiding Judge of the Nevada County Courts, dated September 10, 2002.

The February 4, 2003 report referenced above was jointly submitted by the County Executive Officer, County Counsel and the Auditor/Controller. This report addressed Minute Orders 02-38 and 02-39, outlining a plan and schedule for accomplishing the review and update of the County Code, updating the progress of the implementation of a fee audit program, and identifying other issues related to staffing and associated activities potentially influencing implementation of the program.

4. **The report on Utility Franchises by the 2001-2003 Grand Jury issued recommendation No. 2:**

“Once the County Code is updated, the Auditor-Controller should conduct regular audits of all county franchise fees.”

The Board responded on September 10, 2002 by stating: “The recommendation will not be implemented as stated.”

The Board issued MO 02-38 that directed the CEO, in coordination with the Auditor-Controller as follows: “You are hereby directed, in coordination with the Auditor-

Controller, to evaluate the Grand Jury response and make a recommendation to the Board as to the implementation of a regular franchise fee audit program and/or other alternatives to regular formal audits.” A return date of January 14, 2003 was specified on MO 02-38.

On February 4, 2003, the Board accepted a report from the CEO addressing MO 02-38 (see Addendum A). Pursuant to this report the Board closed MO 02-38.

Partially agree

The Finding only reports a part of the Board’s September 10, 2002 response. See the complete Board response to Grand Jury 2001-2002 Interim Report No. 14, Recommendation No.2 in the attached letter to the Presiding Judge of the Nevada County Courts, dated September 10, 2002.

Also, see responses to Findings No. 3 & 6 in this report regarding the work plan and schedule for accomplishing a review and update of the County Code addressed in Minute Order 02-38.

5. The report on Utility Franchises by the 2001-2002 Grand Jury issued recommendation No. 3:

“The Auditor-Controller should have an employee in his department to audit and verify the accuracy of these franchise fees.”

The Board on September 10, 2002 responded to this recommendation by stating: “The recommendation requires further analysis to be completed by February 28, 2003.”

On September 10, 2002, the Board issued MO 02-39 directing the CEO as follows: “You are hereby directed in cooperation with the Auditor-Controller and the Director of Personnel, to determine and report back to the Board by February 28, 2003 if there is a need for additional staffing in the Auditor-Controller’s office to audit and verify the accuracy of the franchise fees. If additional staffing is required, the staffing increase will be considered as part of the FY 2003/2004 budget process.”

On February 4, 2003, the Board accepted a report from the CEO addressing MO 02-39 (see Addendum A). Pursuant to this report the Board closed MO 02-39.

Partially agree

See responses to Findings No. 3 & 6 in this report regarding the work plan and schedule for accomplishing a review and update of the County Code addressed in Minute Order 02-38.

6. The report on Utility Franchises by the 2001-2002 Grand Jury issued recommendation No. 4:

“A realistic deadline should be established to get the analysis completed and the audits performed to ensure the County collects franchise fees correctly and in accordance with existing agreements.”

On September 10, 2002, the Board responded to this recommendation by saying: “The recommendation has not yet been fully implemented, but will be as stated in the Board response to Recommendation No. 1. The CEO has been directed to develop, in cooperation with concerned departments and the Auditor-Controller, a work plan and schedule for accomplishing a review and update of the County Code regarding franchises and report back to the Board by January 14, 2003. The franchise fee audits are presently scheduled to be completed on September 30, 2002.”

On September 10, 2002, the Board issued MO 02-38, which directed the CEO, the Auditor-Controller and the County Counsel to take action on Recommendations No. 1 & No. 4 of the 2001-2002 Grand Jury report. MO 02-38 incorporated MO 01-71, 01-72 and 01-73 which were addressed to the County Administrator and were issued because of the 2000-2001 Grand Jury recommendations on Utility Franchises and which had return dates of June 30, 2002. No action had been taken on MO 01-71, 01-72, and 01-73. MO 02-38 directed the CEO to report to the Board by January 14, 2003 with a plan and a schedule for accomplishing the review and update of the Code.

On February 4, 2003, the Board accepted a report from the CEO addressing requirements in MO 02-38 (see Addendum A). Pursuant to this report, the Board closed MO 02-38.

Partially agree

No action had been taken on Minute Orders 01-71, 01-72, and 01-73 because they could not be accomplished until Minute Order 01-70 was completed. Minute Order 01-70 was not completed by June 30, 2002 as anticipated due to higher Board of Supervisors' priorities, lack of available staff resources, and the departure of the county Chief Fiscal Officer.

The County Executive Officer, County Counsel, and Auditor Controller presented the work plan and schedule for accomplishing a review and update of the County Code regarding franchises to the Board on February 4, 2003. The project to update the County Code was ongoing but was not completed as directed in Minute Order 02-38 due to other higher priority items and lack of needed staff and resources.

7. **On July 12, 2002, in a letter to the Honorable Judge Ersel Edwards, the Auditor-Controller reported that he had received funding of \$20,000 on March 26, 2002 to perform franchise audits of AT&T and USA Media. He further reported that the county purchasing agent had approved two contracts with the Buske Group to perform the audits and that the expected completion date of the audits was August 31, 2002.**

Agree

The audits were not completed by August 31, 2002 as anticipated due to delays obtaining information needed to complete the audits and responses from the franchisees to auditor questions. Delays resulting from the acquisition of AT&T Broadband by Comcast also contributed to the delay.

The contract with C2 Consulting for the audit of USA Media, LLC is essentially complete and the contract for the audit of AT&T (Comcast) will be completed following receipt, evaluation, and inclusion of Comcast comments regarding audit findings into the final audit report.

8. **On October 30, 2002, C2 Consulting Services, Inc. provided a review of the cable services franchise fees received by the County of Nevada from USA Media Group LLC for the period April 1999 through June 2002. This review found an underpayment to the County of Nevada of \$24,837 including interest.**

Agree

This amount has been confirmed by the final audit report. A letter was sent by County Counsel to USA Media Group, LLC on April 25, 2003 requesting payment of the money owed to the County and offering a proposed settlement of other audit issues. As of this date, USA Media Group, LLC has not responded to this request.

The Auditor Controller and County Counsel will follow-up with USA Media, LLC until agreement is reached on all outstanding audit issues then the County Executive Officer will bring the proposed agreement to the Board for final review and approval.

9. **On January 13, 2003, C2 Consulting Services, Inc. provided a preliminary report of a review of the cable services franchise fees received by the County of Nevada from AT&T for the period October 1998 through September 2002. Although this report is still preliminary, it found an underpayment to the County of \$63,064 including interest.**

Agree

The audit is essentially complete and the auditor is waiting for Comcast's response to the findings of the auditor. The Auditor Controller and County Counsel have indicated that, at this point, there do not seem to be any major points of controversy with Comcast regarding the audit findings and/or the amount of underpayment due to the County as indicated above. Final resolution of outstanding issues and completion of the audit is expected soon, hopefully by the end of June 2003.

When complete, the County Executive Officer will forward the audit report and any proposed resolution of discrepancies to the Board for final review and approval.

10. The USA Media Group LLC and AT&T reviews were not concluded by the Board's committed date of June 30, 2002 or by the expected completion date of August 31, 2002 provided by the Auditor-Controller on July 12, 2002. The Grand Jury has not received the final review for AT&T.

Agree

See response to Finding No. 7.

Copies of both audits will be forwarded to the Grand Jury after they are reviewed and approved by the Board of Supervisors.

Statutory restrictions required setting of an optimistic completion date which circumstances revealed to be unrealistic. Reviews were, in fact, conducted in a timely a fashion as possible.

11. In fiscal year 2001-2002, the County of Nevada collected \$798,268.69 from franchise fees. See Table below:

County of Nevada - Franchise Fees

TYPE	FRANCHISEE	FY 2001-2002
Cable	USA Media	\$ 52,423.58
	AT&T	\$102,409.92
		\$154,833.50
Garbage Collection	Waste Management, Inc.	\$174,962.44
	Tahoe Truckee	\$134,387.71
		\$309,350.15
Electric	PG&E	\$272,161.42
	Sierra Pacific Power	\$ 19,028.86
		\$291,190.28
Gas	PG&E	\$ 42,894.76
TOTALS		\$798,268.69

Agree

12. At the request of the Grand Jury, County Counsel is researching if the County has the right to charge franchise fees of any other utilities, (e.g. SBC and NID).

Agree

County Counsel indicated an opinion has been provided to the Grand Jury stating that the County does not have the legal authority to charge franchise fees for any other utility other than those currently listed in the Nevada County General Code Chapter II: Franchises. A copy of this opinion has not been provided to the Board of Supervisors.

Recommendations:

The Board of Supervisors should:

1. **Should take immediate, definitive and conclusive actions to update the County Code (Nevada County General Code Chapter II: Franchises) to:**
 - **Identify and include all utility franchises operating within the County.**
 - **Establish a definitive method for calculating each franchise fee.**
 - **Establish procedures to ensure that the county is receiving all agreed-to fees from franchises operating within the county. These procedures should include audits and/or other reviews of each franchise.**

The recommendation has not yet been implemented and requires further analysis to be completed by October 1, 2003.

The County Executive Officer, with assistance from County Counsel and the Auditor Controller by this response, is directed to review the provisions of the Nevada County General Code Chapter II: Franchises, and present recommendations to the Board by October 1, 2003 regarding ordinance additions or revisions, along with a work plan to update the ordinance, paying special attention to the Grand Jury recommendations. A firm date for completing the update of the franchise code will be established at that time, with the goal of completing the update as soon as possible after Board approval of the recommendations.

Current franchise activities that may impact the update of the County Code include negotiations related to the PG&E "Plan of Reorganization" and the renegotiation of the cable TV franchises. Renegotiation of cable TV franchise agreements and updating of County Code sections relating to cable TV franchises are presently under way and proceeding simultaneously. The Buske Group, the consultant retained by the County to assist in the Cable TV franchise renewal negotiations, is assisting in rewriting the cable TV franchise code sections and is addressing each of the Grand Jury recommendations listed above. Completion of this task is presently scheduled for January 2004.

The Board continues to recognize and acknowledge the need to update the County General Code sections dealing with franchises (Nevada County General Code Chapter II: Franchises). The Board agrees with the Grand Jury that to the extent that existing regulations and/or contracts do not provide for a definitive method for calculating and charging an authorized fee and procedures to ensure that the county is receiving full payment of such fees, further provisions should be included in the Code, including provision for audits and/or other inspection, and review and examination of the books and records of each franchise.

Previous Board direction to the County Executive Officer to review the existing franchise ordinance, make recommendations regarding changes to it, and move forward after the ordinance was adopted with audits/reviews of applicable franchises by June 30, 2002 was not accomplished for several reasons. The County Executive Officer did not complete the project within the timeframe given in the Board response due to other higher priority items and lack of needed staff and resources. The loss of the County's Chief Fiscal Officer from the County Executive Office in early 2002 necessitated diversion of a good portion of available staff to completion of the budget process and directly contributed to the delay of the ordinance update. The hiring of a new County Executive Officer in January 2003, and subsequent staff reorganization in his office, further contributed to the delay.

2. **Immediately following the update to the County Code, the Board should ensure, with the Auditor-Controller, that audits are immediately initiated and concluded in a timely and appropriate manner for each franchise as stated in the updated County Code.**

The recommendation will be partially implemented following the adoption of any changes to the County Code requiring regular audits of franchises. Recommendations for updating the franchise code and a work plan for accomplishing the code update will be presented to the Board by October 1, 2003.

Following adoption of the revised ordinance, the Auditor Controller will be requested to implement a regular franchise fee audit program and/or other alternatives to regular formal audits that may be needed to help ensure the county is receiving its proper amount of franchise fees. The timing and frequency of any audit program will depend on the provisions of the ordinance, other priorities, and the availability of time, personnel, and resources needed to accomplish the audits.

It is not anticipated that audits of County cable TV franchises (USA Media Group, LLC and Comcast) will be immediately initiated. Audits of both companies' existing franchise agreements have recently been completed, or are in the process of being completed, eliminating the need for any additional immediate audits. Additionally, franchise renewal negotiations are presently underway with the cable TV companies with estimated franchise renewal dates in July 2004.

3. **The Board should again review the MO process, to ensure that compliance of MO's is opportune, specific, detailed, and that MO's are not closed out prematurely or without the prescribed action having been concluded.**

The recommendation has been implemented.

The Clerk of the Board, in coordination with the County Executive Officer, has modified the Minute Order (Board Order) procedure for closing out Grand Jury Board Orders.

When submitting responses to Grand Jury Board Orders, The County Executive Officer and other departments and agencies required to respond will forward the completed Board Order

form along with a memorandum explaining what specific actions have been taken to complete the Board Order to the Clerk of the Board. When the Clerk receives Grand Jury Board Order responses, Board of Supervisors' staff will review them to ensure specific direction has been completed as directed. Any questions regarding the sufficiency of a response will be resolved with the County Executive Officer through the Clerk of the Board.

If a Board Order can not be completed by the directed completion date, the responsible department or agency will submit a memorandum to the Clerk of the Board prior to the Board Order due date explaining why it can not be completed on time. The memorandum will also include a request for an extension of the Board Order and a new completion date.

All Grand Jury Board Orders received by the Clerk of the Board as completed, and any requests for extension, will be forwarded to the Board of Supervisors for final review and approval. The Grand Jury will be notified after the Board approves the close out of Board Orders or the extension of any completion date.

The Clerk of the Board will also periodically forward to the Grand Jury a summary of current status of Grand Jury Board Orders and a final report when all Board Orders for the current year Grand Jury report are closed.