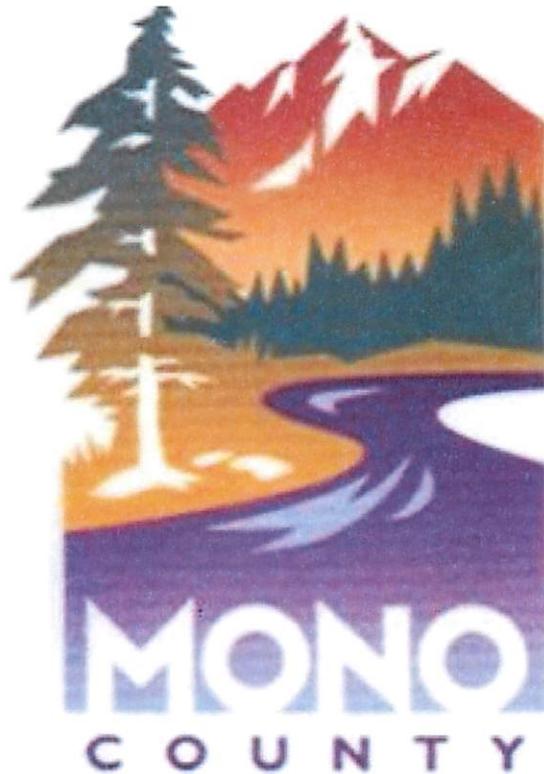


# MONO COUNTY GRAND JURY

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Final Report  
2016-2017

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**LOGO**

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF MONO

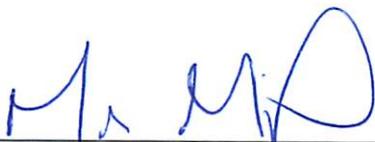
IN RE:

2016-2017 Grand Jury

GENERAL ORDER

I certify that the 2016-2017 Mono County Grand Jury Final Report complies with Title Four of the California Penal Code and direct the County Clerk to accept and file the final report as a public document.

Dated this 16<sup>th</sup> day of JUNE 2017.



MARK MAGIT  
Presiding Judge of the Superior Court



COUNTY OF MONO- SUPERIOR COURT  
GRAND JURY

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Michael R. Boucher  
Grand Jury Foreperson  
2016-2017

The Honorable Judge Mark Magit  
Mono County Superior Court  
P.O. Box 1037  
Mammoth Lakes, CA 93546

Transmittal of the 2016 - 2017 Final Grand Jury Report.

Dear Judge Magit,

It is my honor to submit the completed final report of the 2016 - 2017 Mono County Grand Jury. This year's Grand Jury investigated one Mono County department, revisited a 2014-2015 Grand Jury investigation of the Town of Mammoth Lakes Finance and TOT Collection Department, and investigated allegations of conflicts of interest by Town of Mammoth Lakes officials. The Grand Jury also responded to a number of citizen complaints. In addition, the Grand Jury conducted a review and inspection of the Mono County Jail facility in Bridgeport.

The work of this year's Grand Jury was a bit more complex due to the lack of a seated Grand Jury for 2015 - 2016. It was unfortunate that there were not sufficient citizen volunteers to impanel a Grand Jury for that year. As a result, our Grand Jury dedicated significant time to read and review the findings of the 2014 - 2015 Grand Jury. As part of this research we were able to discover official responses from Mono County and Mammoth Lakes governmental officials which had previously not been added to the Mono County Grand Jury website. We believe it is important that all required governmental responses to each year's Mono County Grand Jury report be promptly written, read by the court, and posted onto the Grand Jury website for our citizens to read and review. Failure to do this weakens the impact and effect of the Grand Jury system.

It has been a pleasure to work with a fine group of Mono County citizens as part of the 2016- 2017 Mono County Grand Jury. I want to thank Tom Gaunt who served as the Assistant Foreperson and Jennifer Burrows who served as our Grand Jury Secretary. I also want to commend Tom Gaunt, Roger Claypool, and Jennifer Burrows for their service chairing our three investigative committees. Two Grand Jury members chose to recuse themselves from two separate investigations during the course of our year of service. All members of the Grand Jury members acted in the interest of our fellow Mono County citizens with the highest civic and ethical goals in mind.

The Grand Jury wishes to thank Judge Stan Eller and Judge Mark Magit for the opportunity to serve our county. Tim Kendall, Mono County District Attorney, Hector Gonzalez, the Executive Officer of the Court, and Stacey Simon, Mono County Counsel, provided the Grand Jury with valuable legal assistance and advice throughout our term. We are grateful for their help.

Moving forward, we encourage our fellow Mono County citizens to volunteer for future Grand Juries. It is our hope and expectation that service of this type will help promote and ensure high standards and efficiency within our Mono County and Town of Mammoth Lakes governments.

Respectfully yours,

A handwritten signature in blue ink that reads "Michael R. Boucher". The signature is written in a cursive style with a long horizontal stroke at the beginning.

Michael R. Boucher  
Foreperson, Mono County Grand Jury 2016 - 2017

## **THE GRAND JURY SYSTEM**

Shrouded in secrecy, the functions of a Grand Jury are not widely known. The following summary describes what a Grand Jury is and does:

The Grand Jury system dates back to 12th century England during the reign of Henry II. Twelve "good and lawful men" were assembled in each village to investigate anyone suspected of crimes. The jurors passed judgment based on what they themselves know about a defendant and the circumstances of the case. It was believed that neighbors and associates were the most competent to render a fair verdict. By the end of the 17th century, the principle that jurors must reach a verdict solely on the basis of evidence was established, and that practice continues today. Although California Supreme Court decisions have curtailed the historical criminal indictment function, the Grand Jury still serves as an inquisitorial and investigative body functioning as a "watchdog" over regional government.

The Mono County Grand Jury, as a civil Grand Jury, is not charged with the responsibility for criminal indictments except in the case of elected or appointed county officials. Its primary function is the examination of county and city government, including special legislative districts such as community service districts and fire protection districts. The Grand Jury seeks to ensure that government is not only honest, efficient and effective, but also conducted in the best interest of the citizenry. It reviews and evaluates procedures, methods and systems used by governmental agencies to determine compliance with their own objectives and to ensure that government lives up to its responsibilities, qualifications and the selection process of a Grand Jury are set forth in California Penal Code Section 888 et seq.

The Grand Jury responds to citizen complaints and investigates alleged deficiencies or improprieties in government. In addition, it investigates the county's finances, facilities and programs. The Grand Jury cannot investigate disputes between private citizens or matters under litigation. Jurors are sworn to secrecy, and all citizen complaints are treated in strict confidence.

The Mono County Grand Jury is a volunteer group of 11 citizens from all walks of life throughout the county. Grand jurors serve a year-long term beginning July 1, and the term limit is two consecutive years. Lawfully, the Grand Jury can act only as an entity. No individual grand juror, acting alone, has any power or authority. Meetings of the Grand Jury are not open to the public. By law, all matters discussed by the Grand Jury and votes taken are kept confidential until the end of term.

One of the major accomplishments of a Grand Jury is assembling and publishing its Final Report. This document is the product of concentrated group effort and contains recommendations for improving various aspects of governmental operations. When it is completed, the Final Report is submitted to the presiding judge of the Superior Court. After release by the court, it is directed first to county department heads for review, then to the communications media. The Final Report is a matter of public record, kept on file at the court clerk's office. It is also available on line at: [www.monocourt.org](http://www.monocourt.org).

## **GRAND JURY ADVISORS**

**Mark Magit**

Judge, Superior Court, Mono County

**Hector Gonzalez Jr.**

Executive Officer, Superior Court, Mono County

**Tim Kendall**

District Attorney, Mono County

**Stacey Simon**

County Counsel, Mono County

**Danielle Bauman**

Executive Assistant, Superior Court, Mono County

## **GRAND JURORS**

### **2016-17 Grand Jurors**

**Michael Boucher, Foreperson  
Mammoth Lakes**

**Thomas Gaunt, Assistant Foreperson  
Mammoth Lakes**

**Jennifer Burrows, Secretary  
Mammoth Lakes**

**Roger Claypool  
Mammoth Lakes**

**Alane Dufrene-Beardsley  
Mammoth Lakes**

**Lisa Isaacs  
Mammoth Lakes**

**Rose Kuljerich  
Mammoth Lakes**

**Sally Miller  
Lee Vinning**

**Sharlean Magid  
Mammoth Lakes**

**Jeffrey Mitchell  
Mammoth Lakes**

**Forward:**

A supermajority of the 2016-17 Mono County Grand Jury approved all of the following three Investigative Committee Final Reports, the Final Report of our inspection of the Bridgeport Jail, and the disposition of submitted citizen complaints.

**Mono County Grand Jury for the Year 2016 - 2017**  
**Investigation #01**  
**Mono County Elections/Registrar of Voters Office**  
**Final Report by Grand Jury Investigative Committee**

**Introduction:**

The Grand Jury is charged with reviewing local government agencies. Penal Code Section 925 specifically directs the Grand Jury to investigate and report on county agencies. The Grand Jury at its general meeting on September 8, 2016 decided to begin an investigation of the Mono County Registrar of Voters Office. The Grand Jury chose to investigate this office due to questions regarding the accuracy, functioning, and efficiency of our two most recent Mono County Elections, specifically the June 2016 primary election in Mammoth Lakes, and the November 2016 general election throughout Mono County.

**Background:**

Numerous problems were noted by Mono County voters and by the local press during the June 2016 primary elections in Mammoth Lakes. For the Mammoth Lakes Town Council election, the Mono County Sample Ballot incorrectly directed voters to select three candidates. There were only two vacancies on the Mammoth Lakes Town Council. This error was not noted until the first batch of absentee ballots was mailed out to voters. These absentee ballots directed voters to select three candidates for Mammoth Lakes Town Council rather than two.

In an effort to resolve this problem, the Mono County Registrar of Voters office contacted the California Secretary of State for suggestions. It was recommended that a second absentee ballot with only Mammoth Lakes Town Council candidates and corrected instructions to vote for only two candidates be mailed to voters. Voters were directed to fill out the first absentee ballot for all other races except for Mammoth Lakes Town Council. The second ballot, only for Mammoth Lakes Town Council, was to be returned to the proper voting location or mailed to the Mono County Registrar of voters. Any votes cast for Mammoth Lakes Town Council on the first absentee ballot would be not be counted. Citizens who voted in person on the day of the primary election were given two ballots - one with Mammoth

Lakes Town Council, and one with every other item on the ballot. The extra cost to Mono County for the additional printing and mailing expenses was estimated by the Registrar of Voters to be approximately \$10,000. This was paid from the Mono County General Fund. The confusion to Mammoth Lakes voters, and disruption of what should have been a relatively straight-forward town council election, was significant.

A related problem with the Mammoth Lakes Town Council primary election concerned two candidates who were not put on the primary ballot due to submitting petitions with an insufficient number of valid voter signatures. One of these candidates submitted his petition on the last day possible, so there was no time to verify the voter signatures until it was too late to qualify for the election. The second of the candidates did file his petition a week before the deadline. This should have been enough time to verify voter signatures, notify the candidate that he did not have enough valid voter signatures on his petition, and enable him to attempt to secure the required number of voter signatures prior to the primary election deadline. This did not occur. The candidate in question eventually decided to pursue his candidacy as a write-in candidate.

An additional significant error in the Mammoth Lakes June 2016 elections concerned Measure G. Measure G was a parcel tax which would benefit Mammoth Unified School District, its educational programs, and students. The Measure G committee submitted an argument in favor of the parcel tax to the Mono County Registrar of Voters office prior to the deadline. The office lost track of that argument. The argument for Measure G subsequently was not included in the information in the Sample Ballot which was mailed out to voters. Measure G, the parcel tax for Mammoth Unified School District, did pass, but the argument in favor of the measure should have been published in the Sample Ballot so voters would have had more information about the issues involved.

A number of irregularities and difficulties were observed during the November 8, 2016 general election. A significant number of Mono County voters did not receive their absentee ballots in the mail. 130+ absentee ballots were returned to the Post Office as "undeliverable." Other voters who did receive absentee ballots neglected to bring them to the polling stations when they decided to vote in person. Long lines of voters, especially in Mammoth Lakes, were observed. The long lines were due in part to the record turnout for the 2016 general election. Other issues compounded the

long lines. There were voters who had recently moved but who had failed to re-register. There was also a new state voter registration data base which went live in 2015. This data base would purge voters who were registered to vote in more than one county. The data base would try to determine/guess which county's registration was accurate and purge the secondary registration. According to an elections official, some Mono County voters had their names purged from the voter rolls because the data base believed they lived in Inyo County. This required that the voter line up to cast a provisional ballot during the general election.

Another factor complicating the voting process concerned voters who had registered to vote online, but who had not come in to a California Department of Motor Vehicles office or the Mono County Elections office to submit a valid signature. Many of these voters were also waiting in line in order to cast provisional ballots. One of the voting machines in Mammoth Lakes malfunctioned, compounding this problem. In Bridgeport, there were both software and hardware problems with the voting machines. One machine in Bridgeport was rejecting too many ballots, many of which were marked in pencil. Pencil-marked ballots should be able to be read by the voting machines. The election officials eventually changed the cartridge in the machine which appeared to solve that problem.

An election official told one of the Grand Jury members observing the general election voting in Bridgeport that Mono County's election machines were among the oldest in the state. This official stated that there was no money in the Registrar of Voters budget to replace the machines. This official also stated that the office was not prepared for the volume of voters who showed up at the polls for the general election. An additional elections office staff member would likely have improved the flow and speed of voting during the general election.

After the general election, the Office of the Registrar of Voters office conducted a mandatory hand count of ballots in order to confirm the election machine totals. The machine count did not match the hand-counted totals. It was then determined that the voting machine's cartridge had not been properly reset after an initial test had been conducted prior to the election. Once the cartridge had been reset and the voting machine re-tallied the ballots, the hand count, and machine count matched.

An additional example of inaccuracies in the election process included conflicting information on when absentee ballots needed to be received by the Registrar of Voters office. The online information on the Mono County Elections Office website initially stated that the ballots had to be received by the day of the election in order to be counted. That information was incorrect. The Registrar of Voters office, at the request of the grand jury, corrected the online information to state that absentee ballots needed to be received within three days of the election.

## **Methods:**

The 2016-17 Grand Jury formed an Elections Committee to investigate the incidents which occurred during the June 2016 primary elections, and to look at general policies, procedures, and guidelines within the Registrar of Voters Office. It should be noted that the Registrar of Voters in Mono County also serves as the Clerk to the Board of Supervisors, as the Mono County Recorder, and the Mono County Clerk. This Clerk/Recorder/Registrar of Voters position is not unheard of in smaller California counties, but it does present the challenge of having many different responsibilities be overseen by one appointed individual.

The Elections Committee interviewed four individuals over the course of five months. These individuals included several members of the Clerk/Recorder/Registrar of Voters office, a key Mono County official, and a long-time precinct worker/supervisor of Mammoth Lakes elections. One member of the Clerk/Recorder/Registrar of Voters office was interviewed twice - once after the June 2016 primary election and a second time after the November 2016 general election.

The first witness from the Clerk/Recorder/Registrar of Voters office accepted full responsibility for the errors, omissions, and problems which arose during the June 2016 primary election. This official gave a clear and forthcoming description and analysis of what went right and what went wrong during the June 2016 primary elections in Mammoth Lakes along with specific suggestions for how to address each issue. Chief among the reasons so many errors occurred in the June 2016 primary election in Mammoth Lakes was the general inexperience of the staff working within Mono County's Registrar of Voters office. A key, long-term employee who had been responsible for conducting many previous Mono County elections

resigned her position and moved out of the county. The individual appointed to by the Board of Supervisors to be the new Clerk/Recorder/Registrar of Voters did not have any experience running elections. There were limited written procedural election guides in place within the elections department. This led to a lack of clarity regarding what needed to be done, when it needed to be done, and who was responsible for each of the key election related tasks. The proofreading error regarding the Mammoth Lakes Town Council election - citing 3 open positions when only 2 existed - and the omission of the argument for the Mammoth Unified School District's parcel tax, Measure G, were all mistakes made by an office which was still learning how to conduct elections, led by an official new to his position, with too many administrative hats to wear, and not enough delegating skills.

The Grand Jury's Elections Committee sent four representative to observe the November 2016 general election. Two members observed the one Mammoth Lakes polling place. Two other members traveled to Bridgeport to observe election proceedings there as well as observe operations in the Bridgeport Registrar of Voters office. The grand jurors observing the voting in both locations noted that there could have been a greater number of clearly posted voting instructions present. On a positive note, the observers commented that the volunteer staff in Bridgeport and in Mammoth Lakes appeared to be very hard-working and efficient. Both groups of election volunteers shared that the turnout was the highest they had ever seen.

A second witness was interviewed after the November 2016 general election. This individual was a long-time Mono County election volunteer and polling place supervisor. The witness was able to share a historical perspective on elections issues in Mammoth Lakes and detailed observations regarding the June and November 2016 elections. In this witness's experience, the number of problems and errors in the June 2016 primary election, and the confusion and voting delays - due to the long line of provisional voters - in the November 2016 general election, were unparalleled in recent Mammoth Lakes elections.

This individual shared that the logistical cooperation between Mammoth Unified School District, Mammoth High School, and the Mammoth Lakes polling place regarding parking and utilizing the high school library for voting was excellent. The witness shared the opinion that there were not enough staff members working for the elections office (throughout the

county) on the day of the November 2016 general election to allow for a smooth election process. The witness also noted that there were inconsistencies between online election information provided on the Mono County Elections Office website and information which was written on the ballots.

The witness stated that there were ample volunteers present at the Mammoth Lakes polling station. He said that the big problem they encountered had to do with voters who had been on the voter rolls in previous elections, but were not on the rolls this time. There were also some delays due to the complex nature of the general election ballot. It was suggested that a separate area within the polling area be set up for people to sit, read, and study the ballot. The witness stated that signage within the polling area at Mammoth High School could have been better. It was unclear to some voters where they should line up to vote for their specific precinct. There were only two touch screen voting machines at the Mammoth Lakes polling place. One of these two touch screen machines went down and had to be repaired. This slowed the voting process as well. The witness believes that replacing these voting machines is imperative for future elections.

Shortly after the November 2016 general election the Mono County Clerk/Recorder/Registrar of Voters offered his resignation. He has since moved out of the state. His deputy was appointed as interim Clerk/Recorder/Registrar of Voters. As of February 2017, county officials decided to make this appointment permanent.

In January the Election Committee conducted its third interview. This witness reviewed what went right and what went wrong with the November 2016 general election in Mono County. A summary of these issues include:

- 130+ absentee ballots which had been mailed to Mono County absentee voters and were returned to the Post Office as “undeliverable.”
- Some voters who received absentee ballots neglected to bring them to the polling stations when they decided to vote in person.
- Long lines of voters, especially in Mammoth Lakes were observed. The long lines were due in part to the record turnout for the 2016 general election.
- An additional elections office staff member would have improved the flow and speed of voting during the general election.
- There were voters who had recently moved but who had failed to re-register.

- There was a new state voter registration data base which went live in 2015. This data base purged voters who were registered to vote in more than one county. The data base would try to determine/guess which county's registration was accurate and purge the secondary registration.
- Some voters who had registered to vote online did not come in to a California Department of Motor Vehicles office or the Mono County Elections office to submit a valid signature.
- One of the voting machines in Mammoth Lakes malfunctioned.
- One machine in Bridgeport was rejecting too many ballots. Many of these were marked in pencil. Election officials eventually changed the cartridge in the machine.
- Mono County's election machines are among the oldest in the state. They need to be replaced to ensure an accurate and efficient election.
- The mandated hand count of one of Mono County's precincts did not match the machine count. The voting machine's cartridge had not been properly reset after an initial test had been conducted prior to the election.

The witness gave the grand jury committee specific suggestions for resolving the election problems of 2016. First would be to have Mono County buy new election voting machines. Second would be to have a provisional ballot voting machine for each of the five Mammoth Lakes precincts (instead of sharing one for all five precincts). A third suggestion was to encourage the State of California to allow for smaller counties such as ours to increase the number of people in a voting area who are allowed to vote solely via absentee ballots from 1,000 to 10,000. A fourth suggestion regarded new legislation signed by Gov. Brown which Mono County could opt into as of 2020. This new legislation would allow for two general voting centers to be set up in Mono County. These would be in lieu of needing to have a physical voting center for every precinct. The general voting centers would be open 10 days before the election including some weekends. This would allow the county and its voters to have more pre-voting and the opportunity to have shorter lines. A final comment which this witness made to the grand jury committee was that detailed organizational skills, the ability to delegate, and a breadth of experience with elections would all be skill sets which would lead to more smooth, error-free elections in Mono County in the future. This witness believed that the newly appointed Clerk/Recorder/Registrar of Voters possessed the requisite skill set to accomplish this goal.

The fourth interview held by the Grand Jury's Elections Committee was held in early February of 2017. The key suggestions this witness made to the grand jury regarding conducting smooth, error-free elections included:

- Filling a new vacancy within the Clerk/Recorder/Registrar of Voters office with a skilled and experienced worker. This would bring the total number of employees in the office to five.
- Create stability in the office - there has been too much turnover over the past three years.
- Review old materials and documents, redo procedure manuals, and clear out and modernize the filing system within the office.
- Train election department staff on using the new VoteCal voter database.
- Communicate more frequently with the Mammoth Lakes Town Clerk regarding election petitions, deadlines, and valid voter signatures.
- Have sample/absentee ballot proofreading done by committee - no one should be the only person to proofread these materials.
- Increase voter education and outreach at the front end (before the elections take place).
- Hire extra (trained) workers for the next election. Only one extra trained worker was available for this past year.
- Purchase new election voting machines. The Registrar of Voters has been in contact with the Mono County administrator regarding bringing this issue in front of the Board of Supervisors as they prepare their spring revision to the county budget.
- The new Clerk/Recorder/Registrar of Voters needs to organize the office and clearly delegate and guide staff in order to accomplish the most time-sensitive tasks at hand throughout the calendar year.

The final interview of this investigation took place in late February of 2017. In analyzing the errors and problems which affected the past two Mono County elections the witness believed that disorganization and a lack of attention to detail by the former Mono County Registrar of Voters were contributing factors. The witness also believed that clearly articulated policies and procedures for conducting the election were not in place. There was acknowledgement as well that the general level of staff experience with conducting elections was not as high as it should have been due to the resignation and departure of a long-time staff member who had conducted many Mono County elections prior to 2015.

The official shared the opinion that the newly appointed Mono County Clerk/Recorder/Registrar of Voters brought a different - and more appropriate - skill set to the job. Organization, delegation, and attention to detail were strengths of this new administrator according to this witness. The Mono County official indicated that experienced professionals from outside Clerk/Recorder/Registrar of Voters offices were being brought in to Mono County to help conduct interviews and help hire a new, experienced staff member to round out the staff of five for the Mono County Clerk/Recorder/Registrar of Voters office.

**Findings:**

F1 - The Mono County Registrar of Voters Office was generally unprepared, due to the lack of experience of its leadership, for dealing with the complexities of the June 2016 primary, and November 2016 general elections.

F2 - The Mono County Clerk/Recorder/Registrar of Voters who was in charge of conducting the June 2016 primary and November 2016 general elections, while being an honest, experienced, dedicated, and reflective county administrator, did not have the skill set - organization, delegation of duties, careful attention to detail - that a complex and multi-faceted department requires for accurately conducting its business, especially during primary and general elections.

F3 - Mono County could lobby the state for voting legislation in California which could expand the number of citizens able to cast absentee ballots during primary or general elections from 1,000 to 10,000. Mono County could also choose to opt-in by 2020 to new legislation which provides for two general voting centers within the county with extended voting days. The adoption of either of these measures would allow for greater voting opportunities and fewer costs to Mono County.

F4 - Mono County's voting machines are obsolete and need to be replaced. There should be enough voting machines so that each precinct in Mammoth Lakes has a dedicated voting machine.

F5 - Mono County's Registrar of Voters Office needs to conduct additional voter education and outreach to eliminate confusion during elections. Mono County's Registrar of Voters Office also needs to ensure that clearly

written and accurate sample and absentee ballots are prepared, distributed, and received by the county's voters in a timely manner. The Mono County Registrar of Voters Office needs to be in close contact with the Mammoth Lakes Town Clerk, and any other pertinent local officials to ensure that candidates for office submit petitions of office in a timely manner with enough opportunity for voter signatures to be verified prior to the deadline.

**Recommendations:**

R1 - Staff within the office of the Registrar of Voters should receive continuing training and education in the efficient use of new state voting software. Ongoing staff development should be conducted regarding election protocol and procedures. Mono County's internal election procedure manuals should be updated and distributed to relevant staff as needed. The office should hire additional skilled personnel to help them conduct each election. Additional staff levels during election periods should be determined by the nature and demands of each particular election.

Action: Clerk/Recorder/Registrar of Voters

Timeframe: 6 months

R2 - Mono County should appoint an administrator to be Clerk/Recorder/Registrar of Voters who has experience in conducting elections, and who also has a skill set with high levels of organization, delegation, and careful attention to details. This individual should also strive to maintain long-term stability and morale within the department and to employ and train such skilled staff as are necessary to conduct the many diverse duties and functions of the Clerk/Recorder/Registrar of Voters offices.

Action: The initial action of appointing a new Clerk/Recorder/Registrar of Voters was taken by the Chief Administrative Officer (CAO) of Mono County in early 2017. The Mono County CAO should monitor the offices of the Clerk/Recorder/Registrar of Voters to verify that a reorganization and updating of files, and policy/procedure manuals has been undertaken, and that newly hired personal receive the training they need to be effective in their multi-departmental setting.

Timeframe: 9 months

**R3 - The Mono County Board of Supervisors and the Registrar of Voters should carefully research new state legislation and voting initiatives to determine whether Mono County might take advantage of more flexible regulations regarding the number of voters in an area who may cast their ballots via absentee ballot and/or create several general election centers which are open for extended days to maximize voting opportunities and reduce costs.**

**Action: Mono County Board of Supervisors, Mono County Chief Administrative Officer, Registrar of Voters**

**Timeframe: 6 months**

**R4 - After carefully researching and reviewing new voting legislation and initiatives, the Board of Supervisors of Mono County should budget sufficient funds to purchase new voting machines - consistent with projected future needs and election methods.**

**Action: Mono County Board of Supervisors, Mono County Chief Administrative Officer**

**Timeframe: 6 months**

**R5 - The Mono County Registrar of Voters needs to clearly communicate to Mono County voters information regarding State of California Voter Registration requirements, online voter signature requirements, and prospective elected-official voter petition rules. All sample and absentee ballots, along with measure/initiative arguments, need to be accurate and accompanied by clear instructions. These documents should never be proofread by only one person. Mono County's online Elections Office website needs to be updated and have accurate information. Instructions on absentee and sample ballots should match the information provided on the Mono County Elections Office website and should be in accordance with state law. There should be clear and ongoing communication between satellite offices, such as the Town of Mammoth Lakes Town Clerk, and the Registrar of Voters office regarding timelines for the submission of candidate petitions, the verification of voter signatures, and the precise number of candidates who can be voted for on a given election.**

**Action: Registrar of Voters**

**Timeframe: 6 months**

**Mono County Grand Jury for the Year 2016-2017  
Investigation #2  
Town of Mammoth Lakes Conflict of Interest  
Final Report by Grand Jury Investigative Committee**

**Introduction:**

The Grand Jury had a concern about actual or perceived conflicts of interest among council members for the Town of Mammoth Lakes. The Grand Jury became aware of a citizen complaint which had been filed against a current Mammoth Lakes Town Council Member and a former Mammoth Lakes Town Council Member. The complainant was concerned about two issues. One issue was that the council members' Form 700's omitted business holdings, leases, and spousal information. These businesses are located within The Village area in Mammoth Lakes. The other issue was that the two Town Council members had a potential conflict of interest. Both Council members cited in the complaint had participated in discussions, and voted, to support a parking lot to help ease congestion in the area surrounding The Village. There is a concern that the vote for the parking lot constituted either an actual or perceived conflict of interest since increased parking around the Village could arguably bring additional customers into the businesses which were owned by the above-mentioned town council members, thus providing them with a financial gain.

**Background:**

The FPPC states: *"If a decision may have a financial impact or effect on any of the foregoing interests, an official is disqualified from governmental decision if the following two conditions are met:*

- The financial impact or effect is foreseeable, and*
- The financial impact or effect is significant enough to be considered material.*

*Generally, a financial impact or effect is presumed to be both foreseeable and material if the financial interest is "explicitly" or directly involved in the decision. A financial interest is explicitly involved in the decision whenever the interest is a named party in, or the subject of, a governmental decision before the official or the official's agency.*

*If the interest is "not explicitly involved" in the decision, a financial impact or effect is reasonably foreseeable if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. A financial effect need not be likely to occur to be considered reasonably foreseeable.*

*However, for interests "not explicitly involved" in the decision, different standards apply to determine whether a foreseeable effect on an interest will be material depending on the nature of the interest. The FPPC has adopted rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest. These rules are called "materiality standards," that is, they are the standards that should be used for judging what kind of financial impacts resulting from governmental decisions are considered material or important."*

Each individual holding public office is required to fill out a Form 700 annually. This form helps to identify financial interests which might be considered a conflict of interest while serving in office.

### **Methods:**

The 2016-2017 Grand Jury formed a Conflict of Interest Committee to investigate the complaint to the FPPC. The first step was to acquire the complaint filed with the FPPC. A committee member contacted the FPPC and received copies of the complaints which were reviewed by the entire committee.

Next, the committee interviewed five people in a four month time period. These individuals included the individual who filed the complaint with the FPPC, a former Mayor, the two individuals named in the complaint, as well as a senior Town of Mammoth Lakes Official.

The first individual was interviewed in September 2016. This individual filed the complaint with the FPPC which stated the Form 700 omitted pertinent information such as companies owned, spousal income, and leases held within the Village. In addition, the two individuals named in the complaint had participated in discussions and had voted, as town council members, to build a thirty-eight space parking lot adjacent to The Village. The complainant felt that this was a direct conflict of interest due to the fact that both of the council members owned restaurants in The Village area. One council member also owns a real estate business in The Village in which the spouses of both council members are employed. The complainant felt that

council members should have recused themselves from the vote on the thirty-eight space parking lot due to a possible conflict of interest.

The committee asked about the complainant's previous experience on the Mammoth Lakes Town Council and how conflicts of interest were handled. The complainant stated that a conflict of interest was taken very seriously and there were multiple times in which the complainant did not participate in a town council vote because of it.

The committee inquired regarding whose responsibility it is to identify a potential conflict of interest. The complainant stated that it's up to the individual, but the Town Manager and Town Attorney are supposed to provide guidance.

The second witness was a former Mayor, also interviewed in September of 2016. The witness stated that while on Town Council, conflict of interest training was provided. However, the rules regarding conflict of interest have evolved over the time and now are much more vague. Generally, if there was a perceived conflict of interest concern, the council member would consult with the Town Attorney. However, if there was a materiality issue such as ownership of property, the individuals would recuse themselves from voting.

In regards to the materiality of the parking structure at The Village, the witness felt that the rules now made it more of a gray area. While there aren't that many spaces, many of the people parking there will visit The Village including the businesses owned by those cited in the complaint. Even if it's not a materiality issue, it's definitely a perception of conflict of interest and the individuals named in the complaint should have recused themselves in the opinion of this witness.

The third witness was interviewed in November of 2016. The witness was one of the individuals named in the complaint and currently sits on the Town Council. The witness owns two businesses within the Village area. When asked about conflict of interest training, the witness stated there really wasn't any, just Brown Act training.

When asked about the complaint with the FPPC, the witness was aware of it. The witness was working with the FPPC to amend the Form 700.

When asked about the vote on the parking lot, the witness stated that there was a discussion with the Town Attorney beforehand. The attorney said that under the old rules, it would have been a materiality issue, but under the new rules, it no longer was. Further, the investigator for the FPPC had spoken with the owner of The Village and felt that there was no materiality issue. However, if the witness was to do it all over again, he stated he would recuse himself from the vote.

When asked about proposed future development projects adjacent to The Village, the witness stated that he would be recusing himself from votes on those projects due to a perception of conflict of interest. The witness also stated that he is now more alert to the perception of conflict of interest, recuses himself if there is any concern, and asks the town attorney if there is a gray area.

The committee went on to ask about a possible conflict of interest with the Town Manager and the contract offered to an event company whose owner currently resides at the Town Manager's property in Grass Valley. The witness agreed it was a conflict of interest. The Town Manager was reproached and required to report the conflict to the FPPC.

The fourth witness was the second individual named in the complaint. The witness owns one business in The Village area and was interviewed in December, 2016. The committee asked the witness if there was any special training offered when becoming a council member. The witness stated that there were ethics and Brown Act training, but no conflict of interest or Form 700 training. As far as the Form 700, the witness stated there was a box left unchecked on his initial Form 700. He reported that it has been fixed.

The witness explained that parking has been an issue since The Village was built. The lack of parking was becoming a safety issue, and the witness felt it necessary to come up with a parking solution. The possible conflict of interest was discussed on the dais with the Town Attorney who felt there was not a materiality conflict of interest issue. The witness understood that there was the perception of the conflict of interest, but chose to rely on the Town Attorney's opinion and felt that the council needed to take leadership to move forward with a parking lot

The final witness was a senior Town of Mammoth Lakes Official. He was interviewed in December, 2016. The committee asked what the witness's

role was in identifying a conflict of interest among the town council members. The witness stated that informally he alerts the council, but formally, it's not his job. The witness has more training on conflict of interest issues than the council members do, but if a conflict of interest is identified, the witness and council member's will have a discussion as well as talk to the town attorney. When asked about perception of conflict of interest, the witness stated that perception is discussed, but the legal term of materiality is what is used to make a decision.

The witness was questioned regarding a conflict of interest - mentioned by a previous witness - regarding awarding a town contract to an out-of-town event planner who was also a tenant of the town employee attempting to award the contract. The witness admitted that this was a conflict of interest and that it was reported to the FPPC. The agreement was never entered into. It never crossed the witness's mind at the time that it was a conflict of interest.

The committee inquired about the process to identify a conflict of interest within the town. The witness stated that there really wasn't a process. Everyone discusses what's on the agenda beforehand and asks each other if there are any conflicts. The witness also stated that many times, a conflict of interest can be overlooked if no one is thinking about it. He further stated that a perception of conflict of interest isn't legally binding, so it doesn't matter.

The witness shared that the council is trying to be more open with their voting and decision making, but the witness also doesn't want the council members to be afraid to vote because of a possible conflict of interest.

### **Findings:**

F1: The Town Council members have little to no training in conflict of interest and have found it difficult to determine when to abstain from votes. While the Town Manager may have some training, it still isn't enough to identify his own conflicts let alone those of the council.

F2: There have been several issues of conflicts of interest amongst the Town Manager and Town Council in the past couple of years. With proper training, these might have been avoidable.

F3: There is no training to fill out the FPPC Form 700. Those new to the process may easily make errors on this form opening the door to a potential conflict of interest.

F4: The vote on the hillside parking lot may not meet the test of clear materiality, however, it has the potential to bring a financial gain to all businesses within the Village area including those owned by the two council members who voted on it. Further, there is a strong perception that a parking structure of any kind that is adjacent to the Village would benefit the businesses within. It is essential that council members keep this in mind when making decisions, as public trust in local government needs to be a priority.

**Recommendations:**

R1: Town staff and officials should have conflict of interest training at least every other year by the FPPC or other organizations that specializes in conflict of interest for government officials and employees. The first training should be held as soon as possible.

Action: Town Attorney/Town Manager

Timeframe: 6 months

R2: A comprehensive system needs to be put into place to help identify conflicts of interests. This should include comparing possible agenda items with the relevant Form 700's.

Action: Town Attorney/Town Manager

Timeframe: Ongoing

R3: All public officials should receive an overview of how to fill out a form 700 accurately and completely. They should be completed annually before the forms are due. In addition, the town attorney should have oversight to identify any potential conflicts of interests.

Action: Town Attorney

Timeframe: 9 months

R4: Conflict of interest codes should be reviewed and, if out-of-date, updated, every other year as required by FPPC regulations.

Action: Town Attorney/Town Manager

Timeframe: 6 months

**Mono County Grand Jury for the Year 2016 - 2017**  
**Investigation #03**  
**Town of Mammoth Lakes Finance Department**  
**Final Report by Grand Jury Investigative Committee**

**Introduction:**

The 2014-2015 Mono County Grand Jury spent considerable time and effort investigating the Finance Department of the Town of Mammoth Lakes (Mono County Grand Jury Final Report 2014-2015, case #4). That investigation was undertaken as a result of a written citizen complaint regarding the collection of Transient Occupancy Tax (TOT) and Tourism Business Improvement District Tax (TBID) in a specific tax case. The complainant felt that procedures and policies were not followed, and that favoritism had been shown to a specific taxpayer. In the process of investigating this complaint, the 2014-2015 Grand Jury interviewed eight individuals, including employees of the Finance Department and Town Manager's office, and members of the Town Council. They reviewed records involving Transient Occupancy Tax and TBID appeals for a number of taxpayers. Policies and procedures were reviewed.

At the conclusion of their investigation, the Grand Jury arrived at 5 specific Findings and made 5 specific Recommendations regarding the Finance Department, as follows:

**Findings:**

F1 The Town Finance Department had a problem tax case that needs to be looked at in detail to determine whether or not the Town of Mammoth Lakes received all TOT and TBID owed.

F2 The Town Finance Department needs to adopt formal policies and procedures for the tax collection section.

F3 The Town Finance Department needs to train employees and tax remitters.

F4 The Town Finance Department needs to reinstate the TOT audit program.

F5 The Town Finance Department staff has a lack of teamwork.

**Recommendations:**

R1 The Town Finance Department should pay for an outside audit on the business that was the subject of this complaint.

R2 The Town Finance Department should write a policies and procedures manual.

R3 The Town Finance Department should train employees on the policies and procedures manual; the department should also train TOT remitters by updating its old training program.

R4 The Town Manager needs to set staffing in Finance sufficient to handle collections and audits.

R5 The Town should hire a consultant experienced in team building to address the lack of respectful communication and trust in the Finance Department in order to create a professional working team.

Responses were requested from Town Manager Mr. Dan Holler in regards to Findings 1-5 and Recommendations 1-5. Mr. Holler provided responses in a timely manner.

There was no Grand Jury impaneled for the 2015-2016 term. In order to provide continuity between successive Grand Juries, and to show respect for the work done by prior Grand Juries, the current Grand Jury (2016-2017) elected to follow up on the findings and recommendations of the 2014-2015 Grand Jury regarding this investigation, and to re-examine the workings of the Town Finance Department, particularly in regards to collection of Transient Occupancy Tax.

## **Definitions:**

**Transient Occupancy Tax (TOT)** is a tax levied by the Town of Mammoth Lakes against lodging operators, and is set by the Town Municipal Code. It is 13% of the gross rent charged by lodging operators who rent lodging on a transient basis, defined as any stay of less than 30 days. Gross rent includes fees, but does not include taxes, food, or beverages provided.

**Tourism Business Improvement District Tax (TBID)** is levied against many businesses in the Town. As applied to lodging operators, it is 1% of the same gross rent as TOT. We looked at TBID as it is applied to lodging operators, and did not consider other businesses.

**Town of Mammoth Lakes Finance Department, Tax Collection Section:** The Town Manager works for and reports to the Town Council. The Town Manager oversees the Finance Department. The Finance Department Director is appointed by and reports to the Town Manager, and acts as the Town Tax Collector per the Town Municipal Code. He is responsible for the collection of all taxes and fees imposed by the Town Municipal Code, and any applicable State and Federal codes. There are currently three Finance Department employees charged with collecting TOT and TBID under the supervision of the Finance Director; two Revenue Specialists and one Revenue Accountant.

**Operator** is any business that is required to pay TOT and TBID tax. Hotels, motels, rental condominiums, rental agencies, and individuals renting accommodations on a transient basis are all operators. Legal operators are those complying with zoning and tax remittance requirements. Illegal operators either rent transiently in areas not zoned for this activity, or fail to obtain a Business Tax Certificate and remit the required taxes, or have a Business Tax Certificate but do not remit the correct amount of tax.

**Remitters** are the representatives of businesses required to pay TOT and TBID tax who are responsible to complete and submit the required monthly tax returns to the Finance Department tax collectors. Remitters and Operators can be the same or different individuals.

**Business Tax Certificates** are issued to operators by the Town Finance Department.

**TOT Enforcement Committee** is a group of individuals with an interest and a stake in the processes involved in the collection of TOT. It consists of one individual from the Town Council, one individual from Mammoth Lakes Tourism, one from Mammoth Lakes Housing, three representatives of the private lodging provider community, the three Finance Department Specialists/Analyst, Finance Department Director,

### **Methods:**

In the course of this investigation, the Grand Jury interviewed ten people. Three were employees of the Finance Department, two were from different areas of town management, three were from the TOT Enforcement Committee, one was in Mono County administration, and one was a member of the Town Council.

Documents were provided by some of the witnesses. Minutes of the Town Council were reviewed. including information on the Town budget, the amounts collected from remitters, information on the largest remitters, and historical TOT collections. Budget planning documents for FY '17-'18 were also reviewed.

Minutes of the Town Council were reviewed, with particular attention to the presentation and disposition of TOT appeals before the Council.

### **Process of TOT and TBID collection**

TOT and TBID tax returns are confidential per the Municipal Code (Sec. 3.12.150). As a result, in this report discussion of amounts collected will be general in nature only.

In 2015-2016, approximately \$15,733,000 was collected from TOT against a budgeted amount of \$11,730,000. (Approximately \$7,200,000 was collected from TBID tax). TOT has represented approximately 59% of the total budgeted revenue of the Town of Mammoth Lakes, but has been over 2/3 of total revenue collected, and in the FY '16/'17 may exceed \$19,000,000, or more than 70% of collected revenue.

TOT and TBID taxes are collected on the "honor system". This is not unusual for small towns, although Mammoth is quite unusual in that such a very high percentage of the Town's total revenue comes from TOT. TBID

tax is somewhat different in that it is earmarked for a specific purpose, and goes to a specific agency, Mammoth Lakes Tourism (MLT), to be used in MLT's mission of promoting and enhancing tourism and visitation to Mammoth Lakes. TBID tax does not go into the General Fund. For the rest of this discussion, we will focus on TOT, as TOT goes directly into the General Fund of the Town of Mammoth Lakes, while recognizing that TBID tax is collected concurrently from a wider group of taxpayers than TOT (not just lodging operators).

Each month, the **Remitter** is required to complete a tax return document known as "Monthly Return for Transient Occupancy Taxes (TOT) and TBID (sic.)" detailing amounts charged in gross rent and fees, and used to calculate the resultant tax for the prior month. This return can be completed on paper, by mail or in person, or online, and is due by the 20<sup>th</sup> of each month. There are penalties associated with late filing. The remitter, under penalty of perjury, signs the document. Misstatement of the dollar amounts listed is thus a felony, however the Grand Jury is unaware of any criminal prosecution for any offense under this statute. All of the disputes over TOT between remitters and the Town have been settled with fines and payment of back taxes, when such underpayment has been detected.

There are three employees of the Finance Department who are charged with issuing Business Tax Certificates and processing the Monthly Returns for TOT, in addition to other duties. At the time of the last Grand Jury Finance Department examination, there were four such individuals. There has been turnover and dissatisfaction in the Department as described in the last report, with several disgruntled employees leaving. As a result, the fourth position is currently vacant, and because of budget considerations, is currently unfunded. This spreads the workload over the remaining three employees, consisting of two Revenue Specialists and one Revenue Accountant. One of these employees is more oriented to enforcement of the TOT statutes and detection of violators, while the other two are more focused on issuing certificates, collecting tax, and interacting with the public and other departments, like the building department, although there is considerable overlap in their duties.

There are three kinds of TOT violators: those renting legally in zones permitting transient rentals who do not pay the correct tax, those renting in

zones where transient rentals are legal but who do not have a tax certificate and pay no tax, and those renting in zones where transient rentals are illegal. These are referred to as “revenue violators” and “zoning violators”.

The easiest and least time consuming enforcement is of the accuracy and timeliness of filing of legal remitters who are in compliance with the Business Tax Certificate requirement and who file returns on the “honor system”. There are currently about 680 TOT remitters. Many remitters represent multiple units. There used to be regular audits of legal remitters, however because of budgetary issues and turmoil in the Finance Department, no audits have been performed since 2009. The last Grand Jury recommended that the audit program be reinstated, but this has not occurred. There is general agreement amongst those interviewed that the audit program should be reinstated. It is the stated goal of the Department that each operator/remitter should be audited once every three years. There is no statutory requirement that remitters retain records longer than three years. The general requirement in the State of California for records retention is six years. If every remitter were audited once in each three-year cycle, there would need to be over 200 audits each year. According to testimony, each audit takes three to five days. This is clearly not possible given the current staffing levels. Therefore, the TOT program and tax collection is truly on the “honor system”. The number of “revenue violators” who underpay tax in this group is unknown, given the absence of an audit program.

“Revenue violators” who rent in zones where transient rentals are legal but who have no tax certificate and pay no TOT are primarily condominium owners, but may include a few stand-alone single-family homes in certain areas of town zoned for this use. This type of activity is more difficult to find and often requires detective work on the part of the Finance Department, which can be very time consuming. These “operators” may advertise, or may rent by word of mouth. Anonymous reports of violators – “tips” - are accepted by the Department, and are a big source of leads. A requirement that Business Tax Certificate numbers be placed in advertising for a transient rental is one method by which violators are detected, as these ads are scanned by Department staff. Sting operations are carried out, where staff will pretend to be a prospective renter, collecting information about the suspected illegal rental. There are “many” – exact number unknown – who advertise through platforms such as Airbnb or HomeAway, and others.

This provides a layer of anonymity to the illegal renter, although the requirement that a business tax certificate be listed in the ad still applies.

Revenue violators are motivated by the avoidance of TOT and TBID, and when detected and sent a citation (\$500 fine) or notified of a proposed penalty and assessment of back taxes, often will comply by obtaining a Business Tax Certificate and providing past financial records to substantiate their rental income (and lower the proposed assessment, which can be quite large). This usually does not come easily, with many owners claiming to be unaware of the requirements to pay TOT, and complaining that the Town has not made that requirement widely known. Approximately 60% of revenue violators do not respond to initial contact, and it requires persistent and time-consuming follow-up by the revenue team to bring them into compliance. Many of the “operators” are contentious, uncooperative or unresponsive. Some owners do not agree with the final assessments after they have provided financial documents. These assessments are reviewed and applied by the Tax Collector, (the Finance Department Director) and closely conform to Town code. Penalties and fines are calculated based on the final assessment, and cannot be changed by the Finance Director. The only recourse is to appeal the amount of the fines and penalties to the Town Council, which happens regularly.

“Zoning violators” are those who are renting properties in zones where transient rentals are not legal, which includes most of the single-family homes in Mammoth. The residents and voters of Mammoth Lakes have made it clear that allowing transient rentals in neighborhoods not zoned for such is not desirable. Attempts to legalize transient rentals in these neighborhoods have been vigorously opposed. The Finance Department is the only Town agency enforcing these prohibitions. Although this is a zoning violation, there is no zoning code enforcement activity by the Town, leaving it up to the Finance Department to detect and deter these rentals.

Zoning violators, usually second homeowners, are motivated by the rental income from their properties, which can be much greater when renting on a transient basis than when renting legally long-term (more than 30 days). By renting on a transient basis, the owner can still use the property when it is not rented, and also recognize an income stream from that property. Many homeowners believe that this is their right, and resent the fact that it is illegal, which contributes to their resistance to compliance. Some say

that they would not be able to afford their second home were it not for the rental income.

Zoning violators can be more difficult to deal with, as zoning violators have no legal avenue to pay TOT and TBID. They are therefore more motivated to evade detection, and even when detected, to continue the illegal activity. Some have concluded that payment of fines and penalties and assessments is worth it, given the large amount of money that can be realized from transient rental of their properties. Some have sued the Town. Some are repeat offenders, having been shut down at least once before. Platforms such as Airbnb and HomeAway provide “cover” and make enforcement more problematic.

The goal of enforcement action against “zoning violators” is to shut down the rental activity after collecting back taxes and penalties. This type of enforcement procedure is not a large generator of revenue for the Town, as it is not designed to capture an ongoing revenue stream. The view of the Department is that by shutting down these rentals in illegal zones, the guests will still come to Mammoth, but will be shifted to other properties where TOT can be legally collected. The belief is that there will therefore be more TOT collected by the Town. Similar techniques are used to detect zoning violators as are used for revenue violators, which once again are very time consuming.

### **Finance Department:**

We looked at the Finance Department from the TOT and TBID collection point of view. There are three employees of the Finance Department who are charged with issuing Business Tax Certificates and processing the Monthly Returns for TOT, in addition to other duties (the Revenue Team). At the time of the last Grand Jury Finance Department examination, there were four such individuals. There has been turnover and dissatisfaction in the Department as described in the last report, with several disgruntled employees leaving. As a result, the fourth position is currently vacant, and because of budget considerations, is currently unfunded. This spreads the workload over the remaining three employees, consisting of two Revenue Specialists and one Revenue Accountant. One of these employees is more oriented to enforcement of the TOT statutes and detection of violators, while the other two are more focused on issuing certificates, collecting

tax, and interacting with the public and other departments, like the building department, although there is considerable overlap in their duties.

There are approximately 2,000 tax accounts which include 680 TOT accounts. All of these accounts are handled by the Revenue Team. Each of the Revenue Specialists handles about 1,000 accounts. Each TOT account may represent a single unit, property, or a group of units and properties under one management.

Since the last Grand Jury report, there have been many changes in the Finance Department. Prior Directors have left, and other employees have left, some with considerable acrimony. The Revenue Team is relatively new, and downsized. The Town Manager was for a time acting as the Finance Director, but because of his many other responsibilities, it was felt that there was inadequate supervision of the Department. The Administrative Services and Finance Director position was finally filled in August of 2016. The new Director is universally regarded very favorably, and morale in the Department is vastly improved. It is felt that working relationships among the staff members are good and improving, and that the Director continues to move in the direction of more efficient, responsive, and effective administration of the Department. Some of the employees that have left were regarded as “problems”, and their departure may have been an improvement. The new Director describes himself as being focused on team building and “doing the right thing”. He has the respect of the Department staff.

Only one of the witnesses, among Town Management, felt that the Revenue Team was adequately staffed. The clear message from the Revenue Team indicated that there was more work that could be productively done in collecting TOT that is now not being done because of inadequate manpower. Each member of the Revenue Team felt that they could personally bring in large amounts of additional tax if they had more time to work on their particular areas. The consensus is that at a minimum, the empty position of Revenue Specialist, which is currently unfunded, should be filled. In addition, at least one or two additional staff should be hired, and all felt that this additional expense would easily be made up for by increased tax collection.

The Town has considered contracting with an outside company to perform internet searches for rental properties in the Town that could then be compared to the licensed remitters to help identify both revenue violators and zoning violators. There are several such companies, some more expensive and some less expensive. All of the witnesses felt that the use of such a service would generate many additional enforcement cases, and a need to assist taxpayers with voluntary compliance. This would at a minimum require the addition of at least one Revenue Specialist just to deal with the additional caseload thus generated.

No witness that felt that all of the TOT owed to the Town was being collected. Estimates of the shortfall between what is owed and what is collected ranged from 10% to 40%, but the fact is that these are all guesses, because there is no current method to determine these amounts. The shortfall for legal remitters (Business Tax Certificate holders) is estimated to be between 10% and 20%, but the shortfall from illegal rentals, both revenue and zoning violators, is estimated to be much higher. Overall, the estimates of collection rates for TOT ranged from 60% to 90%.

As noted above, there has not been a TOT audit program since 2009. The audit procedures are well spelled out in the Department policies and procedures, but have not been implemented. The current staff has not been trained on audit procedures, save for one brief trip to Bridgeport, where Mono County procedures were observed. Other training events scheduled for San Diego and elsewhere did not occur. Despite this, the Revenue Team felt that they were up for the challenge of auditing remitters, if they had the manpower to do so without compromising their other duties. It is estimated that each audit takes an average of 40 man-hours. Some would be much less, but some would be much more. It was universally felt that the audit procedure would be an invaluable opportunity for staff to train remitters through the interaction with the taxpayers. Currently, the lack of remitter training results in frustration and discontent on the part of the taxpayer, and is not optimum customer service. It also is felt to contribute to the Town not receiving all the tax it is due.

Out of the 680 TOT accounts, approximately 80% of the revenue is from the top 20 remitters. These are large businesses with professional bookkeeping and accounting. There was no suggestion that these businesses are deliberately evading taxes, but in the absence of any audit, or even the possibility or threat of an audit, it is impossible to know. It is also

impossible to know if these remitters are interpreting the TOT statutes correctly. There may be systemic misunderstanding. Each of the members of the Revenue Team and Finance Department felt that the most efficient and effective way to increase revenue and evaluate compliance would be to audit the top 20 remitters. Since the current staffing level does not allow for comprehensive audits, or any audits at all, this could be accomplished with an outside auditing firm. A TOT audit is far different from a comprehensive audit of a business, and could be accomplished at far less cost and in less time. If significant revenue were realized from this audit, improved staffing levels on the Revenue Team would be justified.

As far as the smaller remitters, they are well aware that there is no audit program, and that the chance of being detected if they underpay their tax is essentially zero. By way of comparison, the IRS audits a small percentage of Federal tax returns, and focuses on larger taxpayers, but the threat of a random audit of any taxpayer does keep many people honest, and is considered an essential part of the government's tax collection efforts. It is logical that the same would be true here.

It was pointed out that the compliance efforts made by the Town would need to be ongoing. There will always be backsliders, or those that "go bad" even after years of compliance. Properties continually are changing hands, and the new owners may not want to comply with TOT statutes until they are detected and set on the straight and narrow, despite the fact that all property purchasers are now provided with TOT information as part of their escrow packets. New technologies, such as Airbnb and HomeAway, are continually evolving, making it easier to rent illegally and anonymously. The political landscape may change, and voters may decide to make changes to the zoning and transient rental regulations. All of these are significant threats to the revenue stream of the Town. Since Mammoth is so dependent already on many things out of its control (like the weather), having a robust tax collection program seems imperative to assure the Town's financial survival. In our opinion, this includes a strong audit program and adequate staff to carry out these audits as well as ongoing routine tax collection, enforcement, taxpayer education, and customer service.

A Revenue Specialist is paid approximately between \$38,000 and \$53,000 per year, plus benefits. The Revenue Accountant is paid about 50% more, from \$57,000 to \$79,600. If 90% of the TOT owed the Town is being collected, that is \$1,500,000 that is uncollected. It would be surprising if 90%

were actually being collected. The town of Truckee thought they were at a 90% compliance rate until they hired an outside firm to detect illegal rentals and discovered that they were closer to a 70% compliance rate. If Mammoth's collection rate is in fact 70%, which was the witness consensus, there is \$4,500,000 of uncollected tax.

In Mammoth's case, each increase of 1% in the tax collection rate would result in \$150,000 in additional revenue to the Town. It is difficult to believe that an additional Revenue Team staff member could not increase the collection rate by 1%, which would easily pay for that staff position with revenue left over.

### **Findings:**

F1) The Finance Department should reinstate the TOT audit program.

F2) TOT enforcement efforts have been limited by reduced staffing levels. TOT compliance rates are unknown.

F3) The Finance Department is limited in its ability to detect illegal transient rentals.

F4) Morale and staff effectiveness in the Town of Mammoth Lakes' Finance and Revenue Collection Departments have improved since the hiring of the new Administrative Services and Finance Director.

### **Recommendations:**

R1) Additional staff should be added so that a meaningful ongoing audit program can be instituted and maintained. This should probably include contracting with an outside auditor to handle some of the top 20 remitters, at least the first time, who will have more sophisticated systems in place and would require an inordinate amount of staff time. Random audits of all remitters should take place on an ongoing basis. Regular audits will have the additional effect of educating remitters thus generating more accurate TOT revenue amounts.

Action: Administrative Services and Finance Director/Town Manager

Timeframe: 6 months

R2) Additional Revenue Team staff should be added so that a robust enforcement and collection program can be instituted and maintained, which would include remitter education and training.

Action: Administrative Services and Finance Director/Town Manager

Timeframe: 6 months

R3) Finance Department should contract with one of the service providers or software companies currently under consideration that will search for illegal rental advertising and assist with documentation of illegal rentals. This will require additional staff to sift through the large number of identified non-compliant rental units.

Action: Administrative Services and Finance Director/Town Manager

Timeframe: 6 months

R4) Town Management should continue to support the work, efficiency, and morale of its critical Finance and Revenue Collection Departments by hiring enough new staff to handle the large workload which TOT audits, newly discovered non-compliant rental units, and complex enforcement procedures require.

Action: Administrative Services and Finance Director/Town Manager

Timeframe Ongoing

## **Mono County Grand Jury for the Year 2016 – 2017**

### **Mono County Jail Inspection Report**

Penal Code Section 919 (b) requires that the Grand Jury inquire into the condition and management of the public prisons within Mono County. To comply with that requirement, the 2016 -2017 Grand Jury toured the Bridgeport Jail (the “Jail”) and interviewed the Mono County Sheriff (the “Sheriff”). There is no longer a juvenile holding facility in Mono County. If necessary, juveniles can be placed in detention centers either in El Dorado or Placer counties. The current sheriff is Ingrid Braun.

#### **Assembly Bill 109**

AB 109, known as the “Prison Realignment Bill,” was passed in 2011 and now requires non-violent felony offenders who fall within certain violation categories to serve their sentences in county jails to lessen the crowding of California’s state prisons. Sheriff Braun indicates that so far this has not had too much of an impact on the Mono County jail population.

The Sheriff also indicated that Mono County has applied for a \$25 million dollar grant from the State to construct a new jail facility on the site of the old Bridgeport health clinic. The overall cost will be lessened due to the fact that Mono County already owns the land. The rationale for the new facility is that the existing one can’t be improved without very expensive upgrades to code that would cost more than building a new facility.

The current inmate population is 30 with a capacity of 48 – more capacity would require more stringent code requirements. The Sheriff’s annual jail budget is approximately \$2.9 million and the non-jail budget is approximately \$5 million. Currently there are 20 Sheriff Deputies hired with 27 spots allocated. Sheriff Braun indicated she hoped to fill several spots once the new collective bargaining agreement increases pay enough to attract more applicants.

## **Jail Tour April 12, 2017**

### **Booking Area**

The tour began in the booking area where all inmates are processed for admittance and given an orientation and a handbook of jail rules as required by law. We were guided by the supervising Sergeant of the Jail Sean Minder. There is booking cage where inmates sit while the officer processes the individual. The cage is locked while the inmate is being processed. The jail uses the Department of Justice 'Livescan' machine for fingerprints which allows for a more rapid identification. The booking area also has a DOJ Breathalyzer that is linked via a T1 line to the DOJ in Fresno for suspected DUIs.

Everything in the holding area is video recorded with voice recording. The entire facility has video recording although not with voice. Sheriff Braun explained there is "no expectation of privacy" in the jail.

The booking area also contained a library of books and periodicals, as well as three separate smaller rooms used for strip searching and for temporary holdings in such instances as "under the influence" of drugs or alcohol. The rooms can also be used to briefly house an out of control inmate. There is also an isolation room used for discipline or protective custody.

Another room was used for medical appointments but now most inmate medical issues are attended to in either Mammoth Lakes or Walker. There are also EMTs in Bridgeport for emergency needs or issues.

### **Intake/Sally Port**

The "Sally Port" is where vehicles with inmates arrive. It had the appearance of a large garage with video cameras. From this point inmates are moved to the booking area.

## **Inmate Property**

The jail confiscates all clothes and personal property of the inmates when they first arrive. An inventory of these items is prepared and then the items are stored until the inmate leaves the facility or the family picks up the items.

## **Mental Health**

At present, the main method for addressing inmates' mental health issues was a series of small group meetings such as the "Morale Recognition Program" led by mental health. The program seems to focus on such issues as "Why are you here?" type of discussions.

## **Laundry**

Inmates, known as "trustees," do the laundry.

## **Kitchen**

The kitchen is inspected once a year by the California Corrections Department and also by the Mono County Health Department. The kitchen looked exceptionally clean. Inmates use plastic utensils. All tools used for food preparation are counted and locked up after use. The jail has two paid cooks to supervise meal preparation along with two inmate helpers who also clean up.

All the staff, including visitors such as us, eat the same food as inmates. The meal we had included tasty chile verde burritos, seasoned rice, home-made tomatillo salsa, corn chips, and chocolate pudding. There didn't appear to be any accommodation for special diets or dietary habits.

## **Cell Blocks**

Cell Block A is maximum/medium security for inmates who have a more significant criminal history and/or criminal sophistication. Each cell here can be separately locked. There is an open area with a table, TV and chairs.

Cell Block B is minimum security for the general inmate population. There is one TV that is shared by all inmates in the block. Some of these inmates work and are outside during the day.

Cell Block D is for female inmates.

Also there is a small cell for four inmates who serve as “trustees”.

An officer is required by law to enter each of the cell blocks at least once an hour to check on all inmates.

### **Program and Control Area**

This area is secured from any unauthorized entry and the interior is not visible from outside of it – dark glass and dim lighting inside prevent inmates and any visitors from looking in. This area controls most of the electronic operations of the facility including jail door controls, water, electrical systems, fire control, video equipment, etc. All areas are video taped with tapes held for 18 days.

All Jail employees are trained to be both correctional officers and 911 operators. The jail is required to have a female employee at the jail at all times. The 911 dispatch serves as the dispatch center for the entire county and must be staffed at all times (even at the expense of assisting another officer). While we were there the center received a 911 call from someone in distress at the ski area and the appropriate action was taken.

There were several video screens in the center and each screen could show multiple images. The operator could toggle between any set of views.

### **Classification of Inmates**

Most of the full-time inmates were in jail for cases like domestic violence, robbery, theft, and stolen vehicles. More violent offenders would be in a cell separate from the general population awaiting transportation to either trial or state prison.

There was some discussion with Sheriff Braun of the possibility of “out of area” prisoners – like from LA County – buying their jail space in less dangerous jails such as the Bridgeport jail. The Sheriff indicated that the possibility existed if it would be financially advantageous to Mono County as the space exists.

### **Overall Impressions**

The members of the Grand Jury were impressed by the professionalism of all the staff at the facility. The cleanliness and attention to detail was noticed by all. The kitchen was spotless with no odor at all. In fact, there was no odor noticeable anywhere. The food seemed more than satisfactory.

The dispatchers in the control were impressive at multi-tasking - taking 911 calls, field calls from deputies, and monitoring the various inmate screens.

Our hope is that the grant money for the new facility comes through and that staffing levels are kept at proper levels. The new facility would have its own medical clinic that would double as an outpatient clinic for the general public.

**Mono County Grand Jury for the Year 2016 - 2017  
Citizen Complaint Letters and Grand Jury Responses  
Final Summary by the Grand Jury**

The 2016-17 Grand Jury received a number of citizen complaints during its term. Two complaints #17-01 and #17-02 arrived during the 2015-16 year in which there was no seated Grand Jury. Response letters were sent to the complainants requesting that they resubmit their complaints to the 2016-17 Grand Jury if the issues involved were still pertinent. No replies were received.

A third citizen complaint letter, #17-03 was received on January 19, 2017 concerning possible illegal personnel actions on the part of a Mono County Special District. The complainant had also submitted the complaint to the Mono County District Attorney. The Grand Jury directed the complainant to follow up with the Mono County District Attorney to pursue redress for their concerns.

Two final citizen complaints were received by the Grand Jury late in its term. One complaint, #17-04 was received from outside of the Mono County Grand Jury's jurisdiction. This letter concerned a federal matter which was also outside of the Grand Jury's purview. A final citizen complaint letter, #17-05, concerned an issue relevant to Mono County and its citizens. Investigative action was not taken by this Grand Jury due to the lack of time left in our term. Complaint #17-05 will be passed along to the 2017-18 Grand Jury for its consideration.