

ENDORSED FILED

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

MAY 27 2016

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

**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**

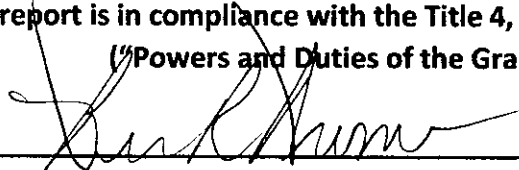
**Final Report [pursuant to Penal Code 933(a) on subject:
Chevron Solar Energy Savings Project**



**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

CHEVRON SOLAR ENERGY SAVINGS PROJECT

SUMMARY

On February 25, 2014, the Sutter County Board of Supervisors (BOS) approved a contract with Chevron Energy Solutions (ES) to implement several energy related improvements at Sutter County facilities; including the construction of ten photovoltaic (solar powered) generating facilities. Also on February 25, 2014, the BOS approved a Master Equipment Lease-Purchase agreement with PNC Equipment Finance LLC, which is intended to fund the proposed improvements. It was anticipated that the energy saved by the solar powered improvements would pay for the anticipated cost of the "Performance Contract Agreement" (Chevron Project).

BACKGROUND

On July 10, 2015, the Appeal-Democrat published an article titled "*Faulty bookkeeping for \$9M in Sutter County.*" The article stated that "*In the midst of an otherwise uneventful Sutter County audit[,] became the matter of an unrecorded \$9.1 million. The money was borrowed and partially spent but never entered into the county's ledger.*"

In an effort to determine if the County had followed the correct method in obtaining the loan for the planned solar arrays, if the money was fully accounted for, and whether or not the Auditor-Controller was properly informed about the project, the SCGJ initiated a full investigation into the process of the loan as well as the responsible departments.

RESOURCES

The SCGJ:

- Interviewed:
 - Former chairman of the Sutter County BOS
 - County Administrative Officer
 - Assistant County Administrative Officer
 - Former Auditor-Controller
 - Current Auditor-Controller
 - General Services Director
 - Representatives of the County
- Reviewed Documents:
 - Chevron ES Performance Contract Agreement
 - Chevron ES Services Contract
 - Master Equipment Lease-Purchase Agreement
- Inspected Multiple Solar Array Sites

DISCUSSION

On July 23, 2013, the BOS approved a Program Development Agreement with Chevron ES to develop the project. On January 23, 2014, a staff report was submitted to the Public Works/Support Services Committee for review. Two Supervisors reviewed the plan and forwarded it to the BOS with a recommendation for approval.

On February 25, 2014, the BOS approved the contract with Chevron ES to erect ten solar arrays, install upgraded HVAC in various County buildings, and install efficient lighting and to make other energy saving improvements, at a cost of 10.5 million. Financing of the project was to come from PNC Equipment, LLC for \$9,109,446 in the form of a Master Equipment Lease-Purchase agreement. An escrow account was established with US Bank so that when an authorized agent of Sutter County requested payments to be made for the purchase of the various components of the project, funds would be released to the respective vendors of the equipment. The two authorized agents of the County were the County Administrative Officer (CAO) and Assistant CAO. In addition to the loan, Sutter County approved a budget amendment to make an upfront cash contribution not to exceed \$1.5million.

The lease agreed to between the County and PNC, consisted of 15 annual payments ranging from \$629,874 to \$1,039,834 in the final year. These payments were to be paid from the various County funds made available from the reduced energy consumed by the project improvements. The Lease-Purchase Agreement also stipulated that the disbursement of the funds in escrow would be completed within eighteen months of the signing or the funds remaining would be used to repay the loan amount.

According to representatives of the County, both the BOS and the CAO stated it was more expedient to handle the agreement by excluding the Treasurer-Tax Collector and the Auditor-Controller from the process. In fact the project came together from the initial study to the final agreement in record time according to a County representative. Instead of purchasing the various components of the project, which would have required the Auditor-Controller to be involved, according to government policy, a lease-purchase agreement was approved circumventing that policy by defining the payments as rent. At the very least, the Auditor-Controller should be included. He was elected by the people of the County to act as an independent agent to prevent the opportunity for improprieties or the appearance of such improprieties.

Since the Chevron Project was signed in February 2014, there have been significant changes from the original agreement, such as:

- The original agreement with Chevron ES was sold to OpTerra, Inc.
- Complications arose in the construction of the two major solar arrays, one located at the Sutter County Airport and the other located at the Mental Health site, preventing these units from being built. Combined, these two units were projected to produce two thirds of the power generated by the entire project.
- A new site originally designated for the airport was chosen near the town of Sutter on property purchased from the Public Works Department. This required additional money

from the General Fund to be spent for the purchase of the site. The completion date for this array is unknown at this time.

- On September 8, 2015, the BOS approved a resolution to amend the Escrow instructions to the Master Lease-Purchase Agreement due to unanticipated delays. The Resolution extends the date of completion of project work and the disbursement of escrow funds to February 27, 2017.

Also on September 8, 2015, a resolution was approved removing the CAO and the Assistant CAO from access to the escrow account and giving the Treasurer-Tax Collector sole access to that account. It further amended the agreement to reflect the Treasurer-Tax Collector and Auditor-Controller as primary authorized signers on further Requisition Requests. Both signatures are now required.

FINDINGS

- F1. The BOS signed an agreement with Chevron ES to construct energy producing and energy saving devices on and within Sutter County facilities. Financing for the project was provided by PNC Equipment Finance, LLC in the form of a Master Lease-Purchase agreement spreading the repayment over fifteen years.
- F2. The Master Lease-Purchase agreement stated that repayment would be considered to be Rent Payments under the lease. These payments would constitute an annual expense for the County.
- F3. The Rent Payments are a part of the annual budget for the respective departments of the County, instead of project funds. By defining the payments as rent, it removed it from the Auditor-Controller's jurisdiction and independent oversight.
- F4. The largest photovoltaic array is projected to produce over half of the total power produced by all ten solar units. The site for this large array was the Sutter County Airport. However, the Federal Aviation Administration (FAA) advised the County that an extensive delay would be incurred while a site study was to be conducted to determine if there were any safety issues regarding airport operations. This required an alternate site to be selected.
- F5. The second largest photovoltaic array is projected to produce 16% of the total power. Its site at Mental Health also proved to be problematic with no alternative site yet to be determined.
- F6. In the rush to complete the Chevron Project, incomplete research resulted in the selection of "problem" sites for two thirds of the total projected energy production resulting in extensive delays and added expense to the County.
- F7. The BOS approved the CAO and the Assistant CAO sole access to the \$9.1 million escrow account to disburse funds for the Chevron Project. This was later amended by giving the Treasurer-Tax Collector and Auditor-Controller sole access to the account.

RECOMMENDATIONS

- R1. Any future projects shall take advantage of all of the resources available to the BOS. The Auditor-Controller shall be included. He was elected by the people of the County to act as an independent agent to prevent the opportunity for improprieties or the appearance of such improprieties.
- R2. Any future project involving County funds shall always name the Treasurer-Tax Collector as the sole agent of the County to handle these funds. He was elected by the people to handle this responsibility and it is inconceivable that, in the original escrow agreement, he was excluded.
- R3. In the future, adequate time for thorough research shall be allowed to avoid such expensive delays, as this project has experienced, costing the County hundreds of thousands of taxpayer dollars. **(See lease payment schedule Attachment A)**
- R4. The BOS employ an internal auditor, by the next fiscal year, to ensure that the County is in full compliance with County Policy & Procedures.

REQUEST FOR RESPONSES

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

- Sutter County Auditor-Controller
- Sutter County Treasurer-Tax Collector
- Sutter County Board of Supervisors

INVITED RESPONSES

- Sutter County CAO

APPENDIX

Chevron Lease Payment Schedule (Attachment A)

BIBLIOGRAPHY

Creasey, Andrew. "Faulty Bookkeeping for \$9m in Sutter County." Appeal-Democrat. Appeal-Democrat. Appeal Democrat, 10 July 2015. Web. 16 Feb. 2016

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.



2. LEASE PAYMENT SCHEDULE:


(a) Total Amount Financed: \$ 9,109,446.00
 (b) Payment Schedule:

Rent Payment Number	Rent Payment Date	Rent Payment Amount	Interest Portion	Principal Portion	Termination Value *
1	2/27/2015	683,110.00	337,596.07	345,513.93	No Call
2	2/27/2016	629,874.00	324,791.32	305,082.68	No Call
3	2/27/2017	655,978.00	313,484.96	342,493.04	No Call
4	2/27/2018	683,267.00	300,792.17	382,474.83	7,965,897.97
5	2/27/2019	711,796.00	286,617.65	425,178.35	7,527,964.27
6	2/27/2020	772,465.00	270,860.54	501,604.46	7,011,311.67
7	2/27/2021	804,885.00	252,271.08	552,613.92	6,442,119.33
8	2/27/2022	838,774.00	231,791.21	606,982.79	5,816,927.06
9	2/27/2023	874,201.00	209,296.42	664,904.58	5,132,075.34
10	2/27/2024	911,234.00	184,655.06	726,578.94	4,383,699.03
11	2/27/2025	866,579.00	157,728.04	708,850.96	3,653,582.55
12	2/27/2026	907,050.00	131,458.03	775,591.97	2,854,722.82
13	2/27/2027	949,360.00	102,714.59	846,645.41	1,982,678.04
14	2/27/2028	993,592.00	71,337.91	922,254.09	1,032,756.33
15	2/27/2029	1,039,834.00	37,157.95	1,002,676.05	1.00

COUNTY OF SUTTER, *as Lessee*

PNC Equipment Finance, LLC, *as Lessor*

By 
 Name: 
 Title: COUNTY ADMINISTRATIVE OFFICER

By 
 Name: 
 Title: 

* Assumes all Rent Payments and other amounts due on and prior to that date have been paid.