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local newspaper and on the County's website. Under California statute, relevant elected officials and governing bodies (such as the Board of Supervisors) must formally respond to each such report.

The more recent Grand Jury reports are here: <https://plumascounty.us/archive.aspx?amid=37>.

The responses are here: <https://plumascounty.us/archive.aspx?amid=38>.

Appointment and Service

Members of the Grand Jury are appointed by the Superior Court Judge to serve their term, starting in or about July 1 of each year. Grand jurors from a prior year may opt to be considered to serve a second term.

Serving on the Grand Jury is an excellent way both to learn more about your County, and local government, and to be of service to your County. You will work closely with your fellow jurors over the course of a year on interesting and important local topics that can help improve the workings of local government, for the benefit of all County residents. It requires impartiality, diligence, and responsibility. Interested persons are encouraged to apply to serve. To qualify, potential jurors must have been resident of Plumas County for at least one year prior to service.

If you are interested in serving as a member of the Plumas County Grand Jury, please apply by calling 530-283-6297 and leaving your name and phone number.

Citizen Complaints

If you wish to file a complaint with the Grand Jury, please submit a completed [citizen complaint form](http://plumascounty.us/documentcenter/view/1696/citizen_complaint_form?didid=): http://plumascounty.us/documentcenter/view/1696/citizen_complaint_form?didid= to the Grand Jury at:

Plumas County Grand Jury
PO Box 784
Quincy, CA 95971

PLUMAS COUNTY WEIGHTS AND MEASURES PROGRAMS: Are You Getting What You Pay For?

SUMMARY

Whenever a consumer purchases something for sale, that consumer has the right to know that they are receiving the product they have chosen, no less than the amount they paid for, at the price that was advertised to them. To this end, the California Department of Agriculture (CDA) requires regular testing to be conducted on weighing and measuring devices used in connection with consumer sales. This testing is conducted by each of California's county departments of agriculture. For Plumas County (and Sierra County), that department is the Plumas-Sierra County Department of Agriculture (PSCDA). The PSCDA has responsibility to oversee a broad array of weighing and measuring devices, including commodity scales found in grocery stores, hardware store scales, propane meters and regulators, and gas and diesel pumps. With regard to gas and diesel pumps, county officials are required to regularly go into fuel stations to check that such devices are accurate and to ensure products are correctly advertised as to volume and price.

The 2019-2020 Plumas County Civil Grand Jury (Grand Jury) conducted an investigation of the PSCDA, focusing on its weights and measures function, in particular its oversight of motor fuel pumps, to ensure that consumer rights are being protected. Plumas-Sierra County's Agricultural Commissioner/Sealer of Weights and Measures (sealer) and the Division of Measurement Standards (DMS), which are part of the PSCDA, are responsible for local enforcement of California's weights and measures laws and regulations. This report will focus on aspects of concern to Plumas County, with the understanding that the department serves both counties.

The Grand Jury found the PSCDA is not currently in compliance with state mandates pertaining to device inspection frequency. The department can become compliant in one of three ways: (i) checking all retail motor fuel devices annually; (ii), developing a plan to ensure accuracy while checking devices on a non-annual basis, or (iii), arranging through the state Secretary of Agriculture to have inspections done, a service for which Plumas County would be billed.

BACKGROUND

In all counties in California, the county Agricultural Commissioner is the head of the county Department of Agriculture and has the additional role of being the sealer. This official is not elected, but is appointed by the county board of supervisors (California Business and Professions

Code (BP Code) §12200). The sealer is responsible for ensuring the accuracy of all commercial measuring devices in the county. The sealer may, upon approval of the board of supervisors, deputize staff members to be responsible for conducting inspections and certifying devices related to weights and measurements (BP Code §12200).

Regular inspection of commercially used weighing and measuring devices is required by California State law and regulations adopted by the state Secretary of Agriculture pursuant to that law. In particular:

- BP Code Section 12212(b) requires that the sealer of each county “perform such inspections as may be required by the [Secretary of Agriculture],” and BP Code §12212(a) instructs the Secretary of Agriculture to adopt “necessary regulations governing the inspection frequency of all commercially used weights, measures, and weighing and measuring apparatus in the state”;
- California Code of Regulations Title 4 (CCR) Section 4070 (CCR §4070) specifies the minimum inspection frequency for all regulated weights and measures devices, including retail gas pump meters; and
- BP Code Section 12240(d) provides that retail gasoline pump meters that are assessed annual registration fees “shall be inspected as frequently as required by regulation, but not less than once every two years”.

It is the responsibility of each county sealer to perform such inspections as may be required by the Secretary (BP Code §12212(b)). Under CCR §4070 certain measuring devices, including commercial gas pumps, must be inspected for accuracy on an annual basis (CCR §4070, BP Code §12027, §12212).

The sealer is obligated both to regularly check devices and visibly certify devices to ensure the public knows that devices are accurate. BP Code §12505 provides that whenever a sealer examines any weight or measure or weighing, measuring, or counting instrument used for commercial purposes, and finds it to be correct, he or she shall seal or mark the weight, measure, or instrument with an appropriate device approved by the department, placed so as to provide optimum visibility to the customer, showing that the weight, measure, or instrument was inspected and indicating the date of the inspection.



Figure 1 - 2019 seal affixed in a visible location, indicating device accuracy.

If an inspection shows that a device is incorrect beyond specified tolerances, regulations require that it no longer be available to consumers. BP Code §12500.10 (a) requires the sealer to remove from commercial usage any weighing, measuring, or counting instrument or device that is out of tolerance. The instrument or device may be either seized or marked with a tag or other suitable device with the words “unapproved device.” This then prompts the business or individual who owns and operates that device to get it repaired within 30 days of the tagging, at which point the sealer, or a deputy would re-test the device. Devices that have been tagged may not be used commercially until a new inspection yields an accurate measurement. If, after a new inspection the device is found accurate, the tag is removed, and the device may be commercially operated again (BP Code §12500.10 (b)). If the device is not repaired or corrected within 30 days of the tagging, either by the refusal or neglect of the owner/user, the sealer or a deputy can seize the device (BP Code §12507).

If a sealer does not, or cannot, conduct inspections annually, but is still able to ensure accuracy of devices through a history of previous inspections or statistical sampling, the sealer may develop a written alternative plan to describe how device inspections will be carried out within the county (CCR §4071, §4072, §4073). The regulation instructs sealers that such plans “...provide that all commercial devices (be) tested either on a regular frequency, a variable

frequency, or on the basis of a statistical sampling procedure.” (CCR §4074(a)). Such plans, once developed, are submitted to the Secretary of Agriculture for approval. BP Code §12212(d) provides that if the county sealer, because of the lack of equipment, is unable or fails to perform the required tests, the state secretary may execute a contract with the county board of supervisors to perform the inspections.

In addition to being accountable to the board of supervisors, a county sealer is also accountable to the citizens that rely on the accuracy of devices in any given county. BP Code §12503 requires that, “Upon a written request of any resident of a county there appearing reasonable ground therefor, the sealer shall test or cause to be tested, as soon thereafter as is practicable, the weights, measures, or weighing or measuring instruments used for the commercial purposes by the person designated in that request.” In other words, if someone using a device reasonably believes that the device is inaccurate, and makes a written complaint to the sealer, the sealer or a deputy must inspect that device, and must make it a high priority to do so.

METHODOLOGY

Beginning September 2019, the Grand Jury conducted a six-month investigation on this topic. The investigation included interviews with PSCDA personnel, and reviews of division documentation, including financial statements and inspections records; research of California State law, including applicable provisions in the California Business and Professions Code and California Code of Regulations and independent field observations of fuel-dispensing devices located throughout Plumas County.

DISCUSSION

The Plumas-Sierra County Department of Agriculture

In conducting its investigation, the Grand Jury began with a review of the duties of the Plumas County Sealer of Weights and Measures (Sealer), according to the Plumas County website. Under the administration and direction of the Sealer, the PSCDA is responsible for local enforcement of State and Federal laws and regulations related to agricultural products. The Sealer generally makes reports to the Plumas County Board of Supervisors (BOS) twice annually, regarding updates and changes in regulations, licensing, and the status of various programs overseen by the PSCDA.

The entire department, serving both Plumas and Sierra Counties, is made up of four people, including the Sealer. Occasionally, they employ seasonal part-time employees, as needed and as funding permits. The weights and measures aspect of PSCDA is only one component of the work that the department is responsible for. Other components include, but are not limited to, noxious

and invasive weeds control, pesticide enforcement, poultry nursery inspections, certifying organic and farmers' market products, and regulation of industrial hemp.

The addition of new programs, as well as increasing regulations, have added to the PSCDA's list of tasks to be accomplished. Often, new programs are accompanied by grant money or other funding mechanisms. The staffing level, however, has not increased with the added responsibility, which has led to reduced ability of staff to perform other tasks. Lower levels of financial reimbursement for DMS programs compared to other programs has effectively led to de-prioritization of DMS work, including device inspection.

Weights and Measures

Within the PSCDA, the DMS conducts various programs, including:

- Weighing and Measuring Device Inspection: ensuring accuracy of commercial weighing and measuring devices such as supermarket checkout scales, gasoline pumps, propane meters, and large capacity vehicle scales.
- Quantity Control: verifying quantities of bulk and pre-packaged commodities. The division enforces laws and regulations relative to the California Fair Packaging and Labelling Act to help avoid deceptive labeling. This includes price verification of commercial retail product scanners and responding to complaints on the purchase of commodities such as bulk firewood.
- Weighmaster: assuring that commercial transactions based upon quantities certified are accurate. Weighmasters are individuals or firms who weigh, measure or count bulk commodities and proceed to issue certified weighmaster certificates.
- Petroleum Products: enforcing minimum quality standards for most automotive products such as gasoline, diesel fuel, motor oil, and antifreeze. The program regulates the advertising, sale, and labeling of these products to reinforce consumer confidence.

Device Inspections

All weighing and measuring devices used commercially in Plumas County must be verified to be accurate by the PSCDA. These include: electric submeters, fabric, cordage, and wire measuring devices, liquid propane gas meters, retail motor fuel pumps, vapor submeters, wholesale meters, computing scales, counter scales, dormant scales, hanging scales, livestock and animal scales, meat scales, prescription and jewelers scales, and vehicle scales. Of the 1,656 devices under PSCDA jurisdiction, 576 are required to be checked on an annual basis.

Many factors affect when device inspections are performed including other, often time-sensitive, responsibilities of the department. PSCDA staff often self-determine inspection schedules,

conferring informally at the start of the workday with the supervisor (Sealer). Inspection priorities are determined by staff availability, weather conditions, device location, device type, and public complaints.

Plumas County is quite large, geographically speaking, with communities (and thus, measuring devices) spread across a wide area. At times, Plumas County gets weather significant enough to make roads impassable, which can force plans to change. Understanding this is important to see why certain devices may not be inspected at certain times of the year. DMS employees prioritize inspecting devices indoors (such as food scales at grocery stores) during the winter season, when cross-county travel is more likely to be hampered by inclement weather. Similarly, inspections of large outdoor livestock scales, fuel tanks, pumps and the like, are more likely to be conducted during the summer months.

Other factors impacting the timing of an inspection can include the types of devices being inspected. Certain devices require specific inspection equipment which is shared between multiple counties. For example, a 100 gallon 'Prover,' necessary to measure high-speed fuel pumps, is only available to PSCDA four weeks out of each year. Therefore, if for any reason an inspection is not able to take place while PSCDA has possession of the equipment, the device will remain untested. Low staffing levels in the PSCDA and lack of cross-certification can lead to delays in inspections, since not everyone in the department is trained and certified to conduct inspections, and sometimes more than one person is required to safely complete an inspection.

As required in BP Code §12212(b), it is the responsibility of the county sealer to ensure that inspections are being done and that devices are accurate. Inspections include all aspects of the measuring devices to ensure consumer confidence, including overall condition of the device. If a device fails the inspection, DMS staff 'red-tags' the device, and the device is immediately shut down and not available for consumer use until repaired and re-inspected. If an owner/operator is found allowing a red-tagged device to be used, he or she is subject to a fine.

It is the practice of PSCDA to only red-tag devices that are found out-of-tolerance in a way which is unfavorable to the consumer. For example, in the case of fuel dispensers, if a device is found to be out-of-tolerance by pumping more fuel than should be pumped for the price a consumer pays, the PSCDA DMS will not necessarily require the owner/operator to suspend operation of that device. The owner/operator is given the option to repair the device to bring it back into tolerance without red-tagging or have the sealer or deputy red-tag the device in order to provide incentive to fix the issue.

Only a fraction of the required fuel pump inspections within Plumas County is being completed annually in accordance with CCR §4070. Based on internal logs provided by the PSCDA, 239 of 324 commercial fuel pumps within Plumas County (73.8%) had not been inspected within the

previous year. The logs also indicated that 7% of Plumas County fuel pumps had not been inspected within three years.

To verify the above statistics as applied to Plumas County only, the Grand Jury conducted field observations of random gasoline and diesel pumps located throughout the county. Over the course of one week 187 motor fuel pumps were observed and recorded for compliance. *Table 1* below outlines the results of those observations.

Total number of Observations	187
Number (%) inspected within 1 year (Compliant)	46 (24.6%)
Number (%) inspected within 2 years	86 (46%)
Number (%) inspected within 3 years	120 (64.2%)
Number (%) inspected within 5 years	126 (67.4%)
No tag on pump	61 (32.6%)

The corresponding percentages between the Grand Jury observations and the statistics provided, although not identical, reflect similar percentage trends. Based on those observations, only 24.6% of the fuel pumps had been checked within the time period required by the law. 32.6% of all pumps showed no indication that they had ever been inspected, and the remainder (42.8%) had been inspected between two and five years prior.

As noted, the Grand Jury observed fuel stations where the pumps did not have any yearly sticker attached. Department personnel indicated that stickers could peel off the device due to weather or vandalism. While this may be the case, this seems less likely to persist where pumps are inspected annually. The Grand Jury also believes that consumer confidence may decline under

these circumstances, as some consumers could conclude the fuel pumps had not been inspected (see figure 2).



Figure 2 - Four fuel pumps (diesel and 3 grades of gasoline) with no yearly inspection sticker attached.

The Grand Jury was informed and subsequently verified that sites with above ground fuel storage tank and fuel dispensing systems serving the county's lake resorts were 6 years out of compliance. Staff numbers and time limitations were cited as major factors as to why these facilities were 6 years out of compliance, as inspections would require more than one person to

complete safely; additionally, certain pumps may not be operating when inspection equipment is available to PSCDA.



Figure 3 - Fuel pump last inspected in 2015 which is 4 years out of inspection compliance.

Alternative Options

There are provisions in the California law and regulation specifying the options available to a sealer if they are unable to perform annual device inspections. Given the fact that these inspections are not completed annually by PSCDA on all devices as required, the Grand Jury believes that it would be in the best interest of both consumers and the PSCDA for the Sealer to consider these options and explore implementation.

One option available to a sealer is to develop a written plan to outline how the department will ensure that devices are accurate without checking them annually (CCR §4071, CCR §4074). An example approach that some counties take is using a statistical sampling method, testing and certifying a percentage of the devices annually without checking each one. Once written, a sealer submits the plan to the CDA Secretary to formally approve.

Since particular equipment is not always available to PSCDA, another option would be for the Board of Supervisors to enter into a contract directly with the Secretary of the CDA to provide device-inspection services (BPC§12212(d)). For this service, Plumas County would be obliged to pay the inspection and associated costs.

Financial Gap

The Grand Jury found that, according to the fiscal year 2018 - 2019 DMS Financial Report, the PSCDA's DMS expenditures were \$117,559 compared with revenue of only \$30,793. The revenue figure represents monies received from various county vendors who register their measuring devices with PSCDA and limited reimbursement from the CDA. Reviewing these figures, a sizeable disparity between the amount of money the PSCDA spends on weights and measures work and what they take-in by way of fees is highlighted. In the past, additional revenue came from the CDA to aid in this revenue shortfall. Since the economic downturn of 2008, CDA funding has all but been eliminated by the state. In order to improve this situation, the PSCDA, through BOS approval, could revise the device inspection fee schedule to reduce this revenue shortfall.

Consumer Complaints

As mentioned earlier, the California Business and Professions Code requires a sealer to address valid consumer complaints in a timely manner (BP Code §12503). According to PSCDA, consumer complaints are rarely received, and prompt only one or two device tests per year. Currently, complaints can be submitted verbally, either in person or by phone to the PSCDA office. There is no written procedure in place regarding complaints. Typically, a staff member who receives a complaint passes it on to a superior, but no complaint log is maintained by PSCDA.

The Grand Jury examined websites of 14 county agriculture departments in California, as well as the CDA websites and links. It was noted that, in comparison to multiple other counties, the Plumas County Department of Agriculture website lacked certain useful information and links. Specifically, there is no online complaint form available for consumers and little explanation of what the department is responsible for.

FINDINGS

F-1. The PSCDA is not in compliance with BP Code § 12212(b) and CCR §4070, in that approximately three-quarters of the county's fuel pumps have not been inspected within the mandated timeframe.

F-2. The PSCDA may become compliant with State law and regulation as to required fuel pump device inspections in one of three ways - (1) inspecting each device annually, (2) creating a written plan to inspect fewer than all devices annually, or (3) having the BOS enter into a contract with the State Secretary of Agriculture under which the Secretary will arrange for the conduct of the inspections.

F-3. The PSCDA device fee schedule is currently insufficient to cover the costs of device inspection and should be reviewed and upgraded by the PSCDA and submitted to the BOS.

F-4. The PSCDA lacks a functional consumer complaint intake, monitoring and logging process. The County Agricultural Commissioner website is incomplete, lacking an online consumer complaint process which would facilitate consumer needs, as well as a comprehensive description of what the department is responsible for.

F-5. Increased obligations on PSCDA staff not related to DMS work have significantly limited the amount of time that staff is able to spend on inspecting devices.

F-6. Decreased financial and technical support from CDA may have restricted the ability of PSCDA staff to perform and complete required device inspections.

RECOMMENDATIONS

Based on the foregoing, the Grand Jury recommends:

R-1. By no later than January 1, 2021, the PSCDA comply with CCR §4071- §4074 by either (i) completing all required device inspections within the appropriate timeframe, (ii) developing a written plan which addresses how the DMS will inspect devices non-annually and submitting said plan to the CDA Secretary for approval; or (iii) requesting the BOS to enter into an agreement with the CDA to facilitate inspections on behalf of Plumas County.

R-2. The PSCDA submit to the BOS an updated device fee schedule for all measuring devices inspected by the DMS to cover a higher portion of the cost of device inspections, by January 1, 2021.

R-3. By March 1, 2021, the PSCDA update the department's website to include brief descriptions of the main responsibilities of the PSCDA, including DMS aspects of the department, and that the PSDCA implement a consumer complaint process, including a complaints intake policy, complaints log and incorporating a link to an online complaint form.