

This document is an extract of a larger publication.

civilgrandjury.org is a project of UnGovr.org, a US-based 501(c)(3) nonprofit dedicated to government transparency and public accountability.



2018 – 2019 Plumas County Civil Grand Jury

PLUMAS COUNTY ELECTIONS: Where Your Vote Counts

SUMMARY

On August 28, 2018, the Plumas County Elections Division, operating under the purview of the County Clerk-Recorder's Office (the "Elections Division"), sent an invitation to the 2018-2019 Plumas County Civil Grand Jury ("Civil Grand Jury") to view multiple steps in the vote by mail process for the November 6, 2018 election, as contemplated by Section 15104 of the State of California Elections Code (the "Elections Code").¹ Members of the Civil Grand Jury attended each of the processes, which included logic and accuracy testing of the optical scan and TSx balloting system, processing of the mail ballots and canvass of the votes cast. Considering the importance of this function, particularly in a general election year, the Civil Grand Jury also opted to proceed with an official investigation for the annual 2018-2019 Civil Grand Jury report.

The investigation included a review of manuals and written documentation, observation of each of the steps in the process, review of the Elections Code, and interviews of selected Elections Division full-time and part-time employees.

The Civil Grand Jury found no apparent irregularities in connection with the November 6, 2018 elections and issued no challenges under Elections Code §15104. It observed that the Elections Division works diligently and effectively, and that its personnel are well-trained and knowledgeable as to the numerous requirements of the Elections Code governing the conduct of elections within the County. They provide a high level of service to the voters of Plumas County, which in some cases seems to go beyond the minimum requirements of the Elections Code and the guidance issued by the California Secretary of State ("SOS").² Nevertheless, the Civil Grand Jury noted that the Elections Division is operating with dated equipment, below-mandated staffing, and without a well-organized set of written procedures that would help ensure continuation of a high level of service in the event that the Elections Division loses one or more of its key employees. However, the fact that Plumas County does not utilize polling locations and relies completely on mail-in ballots (under Section 3005 of the Elections Code) does simplify the Elections Division's responsibilities considerably. The Elections Division should, however, confirm with County Counsel ongoing compliance with Section 3005.

¹ Elections Code §15104 provides that the county grand jury may (but is not required to) observe and challenge the manner in which vote by mail ballots are handled.

² For example, during one of our observations, we observed a group of young adults from a local high school in Plumas County observing the elections process and being educated on the right to vote. The young adults were being encouraged to pre-register to vote. – In California, people aged 16 years can pre-register to vote and once they turn 18, they will receive voting materials and ballots automatically. All residents of Plumas County are encouraged to attend any of the processes open for viewing and the Elections Division posts important dates on their website in advance of the process – <http://www.countyofplumas.com/index.aspx?NID=142>

BACKGROUND

In June 2016, Plumas County went to an all vote by mail process for all elections, proceeding under Elections Code Section 3005, and has conducted all federal, state and local elections since then without the use of polling places.³ In 2014, nearly 70% of California voted by mail.⁴ Even counties that are not vote by mail had seen a steady increase in the number of voters requesting absentee ballots. The use of mail-in ballots is driven by a multitude of reasons, including cost savings, convenience to the voter, wishes of the public, and topography and distance. In rugged, rural counties with scattered pockets of population, such as Plumas County, maintaining convenient, well-staffed walk-in precincts can be difficult and expensive.

METHODOLOGY

Information for this report is based on:

- **Observation** - The Civil Grand Jury attended several steps of the election process including testing of machines, counting of the ballots, ballot duplication, and final canvass of votes cast;
- **Interviews** with current full-time and part-time employees of the County Clerk-Recorder's Office/Elections Division;
- **Review** of requested documentation for the County Clerk-Recorder/Elections office including manuals, and
- **Research** on the Elections Code and on historical election practices in California and Plumas County.

DISCUSSION

Final Canvass

In November 2018 members of the Civil Grand Jury observed the canvass of votes cast process. This is a hand count auditing process done by precinct to confirm the accuracy of the machine vote counting process in Plumas County. The Elections Code (§15360) requires a manual tally of 1% for each ballot type. Plumas County Elections officials perform this tally in the following manner. All the ballots for a precinct are placed on a table in a secure room where four panelists are seated. One panelist will read the votes out loud, another panelist has to confirm what the first panelist read was correct. Then the two remaining panelists count the votes that were read. After every ten ballots the count is confirmed between those two panelists. If there is a discrepancy, they start over with that set of ten ballots.

³ §3005 provides in relevant part as follows: "Whenever, on the 88th day before the election, there are 250 or less persons registered to vote in any precinct, the elections officer may furnish each voter with a vote by mail ballot along with a statement that there will be no voting place for the election." Elections Code §3005(a). The Civil Grand Jury understands that, beginning in 2020, Plumas County will be able to conduct mail-only ballot elections under the auspices of Elections Code §4005, which does not mandate a limit on the number of registered voters in each precinct, but does include certain qualitative conditions or requirements. *See* Elections Code §4005.

⁴ *See* internet article at <http://capitolweekly.net/voter-by-mail-counties-option/>

Plumas County Election officials performed a tally on 100% of the ballots cast in the November 6, 2018 California General Election. In accordance with Elections Code requirements, such tallies are open to the public. This tally process is done prior to the completion of the official final count.

The official final count for the November 2018 election was then certified by the Plumas County Board of Supervisors. The November 6, 2018 California general election had a statewide average voter turnout of 64%, which was the highest voter turnout for a midterm election since 1982. However, Plumas County's voter turnout exceeded the State average by over 10 percentage points.⁵

The Civil Grand Jury had follow-up questions for the Elections Division regarding how the Division ensured that all submitted ballots were processed, and how discrepancies were handled for the November 6, 2018 election. Registered voters who advised the Elections Division that they did not receive their ballots were told to come into the Elections Office where their information was updated, and they were provided provisional ballots. There were 30 instances of this, all of which were reportedly remedied, with all 30 ballots being counted. 75 ballots were returned as undeliverable. A new voter registration card was sent to any voter if there was a new address provided by the United States Postal Service. 17 voters were sent notices because their signatures were not included on the ballot envelope, and 15 voters were sent notices that their signatures did not match. These voters were notified in writing to come into the elections office to rectify the problem and their ballot could then be counted. They did not respond. Those 32 ballots were not counted.

Register / Pre-register to Vote

Citizens can register to vote any time up to 11:59:59 pm Pacific time on the 15th calendar day before the upcoming election. Citizens aged 16 or 17 years may pre-register to vote, although they may not actually vote until they turn 18. Such pre-registered voters will automatically be registered to vote on their 18th birthday. As of the November 6, 2018 election, Plumas County had 28 pre-registered voters.

Vote by Mail Procedures

As noted above, all Plumas County elections are conducted solely on a vote by mail basis. Plumas County registered voters, based on geography, are broken up into 203 precincts. 194 precincts have registered voters and nine precincts do not currently have registered voters living within those boundaries. These precincts are administratively grouped into 29 reporting districts for reporting to the Secretary of State.

In order for Plumas County to qualify to run each election as vote by mail under Elections Code Section 3005, each precinct must have 250 or fewer registered voters by the 88th day prior to the election. If a precinct exceeded 250 registered voters as of such date, then the Elections Division

⁵ See Appendix to this Report for a comparison of voter turn-out in the County and State for recent years.

would be required to set up a polling place for that individual precinct. The Elections Division made an initial determination in or about 2016 that this numerical condition was met for each precinct. It did not confer with County Counsel in so doing. The Division reports that it has periodically reconfirmed eligibility under this requirement since 2016.⁶

After a voter receives his or her ballot in the mail, the voter marks his or her ballot and puts it in the provided, stamped envelope. The ballot may be mailed or dropped off at specified drop boxes throughout the County or the County Clerk-Recorder's office at the Courthouse. Voters may also designate someone to drop off their ballots, but the voters must fill out the authorization section on the outside of the ballot and the designated person cannot be paid for their services.⁷

Once the ballot is received by the Elections Division, the signature on the ballot is compared with the signature on your voter registration card. To preserve the secrecy of the ballot, the ballot is separated from the envelope and tallied. All ballots for every election are tallied, regardless of the closeness of the race(s).

County Clerk-Recorder's Office / Elections Division Staffing and Training

The County Clerk-Recorder's Office has many responsibilities, only one of which is to ensure integrity in the administration of fair and impartial elections. The County Clerk-Recorder's Office also oversees the County Records Management Department and the Office of the County Recorder. Accordingly, there are three Divisions within the County Clerk-Recorder's Office - the Records Division, the Recorder Division and the Elections Division. Since 1997, when the Records Management Department was created, the County Clerk-Recorder's Office has had responsibility for a wide range of duties. During better economic times and prior to technological advancements, the County Clerk-Recorder's Office carried as many as eleven employees, but now has only six authorized full-time positions. One of these positions has been unfilled since March 2018, leaving five employees working in the three different divisions. Due to the unfilled position, one employee of the Elections Division is effectively carrying two positions. It is unclear how long the vacant position will remain unfilled. It's management's view that it is unlikely to be filled in the near future, due to insufficiency of the offered salary.

The elections process must be responsive to the specifics of each election occurring during a given year and is therefore much more dynamic than what might be assumed. In addition, the SOS frequently issues updates and directives to elections officers regarding the conduct of future elections and, the Elections Code itself is complex and extensive. Accordingly, proper training of Elections Division personnel is of key importance. Clerk-Recorder employees attend training and

⁶ The Elections Division provided the Civil Grand Jury with a current sample printout of the precinct registered voter numbers for each County precinct. That printout showed several precincts as having total registered voters in excess of 250. However, it appears that the Division is basing its calculations on the number of active registered voters/polling place, as to which every precinct was at a level of less than 250. It is unclear to the Civil Grand Jury whether Section 3005 contemplates a count of only active registered voters that have not previously indicated a preference for vote by mail.

⁷ See Elections Code §3017(e)

network with other Clerks and Elections officials throughout the state. Training is offered through the California Professional Election Administrator Credential program (CalPEAC). Networking and on-going continuing education also occurs through membership in the California Association of Clerk and Election Officials (CACEO). This training appears adequate, based on our interviews.

All updates, changes and other necessary information are communicated to the staff verbally and an in-house written calendar keeps all employees on target for completing important deadlines for elections activity. The Elections Division is staffed with experienced personnel and they all seem to work well together. Many of the temporary staff have worked there previously and are given a refresher course before beginning work.

Aged Equipment

The Plumas County Elections Division has been using the same voting system equipment since 2001. Funding will be available through the Help America Vote Act to offset much of the cost of a new voting system. There are upcoming “ballot on demand” systems, which would potentially allow Plumas County to save on printing costs. These new systems appear to be well suited to a county like Plumas which may have to provide slightly different ballots to a number of small areas. The new systems may require more floor space than the current equipment and the election processing area is quite limited. A ballot counting machine was taken out of use in the testing phase due to it not working properly and employees’ diligence in following guidelines.⁸

The current voting system (hardware, software and server) will all be decertified by the Secretary of State by the end of 2019. This will require the acquisition of updated equipment and systems prior to 2020.

Departmental Policies and Procedures

The Elections Code contains an extensive and detailed set of requirements to be followed by each county elections office. These legal requirements are supplemented by guidance issued periodically by the California Secretary of State. However, while these resources are detailed, there is still a need for county-specific procedures, to help ensure that county elections office personnel are aware of all that needs to be done in order to comply with State elections laws.

The Elections Code also specifically requires, at several places noted by the Civil Grand Jury, that county elections officials maintain procedures to address certain matters (the “Enumerated

⁸ Importantly, the SOS recently issued a directive, setting a deadline for counties to modernize election infrastructure, noting that “throughout California, many counties are using voting systems that are at or near their life expectancy” and stating that “the time is now for all California counties to modernize voting equipment.” SOS, AP 19:020; issued February 27, 2019. This directive appears to also include vote by mail counting machines.

Procedures”).⁹

The Civil Grand Jury requested the Elections Division to provide copies of all internal procedure documents used by the Division. A review of these materials indicated that there was no comprehensive or amalgamated policy or procedures manual. Instead, the office appears to rely on a collection of policy and procedures, including manuals provided by hardware suppliers, office memoranda, excerpts from the Elections Code itself, handwritten notes, and manual calendars kept by office personnel.

The Elections Division does appear to have written procedures addressing the several Enumerated Procedures topics required by the Elections Code. However, it appears that in some cases these mandated procedures may have been generated when prompted by the inquiry of the Civil Grand Jury. It also appears that there is no written procedure addressing the 250 voter per precinct limit determination required by Elections Code §3005.

This collection of materials, while somewhat informal and not well-integrated, appears to have worked adequately in the past. This is perhaps largely because of the high level of training and expertise of key elections personnel currently in the Elections Division. The Civil Grand Jury is concerned, however, as to the adequacy of this material in the event that one or more of the Elections Division’s key personnel should depart the Division or otherwise be unavailable, particularly at or about the time of an election. In such case, the Division may find itself challenged by the lack of a coherent set of internal procedures that includes a detailed table of contents or index that brings the procedures together and makes them easily researched and used in providing the needed level of services, as required by the Elections Code.

As indicated above in the discussion as to staffing, the Civil Grand Jury notes and appreciates the fact that the Elections Division may not have adequate personnel resources at present to develop a comprehensive set of written procedures, but it should be able to derive an integrated and detailed table of contents or index, and generally organize the materials better.

FINDINGS

- F1. The Elections Division is well-organized in its approach to ensuring an accurate vote count.
- F2. The County Clerk-Recorder’s Office, tasked with three different and unique functions of county government, operates with a below-mandated staff augmented with part-time, as-needed employees. Currently one of the County Clerk’s employees is performing duties for two positions, as a result of a non-Elections Division position in the County Clerk’s Office being unfilled. This position has been unfilled since June 2018.

⁹ See, e.g., procedures to ensure ballot secrecy (Elections Code §3017(b)); procedures to track and confirm receipt of mail ballots (Elections Code §3017(c)); procedures designed to permit voters to learn if their ballot was accepted (Elections Code §3019.5(a)); delivery of election day duties (Elections Code §14210).

- F3. The Elections Division is doing a good job in being transparent and trying to educate and encourage voting in Plumas County.
- F4. The Elections Division has not conferred with County Counsel to confirm compliance with Elections Code Section 3005's precinct registered voter count requirement.
- F5. The Elections Division does not have a comprehensive written departmental policy and procedures manual, nor does there exist a detailed table of contents or index that unifies the various separate procedure documents and renders them readily searchable.
- F6. Current voting systems being used by the County will be decertified as of the end of 2019. There is funding available through the Help America Vote Act to match Plumas County's costs dollar to dollar up to \$206,500.00 toward replacing Plumas County's aging voting system equipment.

RECOMMENDATIONS

- R1. The Civil Grand Jury recommends that the Plumas County Elections establish a written departmental policy and procedures manual, or at a minimum develop a fully integrated table of contents or index to facilitate efficient usage of the various procedures. Such manual should include procedures confirming that the quantitative limit set out in Elections Code §3005 is satisfied in connection with each election. It is also recommended that the Elections Division confirm with County Counsel or other appropriate counsel compliance with Elections Code Section 3005.
- R2. The Civil Grand Jury recommends that the Elections Division seek, the County Administrator consider recommending, and the Board of Supervisors deliberate and consider approving, funding for the purchase and installation of new voting system equipment and software in order to comply with AP 19:020.
- R3. The Civil Grand Jury recommends that the County Administrator inquire into why the vacant position in the County Clerk's Office remains unfilled and that findings be reported to the County Board of Supervisors for consideration of further action.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Civil Grand Jury requests responses as follows:
From the following individuals/governing bodies:

- County Clerk-Recorder's Office / Plumas County Elections Division (F1- F6, R1-R3)
- The County Board of Supervisors. (R2)
- County Administrator (R2, R3)

INVITED RESPONSES

The Board of Supervisors may respond to the entire report.