

# **FARMING WITH BIO-SOLIDS IN PORTERVILLE**

## **BACKGROUND:**

Porterville is Tulare County's third largest incorporated city with an estimated population of 55,174 (July 2013). Its 17.7 square miles of total area is located in the southeastern quadrant of the County approximately 51 miles north of Bakersfield and some 31 miles southeast of Visalia. Agriculture supplemented by the Central Valley Water Project has been the major source of economic growth in the area. The City is the center of a large farming area noted especially for citrus and livestock. Porterville is a charter city with a council-city manager form of government. In fiscal year 2014-15 the City had a budget of \$49,896,677 of which \$5,888,076 was allocated to the operation of the City's sewer system.

## **REASON FOR INVESTIGATION:**

The Grand Jury received a citizen complaint alleging that the City of Porterville had failed to use proper procedures pertaining to requesting and reviewing proposals and subsequently entering into a lease agreement involving the farming of some 682.4 acres of land owned by the City. The lease agreement contained requirements that the lessee adhere to terms and conditions related to the dispersal of treated wastewater from the City's sewage treatment facility. The terms and conditions of wastewater dispersal stemmed from the City's "Bio-solids Management Plan" (BMP), monitored by the Regional Water Quality Control Board. The complaint also alleged that the City failed to take into consideration instances of non-compliance with provisions of previous contracts on the part of one of the respondents.

## **METHOD OF INVESTIGATION:**

The Grand Jury interviewed Porterville City staff and studied various relevant documents, including the lease in question. The Grand Jury also viewed video footage of a Porterville City Council meeting during which information relative to non-compliance with the aforementioned BMP was presented.

## **FACTS:**

1. In evaluating the proposals from prospective lessees, the City assigned a weighted value to each of four (4) criteria:
  - a. Farming experience (25 points)
  - b. Marketing and Sales Experience for Crops (5 points)
  - c. Recycled water irrigation and bio-solids application experience, quality of existing farming operations and response to Request For Proposal (RFP) (30 points)

- d. Revenue accruing to the City from the lease (40 points)
2. The criterion having the most value was criterion "d"
  3. The City's RFP included an addendum which, under normal circumstances, must be returned by each respondent in order to have their proposal considered.
  4. One of the respondents failed to return the addendum within the prescribed time period.
  5. The City Council received advice from legal counsel regarding the respondent's failure to return the addendum and indicated this omission did not disqualify the respondent because it could be considered a waivable defect.
  6. The City pursued redress of a previous instance(s) of non-compliance by filing a civil suit in Tulare County Superior Court which was consummated by a "Negotiated Settlement Agreement."
  7. Terms of the "Negotiated Settlement Agreement" effectively precluded the City from including the previous instances of non-compliance in the evaluation of future proposals submitted by the defendant in the suit.
  8. The City has no formal schedule pertaining to lessee performance and compliance monitoring.
  9. The City has discovered that the lessee has failed to adhere to the crop rotation requirements of the BMP and is, therefore, out of compliance with the terms of the lease.

## **FINDINGS:**

- F1. The City's contract administration and compliance monitoring relative to the lessee's adherence to the provisions of the lease as well as the lessee's compliance with the requirements of the "Bio-solids Management Plan," displayed confusion and/or misunderstanding on the part of staff as to which City Departments had primary responsibility for the timing and collection of lease payments.
- F2. Although there was no misunderstanding as to which City Department has responsibility for monitoring compliance with the BMP, there are acknowledged shortcomings to the development and maintenance of schedules for performance reviews and the documentation thereof.

## **RECOMMENDATIONS:**

**R1.** The City implement a revised comprehensive performance evaluation process wherein the lessee(s) are more closely monitored.

**R2.** The City define and implement detailed accounts receivable policies and procedures.

## **REQUIRED RESPONSES:**

1. City of Porterville

### **Disclaimer**

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Section 911, 924.1 (a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Section 924.2 and 929).



July 21, 2015

**The Honorable Judge Bret Hillman**  
County Civic Center, Room 303  
221 S. Mooney Boulevard  
Visalia, California 93291

**Tulare County Grand Jury**  
5963 S. Mooney Boulevard  
Visalia, California 93277

**Report: Farming with Bio Solids in Porterville**

To the Honorable Judge Bret Hillman and Tulare County Grand Jury Members:

The City of Porterville is in receipt of the Tulare County Grand Jury Report related to the review of the City's wastewater treatment and reclamation operation. Please accept this correspondence as the required response on behalf of the City Council to the Report.

In response to Finding #1 of the Report, that "the City's contract administration and compliance monitoring relative to the lessee's adherence to the provisions of the lease as well as the lessee's compliance with the requirements of the 'Bio-solids Management Plan,' displayed confusion and/or misunderstanding on the part of staff as to which City Department had primary responsibility for the timing and collection of lease payments," the City AGREES with the finding and has clarified that the Public Works Department shall notify the Finance Department of the amount and timing of lease payments, and the Finance Department shall be responsible for their invoice and collection.

In response to Finding #2 of the Report, that "although there was no misunderstanding as to which City Department has responsibility for monitoring compliance with the BMP, there are acknowledged shortcoming to the development and maintenance schedule for performance reviews and the documentation thereof," the City AGREES with the finding and has instituted a more active monitoring program.

In response to Recommendation #1 of the Report, that "the City implement a revised comprehensive performance evaluation process wherein the lessee(s) are more closely monitored," the City has already IMPLEMENTED the recommendation, transitioning from a monthly to a weekly review and monitoring of lessee activities.

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The City's Wastewater Treatment Facility (WWTF) is tasked with monitoring the application of secondary treated effluent and biosolids application to the Reclamation Area. The Reclamation Area encompasses approximately 946 acres, of which 630 acres are available for irrigation, 250 acres are dry farmed land, and 66 acres are used for percolation.

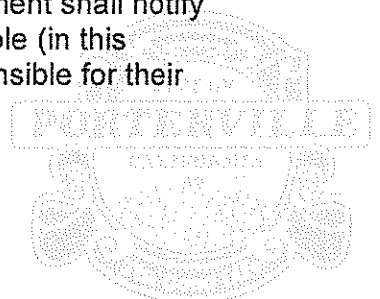
Previous to the Grand Jury's investigation, the City utilized a monthly reporting form approved by the Executive Officer of the Regional Water Quality Control Board for reporting Reclamation Area Monitoring as outlined in Monitoring and Reporting Program No. R5-2008-0034. The Reclamation Area Monthly Report was submitted to the Reclamation Area Lessee, the lessee would enter the required information, sign the report and return it to the City. The City would use the submitted information to generate required monthly, quarterly, and annual reports. The information required in the report included types of crops, amount of water and/or reclaimed water applied to the crops (in acre-feet), amount of sludge and/or chemical fertilizers applied (in pounds of nitrogen per acre).

On November 1, 2014, the City entered into a 5-Year lease agreement with Nuckols Farming to manage the City's Reclamation Area. Nuckols Farming was to comply with all terms and conditions of the lease, including but not limited to following the 2010 Biosolids Management Plan (BMP). Due to existing litigation between Nuckols Farming and the City, the City is unable to respond further at this time.

During its investigation, it was recommended by the Grand Jury that the City undertake a weekly monitoring and reporting program instead of monthly. The City accepted the recommendation, and on March 30, 2015, the City implemented a weekly monitoring of the Reclamation Area. Among the activities monitored on a weekly basis are the field acres, crop, and farming activities (field prep, irrigating, harvesting).

On April 1, 2015, the City contracted with Perigo Roadsiding to take over the Reclamation Area Lease Agreement through October 31, 2019. The City will continue the weekly monitoring program of the Reclamation Area to track the activities of the current farm manager.

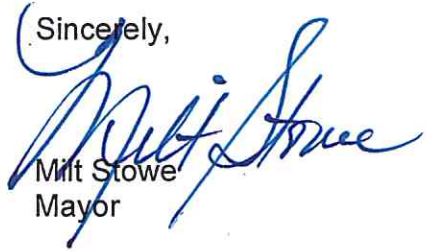
In response to Recommendation #2 of the Report, that "the City define and implement detailed accounts receivable policies and procedures," the City has already IMPLEMENTED the recommendation, which the Public Works Department shall notify the Finance Department of the amount and timing of accounts receivable (in this instance lease payments), and the Finance Department shall be responsible for their invoice and collection.



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Thank you for your time and consideration in the acceptance of this letter of response.

Sincerely,

  
Milt Stowe  
Mayor

