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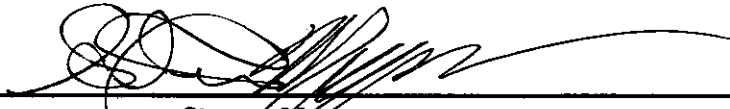
MAY 27 2016

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SUTTER
CLERK OF THE COURT
By JACKIE LASWELL Deputy

**Report
of the
2015-2016
Sutter County Grand Jury**

**Steven Meyer-Foreperson, Addam Heltsley, Andrew Sampeck, Annette Roach,
Carrie Mitchell, Christy Cook-Pratt, Gail Stillwell, Gerald Marta, Jacqueline McLaughlin,
John Forberg, Kristen Hart, Marianne Ethington, Pablo Fischetti, Perry Pasquale,
Richard Libby, Richard Snyder, Teresa Smith, William Carter**

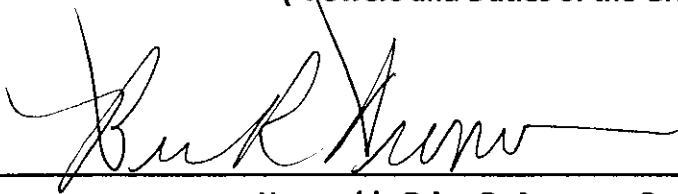
**Final Report [pursuant to Penal Code 933(a) on subject:
Pension Enhancements: A Case of Government Code Violations and
a Lack of Transparency**



**Steven Meyer
2015-2016 Foreperson**

May 18, 2016
Date

**Pursuant to Penal Code Section 933(a), the Presiding Judge makes the finding that the
foregoing report is in compliance with the Title 4, Chapter 3 of the Penal Code
("Powers and Duties of the Grand Jury").**



**Honorable Brian R. Aronson, Presiding Judge
Superior Court of California, County of Sutter County**

May 20, 2016
Date

**PENSION ENHANCEMENTS:
A CASE OF GOVERNMENT CODE VIOLATIONS AND A LACK OF
TRANSPARENCY**

SUMMARY

Unfunded pension liabilities are a concern for county and city governments throughout California. The Sutter County Grand Jury (SCGJ) elected to review the health of Sutter County's pension plan, its impact on the budget, and the process by which the plan was adopted.

The SCGJ found that the Board of Supervisors (BOS) approved a retirement plan on August 31, 2004 that enhanced the formula for employee retirements for all County employees. The new plan was made retroactive to the date of hire. The BOS approved the new plan on the Consent Calendar that is normally used for non-controversial items. This method of approval deprived the public the full opportunity for review and discussion. Additionally, there were no adequate actuarial studies completed to determine the full impact on the County's fiscal health. The SCGJ finds these actions to be in violation of the California Government Code (GC).

The result of the enhanced retirement plan has taken the County from having a surplus of \$28,797,894 in the retirement fund in 2001 to an unfunded liability of \$110,802,083 in 2014. It is difficult to determine the full impact of carrying such an obligation forward. However, the present impact to the County is a risk to the financial health of the County's future.

It is the recommendation of the SCGJ for the BOS to develop, adopt and implement policy and procedures to prevent future violations of the GC. The SCGJ recommends it is in the best interest of the County to employ an internal auditor to ensure that the County is in full compliance with Federal & State law and County Policy & Procedures.

GLOSSARY

Actuary : A statistician who computes insurance risks and premiums.

Actuarial : 1 - relating to statistical calculation. 2 - of or relating to actuaries.

Obfuscation : To make (something) more difficult to understand.

Consent Calendar (Excerpt from Sutter County Agenda Summary - Attachment A):

"The Consent Calendar groups together those items which are considered non-controversial or for which prior policy direction has been given to staff and that require only routine action by the Board. The Chairman will advise the audience that the matters may be adopted in total by one motion; however, the Board may, at its option or upon request of a member of the public, consider any matter separately."

BACKGROUND

In July of 2015, the SCGJ received a letter from a member of the 2004-2005 Marin County Grand Jury regarding the pension enhancements of four agencies in their county. Their

investigation uncovered a pattern of abuse where the public was eliminated from the process through obfuscation, violations of the Government Code and disregard of the rights of the citizens of Marin County. The result of these pension enhancements increased the unfunded liability of Marin County taking that county from having a surplus of several million dollars in year 2000 to massive debt by year 2013. The SCGJ decided to investigate Sutter County's pension plan, which was approved in 2004, and determine what impact it has had on the County's financial health.

RESOURCES

The SCGJ:

- Interviewed:
 - Sutter County Auditor-Controller
 - Representatives of the County
- Reviewed Documents:
 - Agendas & minutes of the Sutter County Board of Supervisors' (BOS) meetings
 - Actuarial results of the County's pension plan
 - Sutter County Budget
 - Sections of the California Government Code

DISCUSSION

The SCGJ reviewed California GC Sections 7507, 23026, 31515.5 and 31516. These statutes impose specific obligations on the County when they consider pension increases. The purpose of these statutes is to ensure timely public disclosure, allow for a public discussion at board meetings, and to require a reasoned decision-making process based on actuarial input.

GC Section 7507 requires that counties *"secure the services of an enrolled actuary to provide a statement of the actuarial impact upon future annual costs before authorizing increases in public retirement plan benefits. The future annual costs as determined by the actuary shall be made public at a regularly scheduled meeting at least two weeks prior to the adoption of any increases in public retirement plan benefits."*

Similar to GC Section 7507, GC Section 31516 requires that the board of supervisors:

- *"shall hire an "actuary to provide a statement of the actuarial impact upon future annual costs before authorizing benefits."* [Emphasis Added]
- It also provides that the actuary's report *"shall be made public at a public meeting at least two weeks prior to the adoption of any increases in benefits."* [Emphasis Added]

GC Section 23026 contains four separate requirements that the board of supervisors of any local pension system must fulfill before enhancing pension benefits. It states that the board of supervisors:

- *“shall make public, at a regularly scheduled meeting of the board, all salary and benefit increases that affect either or both represented employees and non-represented employees;”* [Emphasis Added]
- *“shall include notice of any salary or benefit increase... on the agenda for the meeting as an item of business;”* [Emphasis Added]
- *“shall provide that notice “prior to the adoption of the salary or benefit increase;”* [Emphasis Added]
- *“shall include an explanation of the financial impact that the proposed benefit change or salary increase will have on the funding status of the county employees’ retirement system.”* [Emphasis Added]

Similar to GC Section 23026, GC Section 31515.5 (2001) requires the board of supervisors to notice, at a regularly scheduled meeting, all salary and benefit increases. It authorizes the preparation of an actuarial estimate on the impact of the salary and benefit requirements. Specifically, the mandatory language provides that the board of supervisors:

- *“shall make public, at a regularly scheduled meeting of the board, all salary and benefit increases that affect either or both represented employees and non-represented employees;”* [Emphasis Added]
- *“shall include a notice of any salary or benefit increase on the agenda for the meeting as an item of business;”* [Emphasis Added]
- *“shall include an explanation of the financial impact that the proposed benefit change or salary increase will have on the funding status of the county employees’ retirement system.”* [Emphasis Added]

Government Code provisions require a public airing of proposed pension increases for public employees and the actual costs of those increases. The SCGJ found that the BOS failed to comply with these sections of Government Code and approved enhanced retirement benefits which added millions of dollars of unfunded liability to the Sutter County taxpayers.

Evidence reviewed by the SCGJ shows that in 2004, the BOS failed to comply with Government Code 7507, 23026, 31515.5, and 31516 in the following manner:

- The BOS failed to provide disclosure of the true cost of the enhanced retirement package at a scheduled meeting two weeks prior to its approval.
- The BOS placed the controversial enhanced retirement on the Consent Calendar instead of as an “item of business.”
- The BOS failed to clearly describe the enhanced retirement items by placing them on the Consent Calendar in the following format (Excerpt from Attachment A):

- *“7) Approval of Memoranda of Understanding for the General (A04-173), Professional (A04-174), and Supervisory Units (A04-175); Addenda to Memoranda of Understanding for the Fire Safety (A04-176) and Law Enforcement (A04-177) Units; and Addendum to Salary and Benefit Agreement for Confidential Unit Employees (A04-178)”*

This obscure language, without adequate supporting material, did not allow for full transparency and very possibly curtailed or discouraged full public participation. One significant issue, in the supporting material, included an enhanced retirement formula that enriched the employees’ retirement from date of hire instead of the date the agreements were approved. This single issue had a profound impact on the financial health of the County as well as an added burden to the taxpayers. (See Attachment B)

The BOS refused to remove the “item” regarding the enhanced retirement from the Consent Calendar as requested by the Sutter County Auditor-Controller. The Auditor-Controller is an independently elected officer of the County. Their primary duty is to provide fiscal and management services to and on behalf of the people of Sutter County. By refusing to honor this request, the BOS unilaterally prohibited an independently elected officer of the County from performing their primary function, which is to fiscally protect the public.

FINDINGS

- F1. The BOS violated GC Section 31516 by failing to secure an actuarial statement that explained the financial impact of the pension increase and present it to the public at least two weeks prior to its approval.
- F2. The BOS violated GC Section 23026 by placing the item which enhanced pension benefits on the Consent Calendar instead of “as an item of business.”
- F3. The BOS refused to remove this highly controversial issue from the Consent Calendar when requested to do so by the Sutter County Auditor-Controller.
- F4. The BOS removed a safeguard that was designed to fiscally protect the citizens of Sutter County by refusing the Sutter County Auditor-Controller’s request to bring the enhanced benefits package forward for public review and further study.

RECOMMENDATIONS

- R1. The BOS develop, adopt and implement policy and procedures, including staff training, to prevent future violations of the California Government Code.
- R2. The BOS designate that the Auditor-Controller develop written quarterly reports for the public to view as to the financial security of the County’s pension fund.
- R3. The BOS employ an internal auditor, by the next fiscal year, to ensure that the County is in full compliance with Federal & State law and County Policy & Procedures.

R4. The BOS adopt a policy where transparency in the County's legislative process should take precedence over expediency, especially concerning fiscal matters.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the grand jury requests responses as follows:

- Sutter County Board of Supervisors
- Sutter County Auditor-Controller

INVITED RESPONSES

- Sutter County CAO

APPENDIX

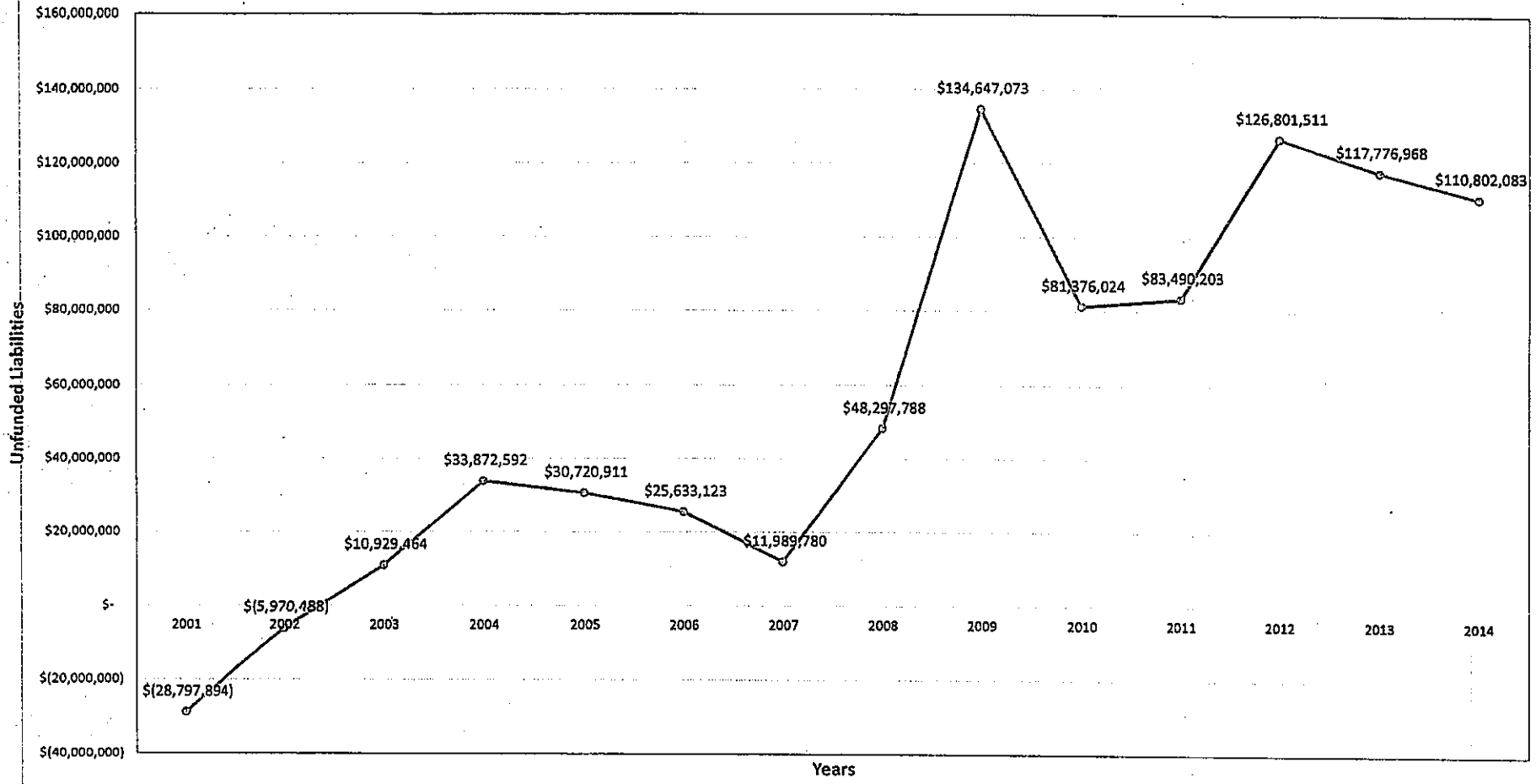
Sutter County Board of Supervisors Agenda Summary

Sutter County - Total Unfunded Pension Liabilities

DISCLAIMER

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

Sutter County - Total Unfunded Pension Liabilities



Agenda August 31, 2004

The complete agenda, including backup materials is posted in the entrance of the County Office Building, 1160 Civic Center Boulevard., Yuba City, and the County Library, 750 Forbes Avenue, Yuba City. The Agenda Summary and Approved Minutes are also posted on the Sutter County Website at <http://www.SutterCounty.org>

**Board of Supervisors
County of Sutter
AGENDA SUMMARY
August 31, 2004**

CONSENT CALENDAR

The Consent Calendar groups together those items which are considered non-controversial or for which prior policy direction has been given to staff and that require only routine action by the Board. The Chairman will advise the audience that the matters may be adopted in total by one motion; however, the Board may, at its option or upon request of a member of the public, consider any matter separately.

Personnel Department

7) Approval of Memoranda of Understanding for the General, Professional and Supervisory Units; Addenda to Memoranda of Understanding for the Fire Safety and Law Enforcement Units; and Addendum to Salary and Benefit Agreement for Confidential Unit Employees

Public Works Department

MINUTE BOOK 3-E PAGE 318

AUGUST 31, 2004

**BOARD OF SUPERVISORS
COUNTY OF SUTTER, STATE OF CALIFORNIA
SESSION OF AUGUST 31, 2004
PUBLIC PARTICIPATION**

Robert Stark, 1587 Holly Tree Drive, Yuba City, said that Item #7 on the Consent Calendar relating to approval of Memoranda of Understanding for the General, Professional and Supervisor Units; addenda to Memoranda of Understanding for the Fire Safety and Law Enforcement Units; and addendum to Salary and Benefit agreement for Confidential Unit employees should be considered a controversial item and should not be included on the Consent Calendar.

CONSENT CALENDAR

On motion of Supervisor Kroon, seconded by Supervisor Munger, and carried by those present, the Board approved the Consent Calendar as follows:
Clerk of the Board

Personnel Department

7) Approval of Memoranda of Understanding for the General (A04-173), Professional (A04-174) and Supervisory Units (A04-175); Addenda to Memoranda of Understanding for the Fire Safety (A04-176) and Law Enforcement (A04-177) Units; and Addendum to Salary and Benefit Agreement for Confidential Unit Employees (A04-178)

Note: There was no reference to Actuarial Study Regarding Pension Enhancements for Sutter County Employees

Agenda Page 1 August 17, 2004

The complete agenda, including backup materials is posted in the entrance of the County Office Bldg., 1160 Civic Center Blvd., Yuba City, and the County Library, 750 Forbes Ave., Yuba City. The Agenda Summary and Approved Minutes are also posted on the Sutter County Website at <http://www.SutterCounty.org>

Board of Supervisors

County of Sutter

AGENDA SUMMARY

August 17, 2004

7:00 P.M. REGULAR MEETING/CALL TO ORDER

Roll Call

Pledge of Allegiance to The Flag

APPROVAL OF MINUTES

1) Approval of the minutes of the August 10, 2004 regular session

Agenda Page 2 August 17, 2004

PUBLIC PARTICIPATION

Members of the public will be allowed to address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board. Any member of the audience who may wish to bring a matter before the Board that has not been agendized may do so at this time; however, State law provides that no action may be taken on any item not appearing on the posted Agenda. The Board requests that comments be limited to three minutes.

CONSENT CALENDAR

The Consent Calendar groups together those items which are considered non-controversial or for which prior policy direction has been given to staff and that require only routine action by the Board. The Chairman will advise the audience that the matters may be adopted in total by one motion; however, the Board may, at its option or upon request of a member of the public, consider any matter separately.

Board Clerk

2) Approval of preparation of a Gold Resolution for Joseph Dailey for 26 years of service to the Sutter County Fish and Game Advisory Commission

Community Services

3) Set Public Hearing on the Certified Unified Program Agency (CUPA) fee schedule. Suggested date: August 31, 2004 at 7:00 p.m.

Fish and Game Advisory Commission

4) Acceptance of resignation of Joseph P. Dailey as District 1 representative and authorization to post vacancy

Human Services – Mental Health

5) Approval of final amendment to contract with State Department of Alcohol and Drug Programs for reimbursable services

6) Approval of submission of two applications for California State Incentive Grants for Reduction of Binge Drinking and Related Problems among Youth and Young Adults to the State Department of Alcohol and Drug Programs

Human Services – Welfare & Social Services

7) Approval of Official Leave of Absence for a Social Worker

Agenda Page 3 August 17, 2004

Public Works

8) Approval of award of contract to Baldwin Contracting for overlay of Garden Highway from SR 99 to North of Messick Road and authorize Public Works director to execute contract and all documents related to the administration of the contract

Sutter-Yuba Mental Health Advisory Board

9) Acceptance of resignation of Roberta Osgood as Family representative and authorization to post vacancy

Sheriff-Coroner

10) Second presentation and adoption of an ordinance to amend the Sutter County Ordinance Code by repealing Section 465-020(g) and enacting Chapter 467 relating to massage establishments and massage practitioners, and to establish a fee of \$42.00, payable to the Sheriff, for the processing of permits relating thereto

CORRESPONDENCE

11) Letter from Jim Denney, Sheriff-Coroner to Assemblyman LaMalfa regarding his efforts in helping restore the Rural Counties Public Safety funding and preservation of local booking fees

12) Letter from Sutter County Local Agency Formation Commission regarding Tierra Buena Area 2 Reorganization No. 322, LAFCO-04-06

13) Letter to the Board from Julie Stark, Community Memorial Museum expressing appreciation for the installation of the museum's new main gallery lighting

CORRESPONDENCE NOT INCLUDED IN AGENDA PACKET

14) Correspondence from the State Water Resources Control Board regarding applications 18085 and 18087, order approving petition for temporary transfer of up to 20,000 acre-feet of water to the environmental water account (cc: Public Works)

15) Agenda for the Regional Council of Rural Counties on August 18, 2004

16) Notice of Regular Meeting of the Consolidated Area Housing Authority of Sutter County for August 19, 2004

PUBLIC COMMENT

During this time, the public may comment regarding any item discussed by the Board during this meeting.
