

City of
Gridley

685 Kentucky Street

Gridley, CA 95948

August 16, 2011

Margaret Worley, Foreperson
Butte County Grand Jury
One Court Street
Oroville, CA 95965-3303

Dear Ms. Worley:

The City Council wishes to thank the members of the Grand Jury for their time and effort in researching the Gridley portion of the Grand Jury Report. The time involved was lengthy and the subject matter complex—making the Grand Jury's task that much more complicated.

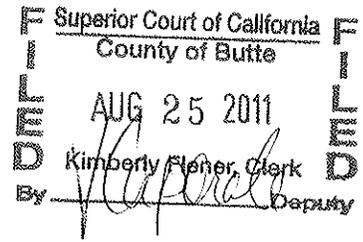
The Council views this report as an opportunity to continue to provide more transparency to the public regarding City business—even if historical in nature.

The Grand Jury's report will be used to assist in making this City a model of accountability regarding its approach in building consensus on future projects. We will continue to strive to "do better" because there will always be a better way to do things.

Enclosed are the City Council's comments and responses regarding the Grand Jury report.

Very truly yours,

Jerry Ann Fichter
Mayor, City of Gridley



FINDINGS

F1: The Gridley Business Improvement District's non-profit status is listed as suspended, and this is due to an error by the California Secretary of State.

Response: The Council concurs with this finding. The Business Improvement District has reported to the City that as of August 1, 2011, the BID status is no longer suspended, and that the Secretary of State's office has correctly updated their information. BID is awaiting final documents from the Secretary's Office.

F2: Any problem involving the Mayor serving as Executive Director of GBID has been resolved.

Response: The Council concurs with this finding. This item has come before Council who then requested the City Attorney to review the matter. After a thorough review, his office issued a legal opinion that stated that there was no conflict, based on the information provided. The Council finds it gratifying that the Grand Jury has come to the same conclusion.

F3: Some City Council Members and the Mayor have had contentious interactions with members of the public and one another at Gridley Council Meetings attended by the Grand Jury.

Response: The City Council agrees that occasionally, some meetings have been marked by sharp discussion on a select few subjects; namely anything to do with the subject or related to the subject of "biofuels". There have been several citizens who have spoken passionately about this subject. Council has and will continue to encourage all interested citizens to participate in their city government. Further, Council welcomes comments from citizens during the council meetings. Having stated that, the Council believes the Mayor has done an excellent job of managing the meetings to ensure all citizens present who desire to speak have the opportunity to do so.

F4: The research and development concept of Biofuel using rice straw became a catalyst for disagreement and animosity, dividing Gridley City Council and public opinion.

Response: The Council concurs; however, wishes to clarify that while this has become a polarizing issue, the fact that it has been ongoing for 17 years with no physical project being built may have added to this "disagreement and animosity." Clearly, there have been differing expectations regarding this subject; and, the 2008 election period saw three new Council members elected and the resulting Council became split on this subject—a proper reflection of the aggregate concerns of the public as reflected in the results of the electoral process itself. The politics of a subject as divisive as this one appears to be as often about how to gain a city-wide consensus and this Council recognizes that from election-to-election, priorities and council direction can change.

The Council appreciates the Grand Jury's recognition that this is part of the political process itself.

F5: Rice straw was moved from the original location in the farmer's fields to the Industrial Park, at some cost to the City of Gridley, where it rotted, became infested with vermin and had to be hauled away.

Response: The City agrees with this statement with some clarification: Under Resolution 2001-R-014, the City Council stated its desires to obtain control of the raw materials for a future biomass conversion facility and approved the purchase for 15,000 tons for the amount of \$225,000. The rice straw was purchased from a rice straw co-op. In April 2005, the City paid approximately \$20,000 to dispose of the rice straw. The condition of the rice straw as it concerns the noted "infested with vermin" comment above, could not be verified from available documents.

F6: Rice straw alone has not yet been proven to be a viable source to create a biofuel.

Response: The City partially disagrees. A rice straw-to-biofuel conversion project was demonstrated at the Red Lion Facility in Toledo, Ohio, last winter, where over 100 tons of rice straw was converted to Syngas. Syngas-to-fuel has been demonstrated at the McClellan Industrial Park as well as at the Toledo Facility. Rice straw may be a viable source that can be used to create biofuel; however, what remains to be seen is whether the technology progressed enough to allow rice straw to be the main feed stock in a commercially-sized facility. This is still a research and development project that has not yet progressed to the commercially viable stage. The City understands it must always remain vigilant when evaluating this or any project that the City and City Council exist for the benefit of Gridley residents.

F7: Monies were used from City of Gridley taxpayer funds to purchase the parcel behind the Rio Pluma Plant (Parcel #025-200-088) and pay the Energy Commissioner for his representation regarding NCPA.

Response: The City agrees with clarification. The land was purchased with City funds. Typically, the only way cities purchase land is either with funds on hand or arranging a loan of some sort. Using City funds to purchase land is a normal and legal process. Regarding the Energy Commissioner compensation, he was a paid consultant who was under contract with the City. The Contract was a fee for services contract (Harris, Sanford and Hamman) and called for the consultant to be paid for services rendered at a negotiated rate. Monies for his (Sanford's) work as the Energy Commissioner came from the City's Electrical Fund; and the City acknowledges these monies were not reimbursed from any source.

F8: The City of Gridley purchased land (Parcel #025-20-088) that was outside its sphere of influence at the time of purchase for a total of \$679,000, using Gridley Taxpayer funds. The land is still zoned for agricultural purposes.

Response: The City agrees with this statement but would like to clarify. There is no dispute regarding the purchase price. If the point of this finding is to indicate that the zoning is incorrect for anything other than "agricultural" purposes, then be advised that City staff researched this issue with the County Planning Department as part of the City's due diligence of the project. The land zoning has not changed at this point nor does it need to. This project is a joint City of Gridley/Northern California Power Agency project and is exempt from Butte County's zoning pursuant to G.C. § 53091 (e) and P.U.C. §12808.5.

F9: Until recently, Gridley City Council agendas and minutes have been vague and lacked sufficient detail for the public to understand the issues.

Response: The Council disagrees. Regarding the historical aspect of the finding, the City Council agendas have always provided a brief, but adequate statement of what that specific agenda item will cover. The minutes, likewise, have always gone beyond the minimums of documenting the motions, seconds and how the items were voted on. However, even with this disagreement, the Council understands and does agree that there is always room to do better and to continue to exceed the legal noticing requirements. We appreciate this feedback on our agendas and minutes. The Council further agrees that the current manner in which agendas are described are more encompassing and may be easier for citizens to understand—part of our ongoing effort to be cutting edge regarding transparency in government. Similarly, current City staff does strive to summarize minutes to include more than the minimum detail. In the case of agendas and minutes more, not less, is better.

F10: Under the former administration, the City of Gridley engaged in notably ineffective record keeping and file maintenance practices.

Response: The Council agrees that more can be done to improve record keeping and will take as an action item to improve the City's records keeping and files maintenance practices.

F11: Some proponents, including public officials, assured the Gridley City council and citizens the Gridley Project would result in no cost to the City. However, Gridley City funds were spent.

Response: The Council partially disagrees. Funds spent on the biofuels project came from the DOE grant. These funds were not considered "City" funds, although Gridley residents, as taxpayers, owned these funds as well. Records indicate Redevelopment Agency funds, not "City" funds, were used to remove and dispose of the rice straw in

the Industrial Park. The City acknowledges all governmental funds of all types belong to taxpayers (including Gridley residents) and are deserving of careful stewardship.

F12: The perception of conflict of interest exists regarding some Gridley City leaders' involvement in the Gridley Project while serving in public office.

Response: The Council disagrees in part due to the fact that any conflict of interest would be an FPPC issue that that agency would need to investigate and determine. Council members have regularly filed their FPPC Form 700's and have attended training as required by law. At this point such an investigation may be appropriate and the City invites such for purposes of clarification. The citizens of the City rely on the honesty and integrity of each individual council member. Most recently, training (AB1234) was conducted following the November 2008 and November 2010 elections.

F13: Emails have been used by Gridley City council members to discuss pending agenda items outside the public arena, which limits City residents' participation in the governing process, and may violate the Brown Act.

Response: The Council disagrees in that no specific e-mails were provided in this report to allow the City to verify that there was in fact a violation. The word "may" does not constitute a violation. Having stated that, the Council has had training on the Brown Act and will continue to be vigilant regarding e-mail communications and the potential they pose to Council members to inadvertently stray into areas that may, after the fact, be viewed as potential Brown Act violations.

F14: the City of Gridley Energy Commissioner position has never been a paid position, other than when held by the former council Member who was appointed to the position on 2000.

Response: The Council agrees with this Finding. Reviewing the records from that time period, it was clear that a significant number of complex projects were in development within the Northern California Power Agency (NCPA) and the Council apparently believed that retaining the services of a consultant who possessed experience as Energy Commissioner would better serve the needs of the City and its citizens. The City acknowledges that no Request for Qualifications was issued at that time; however, no search is required when selecting professional grade services such as attorneys, engineers, or architects.

F15: The City of Gridley paid the Energy Commissioner from 2000 to 2009, even though the contract which was signed in 2000 expired in 2003.

Response: The Council agrees with this Finding. The fact the wording in the contract indicates it "expired" in 2003 is diminished when viewed against the fact that it continued to be an approved budgeted item until the current Council elected to go a

different direction and formally took action to terminate the contract at its regularly scheduled meeting on March 16, 2009. To re-state, the budget for the Energy Commissioner position was reviewed and adopted annually as part of the City budget process; meaning the funds were legally appropriated for the expenses associated with the services that continued to be performed in accordance with the existing contract. The City acknowledges however that once contracted, the specific issue of whether or not the services were an appropriate or desired expenditure was never again brought before the Council for public discussion.

F16: The Former Energy Commissioner appointed in 2000 to represent the City of Gridley with NCPA was paid \$526,369.00 for services related to the Gridley Project. The total Energy Commissioner payments over a nine year period amounted to \$964,949.00.

Response: The Council disagrees with this Finding as the amount quoted in the Finding was for NCPA Energy Commissioner (\$526,369) related services, not as the Principal Investigator of the DOE/Gridley Project (\$438,580). Having clarified that, the amounts paid for services rendered are not in dispute.

F17: The City of Gridley has been pursuing the biomass project since 1994 and so far the project has proven non-feasible. At least one Gridley City Council member continues to advocate for the project.

Response: The Council disagrees with the statement "non-feasible." This project was and continues to be a research and development project conducted in large degree by private entities. This research has furthered technological advances that have demonstrated that rice straw can be converted to syngas which can be converted to diesel or ethanol. Although to clarify, this project is still in research and development.

The Council believes that advocacy of a particular project or idea is a proper role for an elected official, but such advocacy must exist with proper understanding as to whom such an official represents.

F18: The DOE terminated funding for the Gridley Project in 2010.

Response: The Council disagrees. The grant ended on schedule in 2010, it was not terminated. It should be noted that this \$20 million grant is with REll and Red Lion. The City of Gridley has no responsibility for this grant.

F19: Positive changes have been made to address some of the past practices that created problems within the Gridley community.

Response: The Council agrees. Over the past several years, the Council has focused on moving the City to be even more accountable and transparent. Agendas and staff reports are posted online. The City's website has been updated, making it easier to navigate and more user -friendly. The agenda format has been changed to both

better organize the meeting flow as well as to ensure the public has two opportunities to speak, once during the public comment session, and they can speak on any agenda item by merely raising their hand and being recognized by the mayor as a subject come up for debate (this is stated in boldface at the beginning of each Council agenda). The Council appreciates the Grand Jury's acknowledgement that positive changes have occurred at City Hall.

RECOMMENDATIONS

R1: Schedule ethics and Brown Act classes for all department heads, elected, and appointed official to be performed annually and keep records of compliance that are made available to the public, perhaps on the website.

Response: This recommendation has been implemented. The City does schedule ethics and Brown Act training as required by AB 1234; however, the required interval is every two years. The City will investigate posting the information on the website.

R2: Create a timeline for the City Clerk to remind Gridley City Council members and Gridley City Officials at the appropriate time to file Form 700's. Make available to the public, records of ongoing compliance with this requirement.

Response: This recommendation has been implemented since 2008. The City Clerk's office tracks Form 700's on Council members and appointed officials for the City. The incomplete or missing Form 700's were from a time prior to 2008 and seem to be an issue between the responsible official and the Fair Political Practices Commission.

R3: Create a policy when seeking individuals for specialized positions to best represent Gridley's interests.

Response: This recommendation has been implemented. The City follows State Contracting Law when seeking individuals for specialized positions. Request for qualifications (RFQ's) and Request for proposals (RFP's) are routinely published for services needed; however the City does decide on a case-by-case basis whether or not to seek proposals regarding the selection of consultants for professional services.

R4: Encourage GBID to move quickly to obtain their non-profit status by correctly registering with the Secretary of State of California.

Response: This recommendation has been implemented. The Gridley Business Improvement District has submitted all required forms to the State and is awaiting a response. Conversations with the State indicate it may take up to 120 days for them to respond.

R5: In concert with NCPA, continue to pursue other avenues of proven, affordable renewable energy, such as the solar project. Continue to make information regarding this activity available to the public.

Response: This recommendation has been implemented. The one megawatt City solar project has been executed and mobilization is expected to occur within 30 days. The 2.5 megawatt Bay Area Rapid Transit Project for solar energy has been approved in concept by the City Council and is undergoing final contract review between affected agencies.

R6: Hold public meetings at which community members can ask questions. Ensure that questions raised receive either verbal responses or follow-up responses that are also publicly available.

Response: This recommendation has been implemented. To clarify, this has always been the policy of the Council. Citizen participation has always been solicited and welcomed. The Council is reminded that all points of view deserve equal time and a respectful hearing.

R7: Develop policy and procedures for effectively maintaining Gridley City records. Provide an estimated date of completion for these documents.

Response: This recommendation requires further analysis. As the City has a significant number of files, it will take some time to define a process and to ascertain the financial costs associated with moving the existing files system to a standardized files retention plan. The City anticipates implementing a new files plan and retention rules within six months of the date of publication of the grand jury report.

R8: Employ an independent firm to audit and investigate whether any Gridley City officials made decisions or took actions that would constitute a conflict of interest. Make the results of this audit and investigation available to the public.

Response: Not implemented. After the thorough review by the Grand Jury, this is not warranted; however, in the interest of public confidence, the City and Council invite investigation and review by the District Attorney's Office, the Fair Political Practices Commission and the California Attorney General.

R9: Create and document an internal audit committee (one person from each department) to audit and ensure that the Gridley City's policies and procedures are practiced and performed as written and executed correctly. Make the audit reports from the oversight available to the public.

Response: The recommendation will not be implemented because it is not warranted since the City Administrator conducts weekly staff meetings to discuss all aspects of administration to include policies and procedures performed in each department. In

his short 3-year tenure with the City, this has been an instrumental vehicle to effect significant policy and procedural changes in all areas.

In reviewing Finding 19 (Positive changes have been made to address some of the past practices that created problems within the Gridley community), one can see that the Grand Jury has acknowledged the improvements made to the City. It would seem prudent to use the same process that resulted in these improvements rather than creating another meeting with the same people.