

FRANCHISE OPERATIONS NEVADA COUNTY GENERAL CODE

REASON FOR INVESTIGATION

Three previous Grand Juries have issued reports emphasizing the need to update the Nevada County General Code Chapter II: Franchises. The Board of Supervisors (BOS) agreed with these recommendations each year, then issued, and reissued Board Orders (BO) that required implementation of recommendations. After three years of Board direction, many of the recommended actions are only now being completed. The Grand Jury has continued to follow this matter because revenue due from franchisees is a significant source of income to the County.

BACKGROUND

In 2001, 2002, and again in 2003, the Grand Jury published reports concerning the collection of franchise fees in Nevada County. The California State Franchise Act of 1937 allows municipalities and counties to grant franchises to establish operations and to collect fees from private sector utilities. These franchise fees contribute substantially to the income of the county. The Grand Jury reports expressed concern that the county's failure to audit monies received from these franchises left the county open to possible underpayment of fees due.

The investigations done to prepare these reports spanning a three-year period led the Grand Jury to believe that the county was not managing these franchises in the best interests of the taxpayers of Nevada County. This continued lack of management control could mean that the county is not receiving the full amount owed by some or all of these private sector utilities.

Two Grand Jury recommendations have appeared in all three years of reports:

- Update the county code (Nevada County General Code Chapter II: Franchises)
- Conduct audits of all of the franchise holders

METHOD OF INVESTIGATION

The Grand Jury conducted interviews with representatives from the Auditor-Controller's Office, the BOS, and with the Chief Financial Officer. The Grand Jury analyzed two Cable Franchise Audit Reviews conducted under the auspices of the Buske Group, a consulting service retained by the County. Fees collected by the County from all franchisees over the past five years were also studied.

FINDINGS

1. In late 2002 and early 2003 two franchise utilities were audited by outside consultants at a cost of \$20,000. The audit of USA Media for the period 4/99 through 6/02 has since resulted in additional revenue of \$23,899. The audit of AT&T Broadband (now Comcast), for the period of 10/98 through 9/02 yielded additional revenue of \$79,636.35.
2. California State Law (Broughton Act) sets forth a complex formula by which public gas and electric utilities calculate the amount of franchise fees due local governments. The County accepts without verification and on a good faith basis the components used by the utilities in calculating the franchise fees.
3. After several prior extensions of Board Orders, on October 7, 2003 the BOS again extended the deadlines for completion of the Franchise Code update and for implementation of a regular franchise fee audit program to June 30, 2004.
4. The Grand Jury was informed that a new franchise agreement, more favorable to the County and with a straightforward assessment formula was negotiated with Waste Management for the disposal of solid waste in western Nevada County. This new agreement went into effect January 1, 2004.
5. Because the franchise contract for eastern Nevada County with Tahoe Truckee Disposal Company is terminating, the BOS requested the Auditor-Controller to conduct audits of this franchisee for the years 2001, 2002, and 2003 to determine that the proper fees had been paid. In a status report at its April 6, 2004 meeting, the BOS was advised that the Tahoe Truckee Disposal Company audit was not completed but should be done by June 30, 2004
6. The Grand Jury was advised that a renewal agreement, currently being negotiated between the County and Comcast, will serve as the basis for the cable TV franchise code in Western Nevada County. This cable TV code will be presented to the BOS for approval sometime in June 2004.
7. The Grand Jury was also advised that a schedule has been set up in the Auditor-Controller's office to audit all cable franchisees every 3 years.
8. The franchise fees collected for the past five years are shown in the following table:

FISCAL YEAR	CABLE TV	ELEC/GAS	SOLID WASTE	TOTAL
98/99	\$ 173,056.18	\$ 220,999.73	\$ 258,861.65	\$ 652,917.56
99/00	148,184.04	246,193.61	246,077.53	640,455.18
00/01	163,520.99	243,160.96	223,222.35	629,904.30
01/02	154,833.50	334,085.04	309,350.15	798,268.69
02/03	152,410.39	344,818.42	301,711.68	798,940.49
TOTAL	\$ 792,005.10	\$ 1,389,257.76	\$ 1,339,223.36	\$ 3,520,486.22

CONCLUSIONS

1. It appears that the County is finally making headway in establishing some meaningful control over a significant source of revenue as witnessed by:
 - the signing of a new franchise agreement for solid waste disposal in western Nevada County
 - the audit currently underway of the prior disposal franchisee in eastern Nevada County
 - the collection of significant past due cable TV franchise fees
 - the pending renewal agreements for cable TV franchises
2. Cable franchise audits now are planned for every 3 years. These should result in future collections being more carefully monitored to assure the county receives the full amount of contracted obligations.
3. Despite prior Grand Jury recommendations, plans are not yet in place for regular audits of other franchises operating within the County.
4. The Auditor-Controller's office appears to lack a clear understanding of the methodology and documentation utilized by PG&E in their calculation of fees due the County to assure that remittances are in compliance with the law and established procedures.

RECOMMENDATIONS

1. Again, the Grand Jury strongly urges the Board of Supervisors to instruct the County Executive Officer, County Counsel and the Auditor-Controller to finally complete the update to Nevada County General Code Chapter II: Franchises.
2. The Auditor-Controller should develop a plan that will ensure that staff is provided with appropriate training to establish written procedures for regular internal audits of monies received from all franchisees.

RESPONSES

Board of Supervisors September 27, 2004

Auditor-Controller August 30, 2004

STATE OF CALIFORNIA
COUNTY OF NEVADA

BRUCE A. BIELEFELT - AUDITOR-CONTROLLER

Auditor- Controller
950 Maidu Avenue
Nevada City, CA 95959

RECEIVED
ASJ
(530) 265-1244
Fax: (530) 265-9843
email: bruce.bielefelt@co.nevada.ca.us

Reviewed
EE
9-2-04

August 30, 2004

Honorable Ersel L. Edwards
Presiding Judge of the Superior Court
201 Church Street, Nevada City
Nevada City, California 95959

Subject: Grand Jury Report, Nevada County Utility Franchises, Dated April 1, 2003.

Here are my responses to the Grand Jury's findings:

- 1) Agree.
- 2) Agree
- 3) Agree. A time extension will be required. The target completion date is Sept 30, 2004.
- 4) Agree
- 5) Agree. An audit of the Tahoe Truckee Disposal Company was done on June 10, 2004. My office was not able to conclusively determine whether the franchise fees paid the county were correct.
- 6) Neither agree nor disagree. I do not know the status of negotiations with Comcast.
- 7) Agree. Once the Code is rewritten we will set up a schedule.
- 8) Agree.

Here are my responses to the Grand Jury's recommendations:

- 1) This recommendation has not been implemented, but will be implemented some time in the future. County Counsel will provide the exact time line for completion.
- 2) This recommendation has been completed in Fiscal Year 04-05. Internal controls have been put in place to insure franchise fees are received in a timely manner. The procedure requires all departments to send their deposits to the Auditor-Controller's office. The Auditor-Controller's office has set up a tickler file to help us alert departments if their franchise fee deposits are overdue. Before the Auditor-Controller's office deposits the franchise fees the are reviewed for reasonableness and consistency with the documentation supplied by the franchisee, and prior payment history. The Auditor-Controller's office will return to the contracting department a copy of the deposit along with all supporting documentation so they can ascertain, validate, and demonstrate contract compliance. These documents will remain on file with the contracting department for five years.

Please be advised that the above internal control procedure is NOT an audit. It is simply a review. The Contracting department and the Auditor-Controller's office do not have the technical expertise, or staff, to audit large state wide firms like Pacific Gas & Electric, Waste Management Inc, USA Media, and Comcast Inc. Such audits would have to be contracted out, and may best be accomplished in collaboration with other counties. The proposed

revised ordinance does not address auditing methods and procedures. It simply makes a permissive statement that audits may be done.

It is of paramount importance that all franchise contract agreements clearly specify the type of fee documentation required from the franchisee.

Sincerely,



Bruce Bielefeld

Cc: Honorable Board of Supervisors
County Executive Officer
County Counsel

COUNTY OF NEVADA

STATE OF CALIFORNIA

950 Maidu Avenue • Nevada City • California 95959-8617

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Telephone: (530) 265-1480

Fax: (530) 265-9836

Toll-Free Telephone: (888) 785-1480

E-Mail: bdofsupervisors@co.nevada.ca.us

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

September 15, 2004

*Revised 9-16-04
EE*

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 2003-2004 Nevada County Civil Grand Jury Report, dated June 29, 2004, regarding Franchise Operations, Nevada County General Code

Dear Judge Edwards:

The attached responses by the Board of Supervisors to the 2003-2004 Nevada County Civil Grand Jury Report, dated June 29, 2004, 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 (Supervisor Sutherland absent) at their regular meeting on September 14, 2004. Responses to Findings and Recommendations are based on either personal knowledge, examination of official County records, information received from the Auditor-Controller, the Chief Financial Officer, or the Board of Supervisors and County staff members.

The Board of Supervisors would like to thank the members of the 2003-2004 Grand Jury for their participation and effort in preparing their Reports, and their participation in the Grand Jury process.

Sincerely,

Sue Horne

Vice-Chair, Board of Supervisors

Attachment

cc: A-C
CFO
Foreman, Grand Jury
Rick Haffey, County Executive Officer

**NEVADA COUNTY BOARD OF SUPERVISORS RESPONSES TO
2003/2004 CIVIL GRAND JURY REPORT**

DATED JUNE 29, 2004

RE: FRANCHISE OPERATIONS, NEVADA COUNTY GENERAL CODE

Responses to findings and recommendations are based on either personal knowledge, examination of Official county records, review of the responses by County Counsel, the Auditor-Controller, the Chief Financial Officer, or testimony from the Board Chair and county staff members.

I. GRAND JURY INVESTIGATION:

Franchise Operations, Nevada County General Code.

A. RESPONSE TO FINDINGS & RECOMMENDATIONS:

Findings:

- 1. In late 2002 and early 2003 two franchise utilities were audited by outside consultants at a cost of \$20,000. The audit of USA Media for the period 4/99 through 6/02 has since resulted in additional revenue of \$23,899. The audit of AT&T Broadband (now Comcast), for the period of 10/98 through 9/02 yielded additional revenue of \$79,636.35.**

Agree

- 2. California State Law (Broughton Act) sets forth a complex formula by which public gas and electric utilities calculate the amount of franchise fees due local governments. The County accepts without verification and on a good faith basis the components used by the utilities in calculating the franchise fees.**

Partially agree

The County does not currently verify the audit of franchisee fees paid by public gas and electric utilities as it believes such audits would not be cost effective. It does rely however, on Public Utility Commission oversight and public scrutiny to reduce the potential for inaccurate reporting.

- 3. After several prior extensions of Board Orders, on October 7, 2003 the BOS again extended the deadlines for completion of the Franchise Code update and for implementation of a regular franchise fee audit program to June 30, 2004.**

Agree

Board Order BO-03-32 required the County Executive Officer, County Counsel, and the Auditor-Controller to review the provisions of the Nevada County General Code Chapter II: Franchises, and present recommendations to the Board of Supervisors by October 1, 2003.

On October 7, 2003, the CEO, County Counsel, and Auditor-Controller presented to the Board a work plan to update the Franchise Code along with a request to extend the Board Order completion date. The Board accepted the work plan and approved an extension of the Board Order to June 30, 2004 with interim progress reports to be made to the Board by December 31, 2003 and April 30, 2004. Board Order BO-03-32 was also closed and reissued as BO-03-67.

Status reports regarding BO-03-67 were presented to the Board on October 28, 2003, December 16, 2003 and May 4, 2004. The CEO, County Counsel, and the Auditor-Controller reported progress was being made on the work plan and that it was still scheduled for completion by June 30, 2004.

On June 22, 2004 the County Executive Officer, as part of the quarterly update on open Board Orders, reported to the Board that the work plan was still scheduled for completion by June 30, 2004. As of this date, the work plan has been substantially completed and reported to the Board; however, the task remaining is County Counsel's proposed revision of Chapter II of the General Code (Article II went to the Board in July, while Articles I, III and IV have not been completed). County Counsel has since requested an extension of the Board Order 03-67 to September 30, 2004.

Board Order BO-03-33, requiring the development and implementation of a regular franchise fee audit program, is dependent on the provisions of the revised Franchise Code and cannot be completed until the new Code is adopted.

By this response, the CEO and County Counsel, with assistance from the Auditor Controller, are directed, by September 30, 2004 to complete Board Orders BO-03-67 and BO-03-33, or to review the work plan for updating the Franchise Code, establish firm dates for updating the Nevada County General Code Chapter II: Franchises, as directed in Board Order BO-03-67 and establish a plan and time line for developing and implementing a regular franchise fee audit program as directed in BO-03-33.

4. **The Grand Jury was informed that a new franchise agreement, more favorable to the County and with a straightforward assessment formula was negotiated with Waste Management for the disposal of solid waste in western Nevada County. This new agreement went into effect January 1, 2004.**

Agree

5. **Because the franchise contract for eastern Nevada County with Tahoe Truckee Disposal Company is terminating, the BOS requested the Auditor-Controller to conduct audits of this franchisee for the years 2001, 2002 and 2003 to determine that the proper fees had been paid. In a status report at its April 6, 2004 meeting, the BOS was advised that the Tahoe Truckee Disposal Company audit was not completed but should be done by June 30, 2004.**

Agree

On December 16, 2003 the Board of Supervisors adopted Resolution 03-570 directing the Auditor-Controller to conduct an audit of the Eastern county solid waste franchise for calendar

years 2001, 2002, and 2003. At that meeting, The County Chief Financial Officer (CFO) stated the audit could be completed by June 30, 2004.

On April 2, 2004, the BOS was informed by the CFO that the Auditor-Controller was still committed to completing the audit by June 30, 2004.

The Auditor-Controller performed an audit of the Tahoe Truckee Disposal Company on June 10, 2004. The audit was not completed as expected by June 30, 2004, because the Auditor's office has not been able to conclusively determine whether the franchise fees paid to the county were correct.

The franchisee's computer records were not set up to segregate in sufficient detail the revenue data (by service code or franchise area) the Auditor-Controller needs to conduct a cost-effective audit. In a June 22, 2004 letter to the Board, the Auditor-Controller said that an outside accounting firm would be needed to complete this audit, but cautions that the cost could exceed the amount of additional revenue that might be gained from the audit.

6. The Grand Jury was advised that a renewal agreement, currently being negotiated between the County and Comcast, will serve as the basis for the cable TV franchise code in Western Nevada County. This cable TV code will be presented to the BOS for approval sometime in June 2004.

Partially agree

A franchise renewal agreement is currently being negotiated with Comcast, but many of the most important terms for the County are being incorporated into the revised County cable TV system franchise code (General Code Chapter II, Article 2: "Cable Systems and Open Video Systems".)

Within the broader process of renegotiating the County's franchise agreements with its cable TV system providers, of which Comcast is one, the County has updated the enabling ordinance above that provides for County issuance and administration of cable TV system franchises. The revisions to this ordinance reflect the County's franchise renewal goals that were developed with the assistance of the consultant assisting with the Comcast negotiations as well as community input received at several community workshops. The ordinance has been updated and was presented to the Board of Supervisors for a Public Hearing on July 12, 2004. The ordinance was adopted on August 10, 2004 and became effective on September 10, 2004.

The current status of the Comcast negotiation is as follows: The County has repeatedly given notification of non-compliance with the existing franchise and has demanded compliance as a threshold to renewal. Some of the non-compliance includes: Late and inadequate annual reports; inadequate logs of resolutions of customer complaints; inadequate reporting on outages and rebates to customers. Comcast, for its part, has sought to reserve its rights under the existing franchise (which has technically expired), has denied substantial non-compliance, and has objected to the County's revision of Chapter II, Article 2, of the General Code. As to the

latter, its objections are that the code revision imposes costs and burdens that are negative for the business and that ordinance provisions covering customer service, technical standards, definitions, reports, penalties, and due process would ordinarily be negotiated in a franchise agreement. The County's revision to Chapter II, Article 2 has also been adopted by the Cities of Grass Valley and Nevada City and now provides a common basis for cable TV franchise renewal negotiations across all of Western Nevada County.

The franchise renewal agreement will cover much of the same ground as the ordinance, either referring to the General Code or supplementing the General Code; and, there may ultimately be a need for further revisions to the General Code.

7. The Grand Jury was also advised that a schedule has been set up in the Auditor-Controller's office to audit all cable franchisees every 3 years.

Partially agree

The Nevada County General Code Chapter II has no reference to audits, let alone frequency of audits, except for the just repealed cable TV ordinance, where, at G-II 2.37 C, it required an audit "not less frequently than once at the conclusion of each three year period". The new cable TV ordinance does not include this requirement, and in fact does not discuss audits at all as they are negotiated as part of each franchise agreement. The new Article I requirement for franchise audits broadly covers all franchises. It will not specify a rigid mandate of every three years, but will allow for it, and be flexible enough for an audit as often as deemed necessary, except as otherwise provided in a particular franchise agreement. Further it will not mandate that the Auditor-Controller perform all audits, but will state that the scheduling, performance, and oversight for such audits shall be prescribed from time to time by resolution of the Board of Supervisors, or may be undertaken by the direct initiative of the affected department, County Executive, and/or Auditor-Controller.

8. The franchise fees collected for the past five years are shown in the following table:

FISCAL YEAR	CABLE TV	ELEC/GAS	SOLID WASTE	TOTAL
98/99	\$ 173,056.18	\$ 220,999.73	\$ 258,861.65	\$ 652,917.56
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TOTAL	\$ 792,005.10	\$ 1,389,257.76	\$ 1,339,223.36	\$ 3,520,486.22

Agree

Recommendations:

- 1. Again, the Grand Jury strongly urges the Board of Supervisors to instruct the County Executive Officer, County Counsel and the Auditor-Controller to finally complete the update to Nevada County General Code Chapter II: Franchises.**

The recommendation has not yet been implemented but will be by September 30, 2004 (See Response to Finding No. 3).

Despite Board direction to do so in Fiscal Year 2001/2002, no work plan was forthcoming until October 1, 2003, when the current County Counsel (who started in September 2003) committed to a Board-approved work plan and in fact substantially completed the plan as reported to the Board at its May 4, 2004 meeting.

The project has been delayed due to higher Board of Supervisor priorities and lack of available resources in County Counsel's office. Counsel simply needed more time, partly due to having an attorney vacancy in the office during most of FY 03-04, who traditionally handled contracts, franchises, construction, and code enforcement issues.

County Counsel has also been working on more immediate franchise issues, including the renewal of the Western Nevada County Area B franchise with Waste Management of Nevada County on December 16, 2003. Throughout Fiscal-Year 2003/2004 his office also served as legal counsel to the "Cable Franchise Partners", the workgroup for the County, the cities of Grass Valley and Nevada City, and the jointly retained consultant to renegotiate the new cable TV franchise agreement with Comcast.

All that remains to be done to update the Code are the revisions to Chapter 2, Articles I, III and IV. As was stated in the Board response to Finding No. 3, these changes should be ready for Board review by September 30, 2004.

- 2. The Auditor-Controller should develop a plan that will ensure that staff is provided with appropriate training to establish written procedures for regular internal audits of monies received from all franchisees.**

The recommendation has been implemented for FY 2004-2005 as of July 1, 2004.

Internal controls have been put in place to ensure franchise fees are received in a timely manner. The internal procedure requires all departments to send their franchise fees directly to the Auditor-Controller's office for deposit. The Auditor-Controller's office has set up a suspense file to alert departments if their franchise fees are overdue. Before the Auditor-Controller deposits the franchise fees, they are reviewed for reasonableness and consistency with the documentation supplied by the franchisee, and to prior fees collected. The Auditor-Controller will return a copy of the deposit along with all supporting documentation back to the contracting department so they

can ascertain, validate, and demonstrate contract compliance by the franchisee. These documents will remain on file with the contracting department for five years.

The above internal control procedure is not an audit. It is simply a review. The contracting department or Auditor-Controller's office does not have the technical expertise to audit large state-wide firms like Pacific Gas & Electric, Waste Management, Inc., USA Media and Comcast, Inc., nor would it be practical for the Auditor-Controller's office to staff up to perform such audits. These audits will have to be contracted out and may be best accomplished in collaboration with other counties.

All franchise contract agreements shall also clearly specify the type of fee documentation required by the county from the franchisee.

As stated in the response to Finding No. 7, revisions to Chapter II of the Franchise Code will also reference how audit responsibilities are allocated, change the procedures and timing for accomplishing franchise fee audits, and will not require that the Auditor-Controller perform all audits.

Resolution of audit discrepancies and the correctness of the fees submitted will continue to be the ultimate responsibility of the Board of Supervisors.

REQUIRED RESPONSES

Board of Supervisors – September 27, 2004

Auditor-Controller – August 30, 2004

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