

# NEVADA COUNTY UTILITY FRANCHISES

## REASON FOR INVESTIGATION

The 2000-2001 Grand Jury issued an investigative report to insure that appropriate procedures and practices are in place to guarantee that the county is receiving agreed-to fees from utility franchises operating within the county. The recommendations in that report are quoted as follows:

"The responsible county officials should:

1. Review and update the County Code (Nevada County General Code Chapter II: Franchises) to:
  - a. Include all utility franchises operating within the county.
  - b. Establish a definitive method for calculating each franchise fee.
  - c. 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."
3. The 2001-2002 Grand Jury investigated the current status of these recommendations.

## PROCEDURE FOLLOWED

The Grand Jury reviewed the responses provided by the Board of Supervisors (BOS), the County Executive Officer (CEO), and the Auditor-Controller (AC) detailing the respective actions to be taken to implement these two recommendations. The Grand Jury interviewed the CEO, the AC, the County Counsel, and the Assistant Auditor-Controller.

## FINDINGS

1. On September 11, 2001, the BOS responded to the Grand Jury on these two recommendations by stating that the CEO, the AC, and the County Counsel are to work together to review and update the County Code. This analysis was to have been completed by January 31, 2002. Implementation was anticipated by June 30, 2002.
2. The respective audits and/or reviews were to be implemented by June 30, 2002.
3. The BOS issued Minute Orders No. 01-70, 01-71, 01-72, and 01-73 to follow up on their directives (see Addendum A).

4. Despite the request by the BOS that the review of the County Code be completed by January 31, 2002, neither the review nor the possible update has yet been started. No plausible explanations were given to the Grand Jury for the delay.
5. The Audit/Control Department recently was allocated approximately \$25,000 to contract for a specialized audit of the two cable industry franchise companies, which service Nevada County residents.
6. The audit contract is still being negotiated. This will not allow sufficient time to meet the June 30, 2002, deadline.

## **CONCLUSIONS**

1. The requested review of the County Code is a formidable task, which needs to be tackled with focus and conviction. To date, the BOS, CEO, County Counsel, and respective department heads have failed to initiate any action.
2. Verifying franchise fees collected by the county is a new concept. At present, the county does not know if the appropriate fees are collected.
3. The Minute Order process should have triggered a thorough investigation. The County Code analysis was past due as of January 31, 2002.

## **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.

## **REQUIRED RESPONSES**

Board of Supervisors due by September 18, 2002

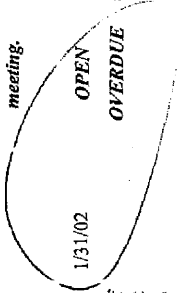
County Executive Officer due by August 19, 2002

Auditor-Controller due by August 19, 2002

County Counsel due by August 19, 2002

DEPARTMENT	ACTION	RETURN DATE	DATE COMPLETED
County Administrator	<p>6. MO 01-69            Direction: Instruct all departments to submit facility planning updates to the Capital Facilities Task Force for discussion and recommendation to the General Services Department and the County Administrator for their review and approval.            Ref: <i>Interim Report No. 13 – Nevada County Capital Facilities: Recommendation #3</i></p>	09/30/01	OPEN
County Administrator	<p>7. MO 01-70 (+ Counsel &amp; A-C)            Direction: Work with the County departments concerned by this response to review the provisions of General Code Chapter II: Franchises applicable to franchises overseen by their department and present recommendations back to the Board regarding additions or revisions necessary to update local regulations of utility franchises within the County, paying special attention to the Grand Jury recommendations. To the extent existing regulations and/or contracts do not establish 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 shall be recommended including provision for audits and/or other inspection, review and examination of the books and records of each franchise.            Ref: <i>Interim Report No. 14 – Nevada County Utility Franchises: Recommendation #1</i></p>	1/31/02	OPEN
County Administrator	<p>8. MO 01-71            Direction: Perform audits and/or reviews as required by the code. (See response to Recommendation #1) following analysis of existing provisions of General Code Chapter II: Franchises, and after adoption of any updated code sections addressing utility franchise audit requirements.            Ref: <i>Interim Report No. 14 – Nevada County Utility Franchises: Recommendation #2</i></p>	6/30/02	OPEN
County Administrator	<p>9. MO 01-72            Direction: With assistance from the Auditor-Controller, complete an audit of existing cable TV franchises as required by the County General Code. As authorized by the General Code, the audit is to be completed either by the Auditor-Controller or by an independent CPA firm retained by the Auditor-Controller.            Ref: <i>Interim Report No. 14 – Nevada County Utility Franchises: Recommendation #2</i></p>	6/30/02	OPEN
County Administrator	<p>10. MO 01-73            Direction: Review other County utility franchise agreements and County Code requirements and determine if and to what extent an audit or examination of franchise books is justified. Any required financial reviews or audits are also to be completed by June 30, 2002.            Ref: <i>Interim Report No. 14 – Nevada County Utility Franchises: Recommendation #2</i></p>	6/30/02	OPEN

Scheduled for 3/26/02 BOS meeting.



**NEVADA COUNTY BOARD OF SUPERVISORS RESPONSES TO  
2001-2002 CIVIL GRAND JURY INTERIM REPORT NO. 14  
DATED JUNE 18, 2002  
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 County Executive Officer, the Auditor-Controller, and County Counsel, or testimony from the board chairman and county staff members.*

**I. GRAND JURY INVESTIGATION:**

**Nevada County Utility Franchises.**

**A. RESPONSE TO FINDINGS & RECOMMENDATIONS:**

**Findings:**

1. **On September 11, 2001, the BOS responded to the Grand Jury on these two recommendations by stating that the CEO, the A-C, and the County Counsel are to work together to review and update the County Code. This analysis was to have been completed by January 31, 2002. Implementation was anticipated by June 30, 2002.**

Generally agree. See actual Board response dated September 11, 2001 to Recommendation No. 1 of 2000-2001 Interim Report No. 14. (see below).

**BOS RESPONSE TO RECOMMENDATION NO. 1  
GRAND JURY 2000-2001 INTERIM REPORT NO. 14**

- “1. Review and update the County Code (Nevada County General Code Chapter II: Franchises) to:
  - Include all utility franchises operating within the County of Nevada
  - Establish a definitive method for calculating each franchise fee
  - Establish procedure 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 been acted upon and requires further analysis to be completed by January 31, 2002. Implementation is anticipated by June 30, 2002.

The Board recognizes and acknowledges the need to update all County Codes and regulations on an ongoing basis, including without limitation, General Code sections relating to all franchise operations. Such provisions and revisions, and agreements pursuant thereto, should include definitive methods for calculating franchise fees and verifying that County is receiving the full payment to which it is entitled.

Further analysis is necessary by staff to determine the nature and extent of any necessary revisions and amendments to Chapter II of the county General Code in this regard. The directors of the concerned departments, together with the County Administrator and County Counsel, with assistance from the Auditor-Controller, by this response are directed to review the provisions of General Code Chapter II: Franchise applicable to franchises overseen by their department and present recommendations back to the Board regarding additions or revisions necessary to update local regulation of utility franchises within the County, paying special attention to the Grand Jury recommendations. To the extent existing regulations and/or contracts do not establish 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 shall be recommended including provision for audits and/or other inspection, review and examination of the books and records of each franchise.”

**2. The respective audits and/or reviews were to be implemented by June 30, 2002.**

Generally agree, with a clarification. The Board response to Recommendation No. 2 in the 2000-2001 Grand Jury Report concerning performance of their required audits and/or reviews at the earliest opportunity was that:

- The County Administrator, with assistance from the Auditor-Controller, was directed to complete an audit of existing cable TV franchises by June 30, 2002, either by the Auditor-Controller or by a retained CPA.
- The County Administrator was to review other county utility franchise agreements and Code requirements and Code requirements and determine if and to what extent an audit or examination of franchise books was justified, completing any required financial reviews or audits by June 30, 2002.
- To the extent Code updates were adopted addressing other franchise audit requirements, those audits and/or reviews would be accomplished as required by Code following the update.

This response assumed that the further analysis necessary to determine the nature and extent of any revisions or amendments would be done in a timely fashion and the requisite amendments done before June 30, 2002, to allow the new procedures to be implemented by June 30, 2002. It is, however, possible that when the analysis is completed, it will determine that no additional revisions are necessary so that no additional audits and/or reviews would be needed.

The response to last year's Grand Jury recommendation actually only committed to doing only one audit by June 30, 2002, for sure – that of existing cable TV franchises as required by the

General Code. As to others, the response made a commitment to determine if and to what extent an audit or examination of books was justified or should be required completing them by June 30, 2002 if required. However, at a minimum, some kind of review and analysis was contemplated upon which that determination would have been based.

- 3. The BOS issued Minute Orders No. 01-70, 01-71, 01-72, and 01-73 to follow up on their directives (see Addendum A).**

Agree.

- 4. Despite the request by the BOS that the review of the County Code be completed by January 31, 2002, neither the review nor the possible update has yet been started. No plausible explanations were given to the Grand Jury for the delay.**

Agree.

The CEO's office failed to start review of the County Code and the possible update within the timeframe given in the Board response due to other higher priority items and lack of available staff and resources to accomplish all that needed to be done. Exacerbating the problem was loss of the County's Chief Fiscal Officer from the CEO's office in early 2002, necessitating diversion of a good portion of staff otherwise available to completion of the budget process.

- 5. The Audit/Control Department recently was allocated approximately \$25,000 to contract for a specialized audit of the two cable industry franchise companies, which service Nevada County residents.**

Agree

- 6. The audit contract is still being negotiated. This will not allow sufficient time to meet the June 30, 2002 deadline.**

Agree that when the Grand Jury Report was published, the contract was still being negotiated.

The Auditor-Controller's office received \$20,000 in funding on March 26, 2002 to perform two franchise audits, of AT&T Broadband and USA Media.

Our Purchasing Agent approved two contracts on June 21, 2002 with the Buske Group to perform the audits. The audits are presently scheduled to be completed by September 30, 2002.

**Recommendations:**

**1. The County Executive Officer should spearhead updating the existing County Code.**

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.

The Board previously directed this recommendation be implemented in response to the Grand Jury recommendation in the 2000-2001 Grand Jury Interim Report Number 14, dated September 14, 2001. It has not yet been accomplished. Previous direction to the County Executive Officer (CEO) to update the Code will be reaffirmed.

The CEO was previously directed in September 2001, by the Board response to the 2000-2001 Grand Jury recommendation in Interim Report Number 14, to determine, in cooperation with concerned departments and County Counsel, the nature and extent of any necessary revisions and amendments to Chapter II of the County Code regarding franchises. Following this review, recommendations were to be made to the Board regarding additions or revisions necessary to update the Code. (See Board response to Recommendation Number 1 of 2000-2001, Interim Grand Jury Report Number 14, dated September 11, 2001).

The CEO, by this response is again directed to accomplish this update 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.

The CEO is also directed to report back to the Board by January 14, 2003 with a plan and schedule for accomplishing the review and update of the Code.

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

The recommendation will not be implemented as stated.

Due to limitations of time, personnel, and resources, the County can not presently commit to regular audits of all county franchises. There needs to be an administrative balancing of the costs of regular audits of all county franchise fees against the potential benefits and a consideration of whether some alternative other than regular formal audits of all county franchise fees would be more cost effective.

As resources permit after the County Code is updated, the Board will consider accomplishing regular audits of all county franchises upon recommendation of the CEO and the Auditor Controller. The CEO by this response, is 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.

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

The recommendation requires further analysis to be completed by February 28, 2003.

The CEO in cooperation with the Human Resources Department and the Auditor Controller is directed by this response 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 franchise fees. If additional staffing is seen to be needed, the staffing increase will be considered as part of the FY 2003-2004 budget process.

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.**

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 ( See response to Finding Number 5).





**COUNTY OF NEVADA  
COUNTY EXECUTIVE OFFICE**

Eric Rood Administrative Center

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**RECEIVED**

JUL 11 2002

NEVADA COUNTY  
BOARD OF SUPERVISORS

July 5, 2002

The Honorable Ersel Edwards  
Presiding Judge  
Nevada County Superior Court  
201 Church Street  
Nevada City, CA 95959

Honorable Judge Edwards:

**Subject: County Executive Officer Response to the 2001-2002 Nevada County Civil Grand Jury Interim Report No. 14 dated June 18, 2002 regarding Nevada County Utility Franchises**

Attached is the Nevada County Executive Officer's response to the Nevada County Grand Jury report regarding Nevada County Utility Franchises. I believe my response to be accurate and appropriately detailed to address the issues raised by the Grand Jury.

Ted A. Gaebler  
County Executive Officer

NEVADA COUNTY UTILITY FRANCHISES  
Grand Jury Report  
County Executive Officer Response

FINDINGS

1. On September 11, 2001, the BOS responded to the Grand Jury on these two recommendations by stating that the CEO, the AC, and the County Counsel are to work together to review and update the County Code. This analysis was to have been completed by January 31, 2002. Implementation was anticipated by June 30, 2002.

*Response: Agree*

*The Board of Supervisors set an aggressive timetable for this important matter.*

2. The respective audits and/or reviews were to be implemented by June 30, 2002.

*Response: Agree*

*See comment above.*

3. The BOS issued Minute Orders No. 01-70, 01-71, 01-72, and 01-73 to follow up on their directives (see Addendum A).

*Response: Agree*

4. Despite the request by the BOS that the review of the County Code be completed by January 31, 2002, neither the review nor the possible update has yet been started. No plausible explanations were given to the Grand Jury for the delay.

*Response: Partially disagree*

*There are explanations. They have yet to be communicated. Other Board priorities had the staff focused elsewhere. For example, refinancing of Certificates of Participation for both facilities and the solid waste system thereby saving millions of dollars. Our Chief Fiscal Officer left in early 2002 and the CEO's office had to focus on backfilling this position to complete the budget process. A new Chief Fiscal Officer was hired June 29, 2002. One of the tasks for the new Chief Fiscal Officer will be this review.*

5. The Audit/Control Department recently was allocated approximately \$25,000 to contract for a specialized audit of the two cable industry franchise companies, which service Nevada County residents.

*Response: Agree*

*It should be noted that it is necessary to not only conduct an audit of the cable system, but a consultant be hired to renegotiate the franchises in the near future.*

6. The audit contract is still being negotiated. This will not allow sufficient time to meet the June 30, 2002, deadline.

*Response: Agree*

## RECOMMENDATIONS

1. The County Executive Officer should spearhead updating the existing County Code.

*Response: The recommendation has not yet been implemented.*

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

*Response: The recommendation has not yet been implemented, but is well on its way to improvements. The Auditor's office has been provided some additional resources for these purposes.*

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

*Response: The recommendation has not yet been implemented.*

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.

*Response: The recommendation has not yet been implemented.*

# 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**

September 3, 2002

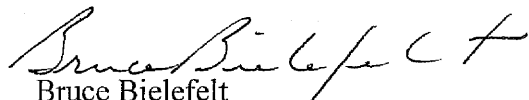
The Honorable Ersel Edwards  
Presiding Judge  
Nevada County Superior Court  
201 Church Street  
Nevada City, CA 95959

Revised response

Honorable Judge Edwards:

Subject: Auditor-Controller Response to the 2001-2002 Nevada County Civil  
Grand Jury Interim Report No.14 dated June 18, 2002 regarding Nevada  
County Utility Franchises

Attached is the Nevada County Auditor-Controller's revised response to the 2001-2002 Nevada County Civil Grand Jury report regarding Nevada County Utility Franchises. My earlier response did not follow established protocol. I believe my response to be accurate and appropriately detailed to address the issues raised by the Grand Jury.

  
Bruce Bielefelt  
Nevada County Auditor-Controller

CC: BOS  
CEO

NEVADA COUNTY UTILITY FRANCHISES  
GRAND JURY REPORT  
AUDITOR-CONTROLLER RESPONSE

FINDINGS

1. On September 11, 2001 the BOS responded to the Grand Jury on these two recommendations by stating that the CEO, the AC, and the County Counsel are to work together to review and update the County Code. This analysis was to have been completed by January 31, 2002. Implementation was anticipated by June 30, 2002.

*Response: Agree*

*The Board of Supervisors set an aggressive timetable for this important matter.*

2. The respective audits and/or reviews were to be implemented by June 30, 2002.

*Response: Agree*

*See comment above*

3. The BOS issued Minute Orders No. 01-70, 01-71, 01-72, and 01-73 to follow up on their directives (see Addendum A).

*Response: Agree*

4. Despite the request by the BOS that the review of the County Code be completed by January 31, 2002, neither the review nor the possible update has yet been started. No plausible explanations were given to the Grand Jury for the delay.

*Response: Agree*

5. The Audit/Control Department recently was allocated approximately \$25,000 to contract for a specialized audit of the two cable industry franchise companies, which service Nevada County residents.

*Response: Agree*

*A contract was executed on 6/21/02 with a completion date of 9/30/02 with The Buske Group.*

## RECOMMENDATIONS

1. The County Executive Officer should spearhead updating the existing County Code.

*Response: This requires a CEO response.*

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

*Response: The recommendation has not yet been implemented, but is well on its way. The Auditor's office has been provided some additional resources for these purposes.*

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

*Response: The recommendation has not yet been implemented. When the audits are completed by The Buske Group we will have a better idea of the time and expertise needed to implement this recommendation. If additional resources are needed, we will include a request in our fiscal year '03-'04 budget.*

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.

*Response: The recommendation has not yet been fully implemented. Audits to be completed by The Buske Group 9-30-02.*

INTERIM REPORT No. 14  
COUNTY COUNSEL

OFFICE OF THE COUNTY COUNSEL  
COUNTY OF NEVADA

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MICHAEL D. CASTELLI, SPECIAL COUNSEL

June 26, 2002

The Honorable M. Kathleen Butz  
Presiding Judge of the Nevada County Courts  
Nevada County Court House  
Nevada City, Ca 95959

Re: Requested Response of County Counsel to the 2001-2002 Nevada County Civil Grand Jury Interim Report No. 11, dated June 18, 2002 regarding Nevada County Airport and Interim Report No. 14, dated June 18, 2002 regarding Nevada County Utility Franchises

Dear Judge Butz:

Interim Report Nos. 11 and 14 of the 2001-2002 Nevada County Civil Grand Jury purport to require responses from County Counsel as well as from the Board of Supervisors. However, in our opinion we believe that Grand Jury responses regarding the Nevada County Airport and Utility Franchises should properly be requested and come from the Board of Supervisors, not from our office. A copy of an opinion dated June 21, 2002 from myself to Ted Gaebler, CEO, explaining this determination is attached hereto. In view of this determination and the unique relationship of our office in providing legal services to both the Grand Jury and the Board of Supervisors, we will be submitting input on Interim Report Nos. 11 and 14 to the CEO and to the Board for the Board response, but will not be preparing or submitting a separate response solely from our office.

Sincerely,

  
HAROLD E. DeGRAW  
Assistant County Counsel

Attachment

Gjno11.doc

cc: Foreman, Grand Jury  
Ted Gaebler, CEO  
Charles J. McKee, County Counsel  
Gary Jacobsen, Airport Manager  
Bruce Bielefeldt, Auditor-Controller