



NEVADA COUNTY GRAND JURY

Eric Rood Administration Center

950 Maidu Avenue

Nevada City, California 95959

Telephone: 530-265-1730

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APR 12 2024

NEVADA COUNTY
BOARD OF SUPERVISORS

April 12, 2024

Nevada County Board of Supervisors
950 Maidu Avenue
Nevada City, CA 95959

Re: **FOLLOW THE MONEY:**

Fire Safe Council's Accountability Problems from 2022 Continue....and Worsen

Dear Jamie Jones and Board Members,

On behalf of the 2023-2034 Nevada County Civil Grand Jury, I am providing to you the following report:

FOLLOW THE MONEY: Fire Safe Council's Accountability Problems from 2022 Continue ... and Worsen

The report will be released to the public on April 16, 2024. This report is being provided to you in advance of its general release pursuant to Penal Code section 93.05, subdivision (f), which provides:

A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. **NO officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.**

It is very important that you comply with this confidentiality requirement.

The Penal Code also prescribes the obligations of a governing board or elected county official with regard to responding to the grand jury's findings and recommendations. Specifically, if the report contains one or more recommendations directed to you as an elected county official, or to the governing board of which you are a member, you must respond to those recommendations and to the supporting findings, as directed in the report.

The time withing which to respond is prescribed by subdivision (c) of the Penal Code section 933, which states I relevant part:

No later than 90 days after the grand jury submits a final report on the operations any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment withing 60 days to th presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations petering to matters under the control of that county officer or agency head and my agency or agencies which that officer or agency head supervises or controls. I any city and county the mayor shall also comment on the findings and recommendations. **All such comment and report shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury.**

The Penal Code also prescribes the content of your responses. Subdivisions (a) through (c) of Penal Code section 933.05 state:

- (a) For purposes of subdivision (b) of Section 933, as to **each grand jury finding**, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or partially with the finding, in which the response shall specify the recommendation has be the portion of the finding that is disputed **and shall include an explanation of the reasons therefor.**
- (b) For purposes of subdivisions (b) of Section 933, as to **each grand jury recommendation**, , the responding person or entity shall report one of the following:
 - (1) The recommendation has been implemented, **with a summary regarding the implemented action.**
 - (2) The recommendations has not yet been implemented, but will be implemented in the future, **with a time frame for implementation.**
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, **and a time frame for the matter to be prepared for discussion** by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.

- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, **with an explanation therefor.**
- (c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matter of a county agency or department headed by an elected officer, both the department head and the board of supervisors shall respond if requested by the grand jury, but the response to the board of supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Please be aware that your responses will be a matter of public record and widely read by both community members and local media. Therefore, it is important that your responses be as clear and specific as possible. A response that is vague, does not provide a clear explanation of any action that has or will be taken, or that does not include a specific time frame for implementation, is neither helpful nor legally sufficient. Furthermore, if a response does not comply with the applicable provisions of the California Penal Code, you may be directed by the presiding judge to provide an amended response.

Please send your response addressed to the Honorable Judge Scott Thomsen, Presiding Judge, Nevada County Superior Court, 201 Church St., Nevada City, California 95959, with a copy to the Grand Jury, within the time period provided in subdivision (c) of Penal Code section 933 (see above).

The 2023-2024 Nevada County Grand Jury's website, <https://www.nevada.courts.ca.gov/general-information/grand-jury>. We would appreciate receiving an electronic copy, as well as a signed hard copy, of your response. You may E-mail a copy to Grand.Jury@nccourt.net.

Thank you for your cooperation in providing a meaningful and timely response,

Sincerely,



Deborah Heller, Foreperson
Nevada County Grand Jury

FOLLOW THE MONEY:

**Fire Safe Council's Accountability
Problems from 2022 Continue
... and Appear to Worsen**

2023-2024 Nevada County Civil Grand Jury

Report Date: April 8, 2024

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Summary

Two things impeded the grand jury's second investigation of Fire Safe Council of Nevada County (FSC): (1) the chairman of FSC's Board of Directors declared that Fire Safe Council would not allow any of its current directors or staff to meet with the jury, and FSC's Executive Director confirmed that by letter of February 4, 2024; (2) FSC's opaque accounting practices make it impossible to precisely follow the Nevada County money (or federal and state money) it receives.

Despite those obstacles, the investigation proceeded. Large amounts of FSC's gross revenue, totaling nearly \$2,000,000, have disappeared without explanation. There is no indication the Board of Directors even noticed, much less questioned, those discrepancies.

Fire Safe appears to be behind in both its federal and state tax filings and has not published any annual audit after 2020.

The jury cannot find any evidence that FSC or any of its principals have ever had a California contractor's license for the work FSC performs.

From the beginning of FSC's available records in 2019 through January 2022, it was subject to California's Open Meetings Act ("Brown Act") and knew that it was. During that period, FSC appears to have violated the Brown Act numerous times.

Fire Safe violated its own bylaws by removing a director without cause or explanation immediately after the director voted against approving a pay raise for a staff member.

FSC's explicit refusal to cooperate with the investigation (and its limited cooperation with a county-commissioned consultant) prevents the jury and the public from knowing whether there are any plausible explanations for these things.

Glossary

Board	Fire Safe Council Board of Directors
Consultant	CliftonLarsonAllen LLP
County	Nevada County
ED	Executive Director
FASB	Financial Accounting Standards Board
FYE	Fiscal Year Ending
FSC	Fire Safe Council of Nevada County
GAAP	Generally Accepted Accounting Principles
Jury	2023-2024 Nevada County Civil Grand Jury
NCSR	Nevada County Service Revenue
OES	Office of Emergency Services
PC	Penal Code
Previous jury report	The report of the 2021-2022 Grand Jury
YTD	Year to date

Background

The 2021-2022 grand jury investigated FSC and issued its report (“previous jury report”). That jury relied on an extensive review of publicly available FSC records, the testimony of some of FSC’s directors and staff, the testimony of a whistleblower, and other research sources, FSC responded,¹ and its inadequate responses caused the 2023-2024 grand jury to reinvestigate. The earlier report found FSC:

- resisted document production,
- had incomplete Board-of Directors operational reports and financial statements,
- lacked operational and financial transparency,
- did not properly segregate duties, roles and responsibilities for internal controls, and
- that FSC’s Board of Directors did not ensure adherence to applicable law.

FSC’s response disagreed with all but one of those findings. With respect to the remaining finding, FSC acknowledged that “annual external audits provided some guidance on some minor process issues, but no significant audit findings of irregularities were issued.”

Approach

FSC has a public website containing some of its Board of Directors meeting agendas, minutes, correspondence, audits, and limited financial records. The jury used those materials extensively. However, the website was not complete when the previous jury reported and is not complete now. FSC responded to the previous jury report that “[t]he documents to which the grand jury is entitled are available to the public as part of board packets.” FSC added, “The FSC provided all relevant and unprivileged documents to the Grand Jury.” That was not true then and is not true now.

The jury approached the investigation in multiple ways. It compared FSC’s responses to the previous investigation to the records available then. It reanalyzed FSC’s operations in light of FSC’s available records postdating the previous jury report. It interviewed former FSC employees, former board members, county officials, and drew on other publicly available materials. The jury has verified and documented every reference on FSC’s website. The jury attempted to interview current FSC directors and a staff member, but on the afternoon of January 3, 2024, the chairman of the FSC Board of Directors said that, on advice of counsel, no one from FSC would agree to be interviewed. The Executive director confirmed that in a letter a month later. FSC’s complete refusal to cooperate impeded the investigation but could not stop it.

Discussion

All the problems that the previous jury identified continue. Some have become clearer, and new problems have emerged. The jury finds the following deficiencies:

- I. Financial management
 - A. FSC’s reported local government funding *versus* Nevada County records

¹ In its response to the previous jury report, FSC asserted that it “is a private non-profit organization, and not a county department or agency, and therefore, it is the position that FSC is not subject to oversight by the Grand Jury.” That statement is overbroad. The grand jury does not have general oversight over nonprofit organizations, but when Nevada County does business with nonprofit organizations, the grand jury does have jurisdiction to follow the trail of county money. PENAL CODE § 933.6. The chair of FSC’s Board of Directors acknowledged that in a conversation with a jury member on January 3, 2024.

- B. Discrepancies in financial reports to the Board of Directors
- C. Discrepancies in data FSC supplied to IRS, FSC's Board of Directors, and FSC's website
- D. Audits and tax filings
- E. Audit findings
- F. Nevada County consultant's report
- II. Apparent absence of required licenses
- III. Operational and financial transparency
- IV. Board conduct and oversight of operations

I. FINANCIAL MANAGEMENT

FSC is primarily a government-funded entity. Its response to the previous jury report stated: "The FSC receives some funding support from Nevada County; it constitutes an important, yet minimal part of the FSC revenue." That is hardly an accurate statement. County records show that the county disbursed \$2,678,226.00 to FSC in FYE 2020. FSC's Statement of Activity for FYE 2020 shows \$2,609,556.11 in total revenue.² The county-disbursement figure is more than 100% of the total revenue that FSC reported to its Board of Directors. To the grand jury, this is more than a "minimal part of the FSC revenue." This report discusses the imprecision of FSC's accounting terms on page 6.

FSC's available documents and the jury's investigation reveal sizable unexplained discrepancies among Board financial reports, external audits, IRS Form 990 filings, and revenue FSC has received from the county. The jury analyzed available FSC financial data in three ways, comparing:

- FSC's annual reported local government funding with Nevada County's records of annual disbursements to FSC,
- FSC's monthly reports to the Board of Directors of YTD revenue receipts from named sources, and
- FSC's annual data as FSC reported them (a) on IRS Form 990, (b) to its Board of Directors in FSC documents, and (c) on available audits.

FSC's refusal to cooperate leaves these discrepancies unexplained.

A. FSC's Reported Local Government Funding *versus* Nevada County Funding Records

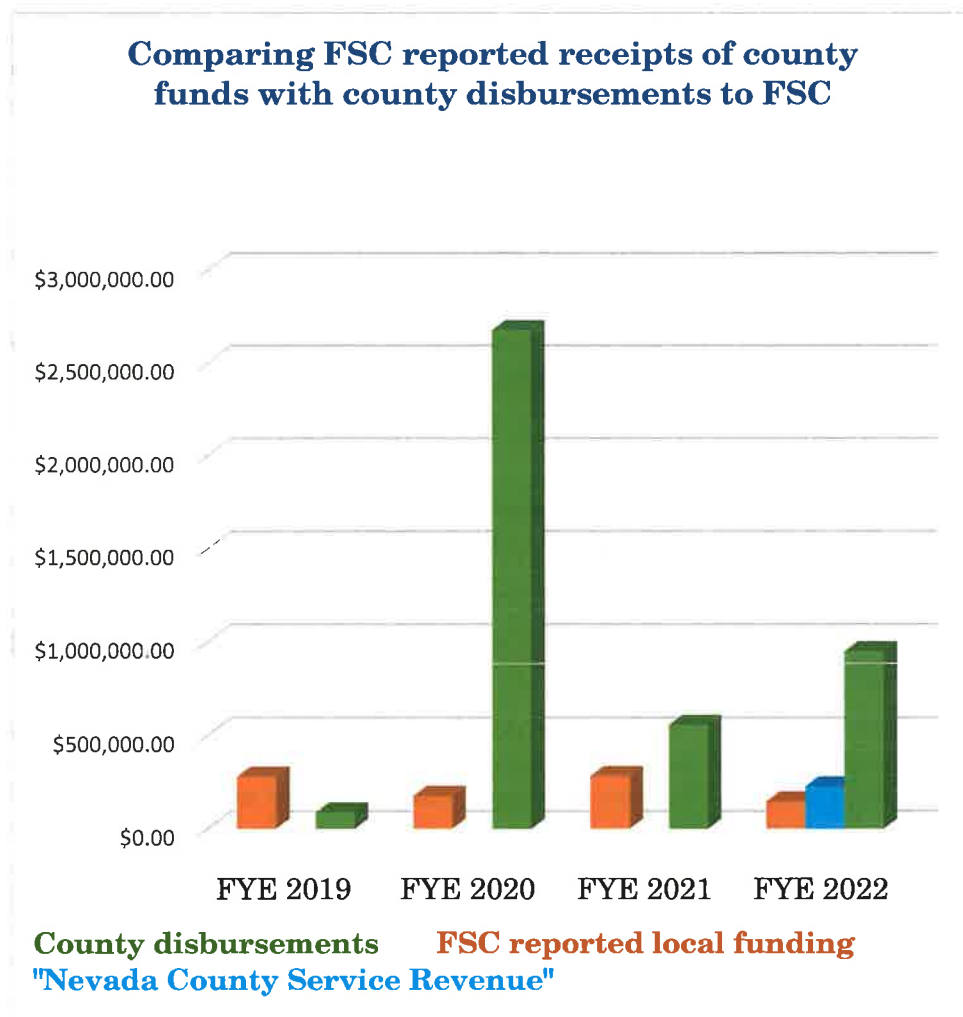
The jury reviewed available FSC Board packet financial statements and audits reporting local government revenue, comparing them to the county's payments to FSC for fiscal years July to June 2018-2021. The jury also examined data now available for the fiscal year that ended on June 30, 2022. The numbers do not add up. In FYE 2020 the county disbursed \$2,678,226 to FSC, yet FSC reported to its directors that it had received only \$714,781.85 in local government grants (a difference of \$1,963,444.15). A close study of FSC's website reveals no explanation for this discrepancy.

² This report discusses the \$68,669.89 on page 9.

Nevada County money constitutes a varying part of FSC's annual revenue. The problem is that FSC's records, as the following chart shows, vastly understate Nevada County's annual disbursements to FSC.

FYE	FSC's Reported Nevada County Funding	County disbursements to FSC	FSC Total Revenue	% Nevada County Funding (FSC figure)	% Nevada County Funding (Nevada County figure)
2019	\$276,378.06	\$87,400.00	\$490,493.43	56.35%	17.82%
2020	\$174,781.85	\$2,678,226.00	\$2,609,566.11	6.70%	102.63%
2021	\$280,476.23	\$555,432.00	\$1,909,667.36	14.69%	29.09%
2022	\$144,587.54	\$948,544.00	\$2,813,247.03	13.16%	33.72%

The same data are even more striking in graphic form.



Source: FSC website and county financial records

Thus, for FYE 2019, FSC overreported the county money it received to its Board of Directors. For FYE 2020, FSC underreported by approximately 90%. For FYE 2021, it underreported by approximately 33%. For FYE 2022, it also underreported.

FSC’s accounting records present a different (but related) issue. They are difficult to understand in part because categories of accounting appear and disappear. “Project revenue” does not appear on any available statements of activity for FYE 2019. It began as an accounting category in November or December 2019. It continued through at least November 2022. There are no later statements of activity until the Board packet of September 2023. By then, “project revenue” had disappeared.

In FYE 2022, another new FSC accounting term appeared. “Nevada County Service Revenue” (NCSR) is on the Statement of Activity covering the period July 2021 through January 2022.³ NCSR follows “Local Government Grants.” That continues for several months. Then the Board packet for September 22, 2022, lists NCSR as a subcategory of Local Government Grants. The Statement of Activity for the period July 2021 through June 2022 is confusing, because the same category (41300) has inconsistent amounts, as the chart below shows.

41300 Local Government Grants	\$144,587.54
41310 Nevada County Service Revenue	\$225,753.33
Total 41300 Local Government Grants	\$370,340.87

The jury does not know what to make of the inconsistent handling of NCSR. It is not clear whether it is properly part of Local Government Grants. It appears to be funding from Nevada County. All three categories—“Project Revenue,” Local Government Grants, and “NCSR”—whatever they may have included—have now vanished; the only financial records for FYE 2024 that FSC has made available on its website lack any mention of them.

B. Discrepancies in Financial Reports to the Board of Directors

The jury’s jurisdiction extends only to FSC’s handling of money it receives from Nevada County. FSC also receives substantial state and federal funding. However, that is only part of the picture. FSC does not identify the source of money for any of its expenditures. It also does not identify the projects for which it expended the funds. This makes it impossible to follow only the county money. For example, FSC’s Statement of Activity for FYE 2021 shows total expenditures of nearly \$2,000,000, broken down into numerous categories, but not one of the entries shows the source of those funds or to which of FSC’s contracts or projects they went.

That co-mingling, combined with the discrepancies mentioned in Section A, requires attention to FSC’s accounting practices. FSC’s handling of federal and state funding, while beyond the scope of the grand jury’s jurisdiction, casts doubt on the accuracy and reliability of the information FSC gives to its Board of Directors. That prevents the Board from exercising appropriate oversight.

A running year-to-date total of gross revenue from a single source should never decrease without explanation within the fiscal year.⁴ Yet FSC’s records show repeated

³ The Statement of Activity is in the Board packet for the meeting of March 24, 2022.

⁴ *Net* revenue may fluctuate according to changing levels of expenses, but gross revenue cannot decrease within the measuring period.

unexplained instances of decreases in YTD figures for grant funding, total revenue, and “project revenue,” as the following table shows.

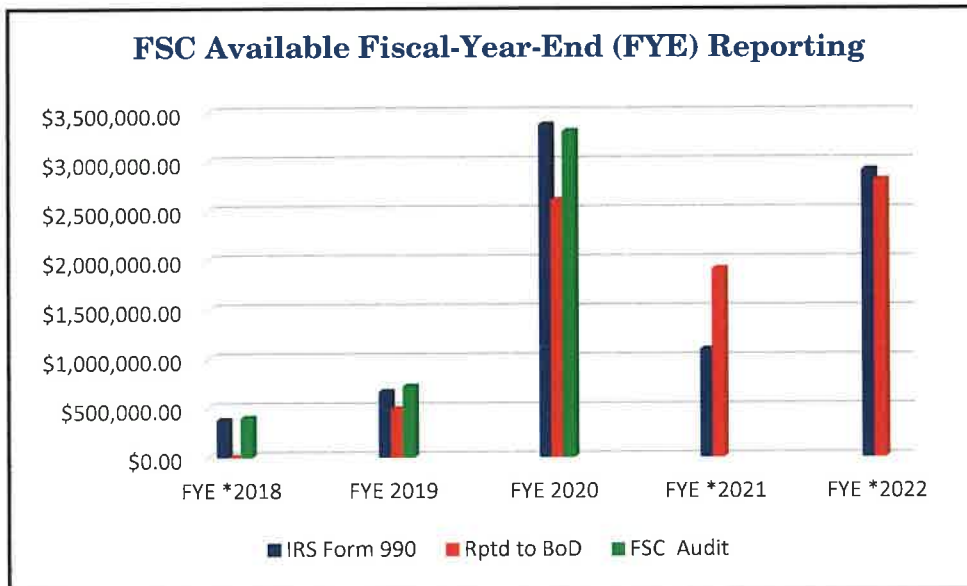
Board Packet Date	YTD Period	Category	Amount	Change from previous covered period
11/22/2019	7/2019—10/2019	Federal grants	\$649,329.00	
1/23/20	7/2019—12/2019	Federal grants	\$110,000.00	(\$539,329.00)
8/27/2020	7/2019—5/2020	Federal grants	\$129,598.53	
10/22/2020	7/2019—6/2020	Federal grants	\$61,132.07	(\$68,466.46)
4/28/22	7/2021—2/2022	Project revenue	\$311,017.68	
9/22/22	7/2021—6/2022	Project revenue	\$125,310.38	(\$125,707.30)
2/24/2022	7/2021—12/2021	State grants	\$1,116,740.00	
3/24/2022	7/2021—1/2022	State grants	\$1,073,000.00	(\$43,470.00)
11/17/2022	7/2022—9/2022	Total revenue	\$1,963,507.80	
1/26/2023	7/2022—11/2022	Total revenue	\$1,506,902.61	(\$456,605.19)
10/22/2022	7/2022	State grants	\$1,723,373.62	
1/26/2023	7/2022—11/2022	State grants	\$939,450.37	(\$783,923.30)

Thus, FSC records show disappearing government funding of \$1,396,065.70, project revenue of \$125,707.30, and total revenue of \$456,605.19 in those time periods, an accounting impossibility. That speaks volumes about the accuracy of FSC’s financial records.

C. Discrepancies in Data FSC Supplied to IRS, FSC’s Board of Directors, and FSC’s Website

The jury also compared financial revenue reports from three sources (two available on FSC’s website) for July-to-June fiscal years: IRS Form 990,⁵ financial statements in Board packets, and audits. (Some data are not available on the FSC website for the fiscal years ending in 2018, 2021, and 2022, as the asterisks along the x-axis indicate.)

⁵ The IRS website shows that FSC filed electronic returns through 2019, but it shows no returns for succeeding years. The graph data for FYE 2020, 2021, and 2022 come from copies of FSC’s returns available on GuideStar, <https://www.guidestar.org/profile/94-3317612> (last visited Oct. 20, 2023). Although the forms appear to be in an electronic version, IRS’s website does not show them. The forms for FYE 2020 and 2021 (but not 2022) also appear on FSC’s website.



*Missing data: 2018 Report to Board of Directors, 2021 and 2022 FSC Annual Audits

Thus, for FYE 2020, FSC’s IRS Form 990 shows \$3,379,215 annual revenue. For the same period, the audit available on FSC’s website reported \$3,312,289. FSC’s year-end Statement of Activity to its Board of Directors reported only \$2,609,566.11 total revenue. Different audiences receive different figures from FSC. That casts doubt on all of them.

D. Audits and Tax Filings

The previous jury’s second finding stated: “The Jury found that financial reporting on multiple levels, monthly Board operational reports and financial statements, and Form 990 [federal tax] filings were incomplete or in arrears.” FSC’s response stated: “Partially Disagree: The annual external audits provided some guidance on some minor process issues, but no significant audit findings of irregularities were issued. Auditor findings have been corrected going forward. Publicly available 990 filings have never been in arrears.” The IRS website shows no returns for FSC after 2019, while other nonprofit corporations’ filings⁶ are current through tax year 2022. As a nonprofit, FSC must file annual federal and state returns. The Franchise Tax Board’s website shows no FSC state tax returns for the years 2019 through 2023.

With respect to FSC’s reference to “annual external audits,” as of January 30, 2024, FSC’s website contains no annual external audits for the fiscal years ending in 2021 and 2022.

E. Audit Findings

FSC’s characterization of “no significant audit findings of irregularities” requires elaboration. The Richardson & Co. Independent Accountant’s Report on Applying Agreed-Upon Procedures on FSC’s website⁷ notes a dozen “irregularities”:

1. mislabeling a Simple IRA plan as a 401k plan,

⁶ For example, Lutheran Services in America, one of the largest nonprofits, is current through 2022.

⁷ The Richardson letter is at https://static.s123-cdn-static-d.com/uploads/2149934/normal_6148df7a37434.pdf (last visited Oct. 9, 2023). There is no date at the beginning of the letter. There is no signature on the letter. The last line of the letter reads: “_____, 2021.”

2. mishandling of employee IRA account payments in a manner potentially exposing employees to additional tax liability,
3. making payments to the Executive Director's IRA accounts that exceeded IRS contribution limits,
4. failing to process payroll advances through the correct accounts, resulting in not withholding required tax,
5. failing to report some payments on the Executive Director's W-2 form,
6. failing to include gym-membership benefits to employees on their W-2 forms,
7. exceeding allowable limits on amounts received by "the executive director and other employees for various COVID-related leave [*sic*],"
8. failing to reflect in the payroll system "credits to payroll taxes that should have been received by FSCNC to offset this COVID leave,"
9. using FSC's credit card for the Executive Director's personal purchases,⁸
10. accounting for an outstanding loan to FSC in a manner that violated generally accepted accounting principles,
11. failing to include the value of employee use of company vehicles for personal purposes on the employees' W-2 forms, and
12. failing to include payments to employees for vehicle storage on their property on the employees' W-2 forms.

The fifth item deserves special attention. There is a \$10,000 event that both occurred and did not occur. The June 2019 minutes say the Board voted the Executive Director a \$10,000 raise. The May 2020 minutes recognize that action, but say it was never implemented. The Richardson Report in 2021 says that the Board realized that it had *not* voted the raise.

The jury discovered another retroactivity item a year later. FSC's Statement of Activity covering FYE 2022 is in the Board packets for the meetings of September 22, 2022, and October 27, 2022. There is an item "ED Retroactive Pay - \$ 10,655.12." None of the Board minutes from 2022 refers to, much less approves, such an item.

⁸ Richardson characterized the use as "inadvertent." There were multiple inadvertencies.

F. The Nevada County Consultant's Report

In 2022, Nevada County hired CliftonLarsonAllen (CLA), a consulting and accounting firm, to study FSC's work under two contracts with the county.⁹ CLA issued its report on February 8, 2023.¹⁰ CLA

conduct[ed] a forensic accounting regarding operations at Fire Safe in an effort to obtain information about the processes, controls, and procedures in place to discharge the requirements of the contracts held with the County and to determine whether the whistleblower claims appeared valid. Additionally, the County wanted to ensure that taxpayer funds were expended appropriately and that they can comply with all regulations concerning the use of public funds. CLA assisted the County with review of [two contracts].

The conclusion of that report stated:

Based on the results of the analysis performed on the available information, CLA found no evidence of misappropriation of funds by Fire Safe related to the two County contracts reviewed. However, CLA relied on a limited production of information provided by Fire Safe.

Note that, in contrast to the Richardson report, CLA was only reviewing the billing associated with two contracts and simultaneously noted that it did not get all the information it requested from FSC. The report noted two red flags. The first relates to FSC.

During our interviews of the Fire Safe staff, including Jones, CLA noted a lack of adequate segregation of duties at Fire Safe due to the limited office staff. However, Jones stated that the Board Treasurer would review the payroll transactions that she performed related to her and her spouse, Wackerly, as a compensating control. *While this does not replace adequate controls,* [emphasis added] it increased the likelihood of fraud or errors being identified within Fire Safe. Since the completion of these contracts, Fire Safe notes they have hired additional staff and made changes to their processes to prevent Jones from performing day to day bookkeeping.

Thus, CLA confirmed that the segregation of duties problem identified in the previous jury report continues to exist. FSC had flatly denied this problem in its response to the jury report.

The second red flag calls attention to the county's performance with respect to the two contracts.

⁹ The consultant did not perform an audit.

While our work may have involved the analysis of accounting records, our engagement did not include an audit in accordance with generally accepted auditing standards or any other attest function. It is our understanding that the primary intent of engaging our services is for the benefit of management of the county. Our services are not intended to benefit or influence any other person or entity.

Review of Specific Fire Safe Council Contracts and Whistleblower Claims, (CliftonLarsonAllen LLP, Feb. 8, 2023) (available at <https://www.nevadacountyca.gov/DocumentCenter/View/47417/Review-of-Fire-Safe-Council-contract-processes?bidId=>) (last visited November 27, 2023).

¹⁰ CliftonLarsonAllen LLP, *Consulting Services: Review of Specific Fire Safe Council Contracts and Whistleblower Claims* (Feb. 8, 2023), available at <https://www.nevadacountyca.gov/DocumentCenter/View/47417/Review-of-Fire-Safe-Council-contract-processes?bidId=> (last visited November 27, 2023).

It is also important that the County [sic] have adequate oversight and monitoring of the grants administered by grantees such as Fire Safe. An inadequate control environment coupled with a lack of monitoring can create an opportunity for fraud or errors in the administration of the grant funds and lower the chance that they will be identified by the County.

This implies that the county had not properly overseen and monitored the two contracts.

The report also noted multiple instances of improper bookkeeping, including FSC billing the county for two employees working 24 hours each in a single day and separately billing for 20-hour work days for two ground crew staff members. That represents four separate errors. CLA accepted FSC's explanation that they were clerical errors.¹¹ Four more errors occurred when FSC staff entered those figures in FSC's system. The jury finds FSC's explanation of repeated clerical errors not credible.

CLA made four significant findings.

(1) FSC continues to lack "adequate segregation of duties. . . ."¹²

(2) It found that the Executive Director had performed payroll transactions for herself and her spouse.

(3) CLA acknowledged that FSC had made a change in its internal controls, but CLA also found that the change "does not replace adequate controls."

(4) CLA implied that the county was not maintaining "adequate oversight and monitoring . . ." and observed that the combination of lack of adequate internal controls at FSC and inadequate monitoring of FSC contracts by Nevada County increase the possibility of undetected fraud or errors.

These are serious matters, particularly in light of the financial questions FSC's records repeatedly raise. For example, with respect to point (2), the grand jury has verified from an independent source that the Executive Director prepared the payroll for two years. FSC bank checks typically require two signatures. Multiple sources have informed the grand jury that they saw blank checks FSC's treasurer had pre-signed. That violates FSC's policy of requiring two authorizations for large checks and removes an important internal control.

CLA's observation of "limited office staff" requires comment. FSC's online materials show no evidence of a controller until the November 18, 2021, Board of Directors meeting. FSC had previously employed a part-time accountant for two years but terminated that employment abruptly and without explanation. FSC fired its controller in the summer of 2022. The Executive Director recruited and hired a new controller in September 2022. That controller left FSC ten months later. The agendas for the August to November 2023 Board meetings list a new controller.¹³ The continuing rapid turnover of financial personnel remains unexplained, particularly in light of FSC's response to the previous grand-

¹¹ The reader should see the CLA report, <https://www.nevadacountyca.gov/DocumentCenter/View/47417/Review-of-Fire-Safe-Council-contract-processes?bidId=>, for the details.

¹² The previous jury report's fifth finding noted that problem. "The FSC lacks segregation of duties, roles, and responsibilities for internal controls." FSC's response emphatically said there was no problem at all. See page 13.

CLA dissents.

¹³ As of January 30, 2024, there are no 2024 materials on FSC's website.

jury report, asserting that “FSC employs competent staff which is supervised and monitored by management and the Board.” FSC has had three controllers in two years.

II. Lack of Required Licenses

The California State Licensing Board (CSLB) has established an extensive licensing system for persons and organizations performing work on property they do not own. Neither FSC nor any of its principals appear to hold any CSLB licenses. Given the extensive services that FSC contracts to supply, FSC must have at least one of three types of licenses: A (General Engineering Contractor), B (General Building Contractor), and C-49 (“known as a C-61/D-49 license prior to 2024”) (Tree Service Contractor). Among its services, FSC offers tree limbing to assist in creating defensible fire space, a service of obvious value in fire-prone Nevada County. Operating without a required license is a misdemeanor, but repeated violations can raise it to a felony.

III. Operational and Financial Transparency

The previous jury report noted, “The FSC lacks operational and financial transparency.” FSC responded:

Disagree. The FSC conducts public meetings and is transparent, more so than required by law, with regard to the financial and operational conduct of the FSC. Financial statements and reports are provided to the FSC Board of Directors each month¹⁴ and are available to the public on the FSC website. . . .

Footnote 14 gives the details.

A. FINANCIAL DISCREPANCIES

The problem that the previous jury report noted continues to exist and has become more acute. The graphs on pages 5 and the chart on page 7 show unexplained discrepancies, and they prevent transparency.

B. LACK OF TRANSPARENCY

1. Responding to the Previous Jury Report

FSC asserted that it made “an effort to be cooperative and transparent to the county and the citizens of Nevada County. . . .” However, that jury’s experience contradicts that. FSC did not honor five document requests from the prior jury, asserting that “the documents to which the Grand Jury is entitled are available to the public as part of Board packets.” That confirms FSC’s refusal to cooperate with the previous jury. FSC’s website lacked (and still lacks) numerous documents that FSC then said were available.

¹⁴ [JURY’S NOTE] This statement is inaccurate. There were no Board packets for the meetings of February 29, 2020, and July 8, 2021. The Board packets for the meetings of September 24, 2020, January 28, 2021, March 25, 2021, April 22, 2021, May 27, 2021, June 23, 2022, and August 25, 2022, contain no financial statements. The packet index for the January 28, 2021, meeting states that financial reports are “under separate cover,” but no such financial reports appear on FSC’s website. The packet index for the Board meeting of March 25, 2021, notes that financial statements are “no [sic] available.” FSC’s website shows no financial statement for the Board meeting of May 11, 2002; there is no posted agenda or Board packet for a May 2022 meeting.

FSC’s Board meetings are almost always during the last week of the month, but the Board packets for 14 meetings, although they have financial data, do not have those data for the month preceding the Board meeting, and several are more than one month behind.

FSC’s omission to post Board packets for the months of February through August 2023, makes it impossible to know whether there were financial reports to the Board. The packets for September through November 2023, contain financial reports covering the period from July 2023 through September 2023. None of those packets shows either local government funding or project revenue.

2. Lack of Cooperation with County Consultant

FSC withheld information from CLA's review of two FSC/county contracts with respect to contract-management practices. Page 6 of the consultant's report notes that it "attempted to obtain further support from Fire Safe, but it was not available," and page 7 notes that the consultant "relied on a limited production of information provided by Fire Safe."

3. Further FSC Reductions in Transparency

FSC has reduced transparency in four ways, the last being the most dramatic.

- a. It stopped publishing informative documents in Board of Directors packets. For the Board meetings of April, May, and June 2019, the packets had copies of monthly statements from Tri Counties Bank and checks drawn. Immediately following, all three packets contained parallel statements for credit card transactions. That provided transparency. Beginning with the August 2019 Board meeting and through the present, no posted packets contain bank statements, check copies, or credit card statements. That reduced transparency both for the Board of Directors and the public.
- b. As of January 30, 2024, FSC had not posted Board packets for the Board meetings of February through August 2023 inclusive.
- c. Although FSC's response to the previous jury report (Finding 5) stated that FSC has "annual external audits," as of January 30, 2024 no audits for years after FYE 2020 appear on FSC's website.
- d. FSC did not prevent the previous jury from interviewing some FSC staff. The 2023-2024 jury requested such interviews, but on January 3, 2024, the chair of the Board of Directors informed the jury by telephone that no one from FSC would cooperate with the jury's current investigation. In light of the issues this report exposes, especially the financial ones, that refusal is very concerning.

4. Taking Action on Non-Agenda Items

As detailed on page 15, while subject to the Brown Act, the Board of Directors took action on five items that did not appear on its posted agenda. Those actions appear to undercut the very transparency that the Brown Act attempts to ensure (and also are examples of the Board of Directors not adhering to governing law).

C. SEGREGATION OF FINANCIAL DUTIES AND RESPONSIBILITIES

The previous jury report noted: "The FSC lacks segregation of duties, roles, and responsibilities for internal controls." FSC responded:

Disagree. Internal Controls, including duties, roles, responsibilities are in place and are available for review in board documents. The FSC has had some turnover, but the FSC continues to carry out its obligations and responsibilities with the oversight of the FSC Board and management staff. The FSC employs competent staff which is supervised and monitored by management and the Board. The FSC undergoes routine audits and has cooperated with the county's request for audits and reviews.

CLA (*see* page 10 of this report) nonetheless noted that segregation of duties, even after FSC's "corrective" action, remains an issue, leaving the door open to financial mismanagement.

IV. Board Conduct and Oversight of Operations

A. ACTING ON UNSEEN DOCUMENTS

Even the Board packets that do appear on FSC's website do not contain all of the documents the Board considered at its meetings.

1. From April 2019 to the present, only one annual budget (marked "preliminary") has appeared in a Board packet. The minutes for that meeting (May 28, 2020) reflect unanimous Board approval.
2. The agenda for the June 22, 2020, Board meeting lists "Report on 2018 FSC Audit by Richardson & Co. — David Walker" as an action item (6b). The minutes of that meeting note, "DW also reported that Richardson & Co. . . . have [sic] completed the 2018 audit." "WK moved that the audit be approved as written. . . . Motion was approved unanimously. A copy of the audit *will be available* [emphasis added] for inspection. A copy will be in the next Board packet." This suggests that the Board approved the audit without having seen it. There is no copy of the audit in the packet for the August 2020 Board meeting.
3. The agenda for the Board meeting for June 24, 2021, lists "Approval of Budget for Fiscal Year 2021-2022" as an item for Board action. The packet for that meeting contains no copy of a budget. The minutes for that meeting state that the Board unanimously approved the budget. This suggests that the Board approved the budget without having seen it.
4. Although the original agenda for the July 8, 2021, meeting contained no mention of the Board reviewing an audit, the minutes show (1) an amendment to the agenda to include audit review, and (2) that the Board considered and approved a 2018-19 audit. The minutes state that the packet for the July 8 meeting contained the audit. As of January 30, 2024, no packet for the July 8 meeting appears on FSC's website. The packets for the August, and September 2021 meetings contain no audit either. This suggests that the Board again approved an audit without having seen it.
5. The agenda for the Board meeting of January 27, 2022, notes only two items for Board action. However, the minutes for that meeting note a motion to amend the agenda to include two additional items, one of which was, "Authorize the purchase of up to ten new vehicles for FSC." The last-minute decision to consider and vote on such a large budget item reduced the usefulness of the published agenda and FSC's transparency. There is no indication that anyone informed the Board of the expected cost of the new equipment. The minutes have an attached resolution (designated "Board Resolution 220127-1") authorizing the purchase. The minutes recite that a unanimous roll-call vote approved the resolution. The resolution itself, marked "Approved: January 27, 2022," has no officer or director signatures despite having five signature lines.
6. The agenda for the June 23, 2022, Board meeting lists the budget for the 2022-23 fiscal year as an item for Board action. The minutes for that meeting recite, "EDJ presented slides (attached) for the 2022-23 Budget [sic] requesting authorization for a \$9.9 M. . . . WK moved acceptance of the above budget. Seconded by PW. Approved unanimously by roll call [sic] vote." The FSC website has no slides that appear to be the ones EDJ presented. The packet for the

June meeting contains no budget, which at least suggests that the Board may once again have voted on a budget without having seen it.

7. The index of the Board packet for the September 24, 2020, Board meeting states that the financial report is "Under Separate Cover." It is not clear whether the Report was available to the directors at the meeting or why it was not available in the packet.

B. ADHERING TO THE LAW AND FSC BYLAWS

The previous jury report stated, "The FSC Board is not ensuring that applicable laws and regulations are adhered to." FSC responded, "Disagree. FSC has cooperated in reviews and audits sought by the County *[sic]* and the FSC and has taken corrective action to address any deficiencies identified in that process. FSC continues to self-assess and participate in audit processes to ensure applicable laws and regulations are complied with." That response, even if accurate when made,¹⁵ is not true today, as the CLA report makes clear when it twice notes its inability to get relevant materials from FSC.

FSC's response to the previous jury report left three important things out. (1) FSC had removed a director from office in violation of its own bylaws, and (2) on at least five occasions took action on "item[s] not appearing on the posted agenda,"¹⁶ and (3) held a special Board meeting for which it posted no agenda or Board packet. Therefore, its response was incomplete, incorrect, and untrue. Since FSC filed its response, it did not fully cooperate in a county-initiated review that resulted in the CLA report, and it has entirely refused to cooperate with the 2023-2024 grand jury.

1. Taking Action on Non-Agenda Items

FSC, having a member of the Nevada County Board of Supervisors on FSC's Board of Directors through January 2022, was subject to California's Open Meetings Act (Brown Act), as FSC acknowledged on each of its published agendas from April 2019 through January 2022, particularly the agenda for the August 27, 2020, Board meeting, which noted "FSC Board Training on Brown Act. . . ." Each action on non-agenda items appears to have violated the Brown Act,¹⁷ which states in relevant part that "No action or discussion shall be undertaken on any item not appearing on the posted agenda. . . ."¹⁸ At the November 22, 2019, Board meeting, the Board approved purchase of a track chipper. The agenda for that meeting did not include that item. The minutes state that the chipper and trailer would cost \$95,000. The packet for that meeting contains no other information about the purchase.

Although the agenda for the July 8, 2021, did not mention reviewing an audit, the minutes show that the Board considered and approved the 2018-19 audit. The minutes state that the packet for the July 8 meeting contained the audit. As of January 30, 2024, no packet for the July 8 meeting appears on FSC's website. Thus, in addition to the Board having approved the audit without seeing it [*see* page 14], it also appeared to consider an item not on the posted agenda.

¹⁵ The grand jury takes no position on the statement's accuracy.

¹⁶ Ralph M. Brown Act, CAL. GOV'T CODE § 54954.2(a)(3).

¹⁷ CAL. GOV'T CODE § 54954.2(a).

¹⁸ CAL. GOV'T CODE § 54954.2(b) allows certain actions if the body determines that an emergency situation exists. No Board determination of an emergency preceded any action on a non-agenda item.

As recited on page 15, the Board unlawfully removed a director in an action not included on the posted agenda.

At the Board meeting of January 27, 2022, the Board approved two items not on the posted agenda: (1) purchase of ten new trucks, and (2) closing a Tri Counties Bank money-market account. The Board of Directors amended the agenda at the meeting at the Executive Director's request.

2. Unlawful Removal of a Director

The agenda for the October 28, 2021, meeting includes an action item for approval of an employee's contract. The minutes of that meeting state, "the Board discussed the proposed contract with the Executive Director with legal counsel and approved the contract as provided in the information packet by a rollcall vote of ten to one with ET voting in opposition." The minutes do not reflect that anyone made or seconded a motion to approve the contract.

The very next sentence reads, "The Board discussed a number of conduct issues in depth with legal counsel. Eric Trygg was removed as FSC Director by rollcall vote of nine to two with ET and TM voting as opposed to removal." There is no notation that anyone made or seconded a motion to remove Mr. Trygg. Removal of a director was not an agenda item for that meeting and thus represents another possible Brown Act violation. It appears also to have violated FSC's By-Laws, Art. IV, § 4, which states that only four circumstances allow removing a director:

[1] [failure] to attend three consecutive meetings of the Board of Directors which have been duly noticed in accordance with these bylaws, or who has been

[2] [the director being] declared of unsound mind by a final order of the Court, or

[3] [the director being] convicted of a felony, or

[4] [the director being] found by a final order of judgment of any Court to have breached any duty arising under Article 3 of the California Nonprofit Public Benefit Corporation Law.

Nothing in the minutes of the October 28, 2021 meeting suggests that any of those circumstances existed to make removal permissible, and former directors have confirmed that none of those circumstances existed.

But there is more. The Board packet for the November 18, 2021, meeting contains a copy of a letter from the Board chairman to the former director stating, "While a board member can be removed at any time with or without cause,¹⁹ the board arrived at this determination based on several factors." The first part of the sentence is contrary to FSC's bylaws; nothing anywhere in the letter refers to the circumstances that the bylaws require for removal.

3. The Meeting with No Posted Materials

As of January 30, 2024, FSC's website had no links to an agenda or a Board packet for a May 2022 meeting. The index of the Board packet for the June 23, 2022, meeting

¹⁹ [JURY FOOTNOTE] That statement is inaccurate; the Board chairman apparently took it from a part of the Bylaws concerning officers, not directors. FSC's Bylaws, Article V Officers, states: "Any officer may be removed, either with or without cause, by the Board at any time with 75 percent of all remaining Board members." Article V, § 1 defines "officers: "The officers of the corporation shall be the Chairperson, Vice Chairperson, Secretary, and Treasurer." The director whom the Board of Directors removed held none of those positions.

contains an entry for a “Special Board meeting” on May 11, 2022. The packet contains “Board of Directors Meeting Minutes . . . May 11, 2022.”

Findings

Finding 1: FSC does not properly account for large amounts of county (and other governmental) funding. This makes it impossible to follow the money.

Finding 2: FSC does not publish all and may not have conducted some annual financial audits. This makes it more difficult to follow the money.

Finding 3: FSC’s Board of Directors has allowed other questionable financial practices, such as voting on large non-agenda purchases, voting on audit documents not before the Board, and having pre-signed checks.

Finding 4: FSC’s day-to-day financial practices do not adequately protect against risk of fraud.

Finding 5: FSC does not appear to have appropriate California contractor’s licenses for the work that it performs.

Finding 6: FSC has reduced transparency, making it difficult for the public and the county to monitor and verify proper use of county funding.

Finding 7: From at least April 2019 through January 2022, FSC, knowing it was subject to the Brown Act, appears to have violated it numerous times.

Finding 8: FSC has violated its own bylaws.

Finding 9: Fire Safe Council of Nevada County is not a responsible, accountable, or appropriate recipient for county (and other governmental) funding.

Finding 10: It appears that the county has awarded multiple contracts to FSC, without verifying that FSC had required licenses.

Finding 11: The county has not been sufficiently diligent about confirming the validity of contractors’ invoices.

Finding 12: FSC has had frequent, unexplained turnover of key financial personnel.

Recommendations

Recommendation 1. FSC’s Board of Directors needs to reform FSC’s financial practices to ensure greater protection against fraud.

Recommendation 2. FSC’s Board of Directors needs to establish consistent accounting practices.

Recommendation 3. FSC’s Board of Directors needs to adopt accounting practices that allow accurate tracking of county funding through expenditures.

Recommendation 4. FSC’s Board of Directors needs to ensure retention of qualified financial staff.

Recommendation 5. FSC’s Board of Directors needs to ensure that qualified financial staff are allowed appropriately to monitor and enforce consistent, proper accounting practices.

Recommendation 6. FSC’s Board of Directors should hire an external consultant to determine the cause(s) of the frequent turnover of financial personnel and make recommendations.

Recommendation 7. FSC's Board of Directors needs to establish clear policies governing financial management within the corporation.

Recommendation 8. FSC's Board of Directors needs to ensure that all board members receive training on their responsibilities, including overseeing proper financial practices and accountability, and timely receipt of all reports and budgets.

Recommendation 9. FSC's Board of Directors needs to ensure greater transparency so that Nevada County and the public are able to confirm proper use of county funding.

Recommendation 10. FSCs needs to obtain appropriate contractor's licenses for the work it performs for the county.

Recommendation 11. FSC's Board of Directors needs to ensure that FSC follows its own bylaws.

Recommendation 12. The county should ensure that contractors have required licenses before awarding contracts.

Recommendation 13. The county needs to reestablish regular processes for auditing invoices on county contracts.

Recommendation 14. The county should require nonprofit corporations that receive county money to agree to operate consistently with the Brown Act.

Recommendation 15. FSC's Board of Directors needs to conduct a thorough investigation into the financial discrepancies this report identifies.

Request for Responses

Pursuant to California Penal Code § 933.05, the Nevada County Civil Grand Jury requires from the Nevada County Board of Supervisors, within 60 days of publication of this report, responses to the following:

Findings 10 and 11

Recommendations 12, 13, and 14

Pursuant to California Penal Code § 933.05, the Nevada County Civil Grand Jury requests from the Fire Safe Council of Nevada County's Board of Directors, within 90 days of publication of this report, responses to the following:

Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, and 12

Recommendations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 15

Responses go to the Presiding Judge of the Nevada County Superior Court in accord with the provisions of California Penal Code § 933.05. Responses must include the information that § 933.05 requires.

