

# EL DORADO COUNTY GRAND JURY



2004-2005  
MID-SESSION FINAL REPORT

STATE OF CALIFORNIA  
EL DORADO COUNTY  
POST OFFICE BOX 472  
PLACERVILLE, CA 95667



## GRAND JURY

Telephone (530) 621-7477

January 25, 2005

Honorable Daniel B. Proud  
Superior Court Department 1  
495 Main Street  
Placerville, CA 95667

Judge Proud,

The members of the 2004-2005 County Grand Jury have decided to release an interim report detailing an investigation into the county department of Animal Control. Upon conclusion of the investigation the grand jury has made the attached findings and recommendations. This investigation was originally reported to last year's grand jury who were unable to conduct an inquiry due to time constraints. The grand jury has made specific findings and recommendations in accordance with the California Penal Code.

Although we found no violation of law, county ordinance or policy we do believe proper procedures should be in place to prevent the confiscation of private property without guidelines in place to return the property without punitive costs when found innocent in a court of law. We also believe property owners should be properly notified of the investigation, decision and disposition of the incident.

The grand jury takes its responsibility seriously and we look forward to completing the term in a professional manner. I would also like to acknowledge the county employees and the department of Animal Control for assisting us with this investigation

Respectfully,

A handwritten signature in black ink, appearing to read "David Davinroy", followed by a long horizontal line extending to the right.

David Davinroy, Foreman  
2004-2005 County Grand Jury

# NOTICE TO RESPONDENTS

For the assistance of all Respondents, Penal Code Section 933.05 is summarized as follows:

## How to Respond to Findings

The responding person or entity must respond in one of two ways:

1. That you agree with the finding.
2. That you disagree wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons for the disagreement.

## How to Respond to Recommendations

Recommendations by the Grand Jury require action. The responding person or entity must report action on all recommendations in one of four ways:

1. The recommendation has been implemented, with a summary of the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
3. The recommendation requires further analysis. If the person or entity reports in this manner, the law requires a detailed explanation of the analysis or study and timeframe not to exceed six months. In this event, the analysis or study must be submitted to the officer, director or governing body of the agency being investigated.
4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

## Time to Respond, Where and to Whom to Respond

Depending on the type of Respondent, Penal Code Section 933.05 provides for two different response times and to whom you must respond:

1. **Public Agency:** The governing body of any public agency must respond within ninety (90) days. The response must be addressed to the Presiding Judge of the Superior Court.
2. **Elective Officer or Agency Head:** All elected officers or heads of agencies who are required to respond must do so within sixty (60) days to the Presiding Judge of the Superior Court, with an information copy provided to the Board of Supervisors.

## **Animal Control Division**

### **Reason for the Report**

The 2004/2005 Grand Jury received a complaint from a citizen regarding her belief that she was treated unfairly by the Animal Control Division.

### **Scope of the Investigation**

#### **People interviewed**

- Director, Public Health Department
- Chief Animal Control Officer
- Complainant
- Citizens that adopted complainant's horses

#### **Documents reviewed**

- Animal Control Policies and Procedures Manual
- Crime report for the incident
- Veterinary report
- Declaration of (previous Chief Animal Control Officer) in Superior Court Case P02CRM0653
- Copy of P.C.597.1 (post seizure hearing) forms served on the complainant
- Copy of letter to complainant regarding Hearing Officer's decision (also established an initial billing of \$2,873.05, payable within 15 days, in order for the complainant to retain ownership of the horses).
- Copies of advertisements in the Mountain Democrat soliciting bids for horses
- Copies of bid forms for the horses
- Copies of animal adoption receipts (contracts)
- Copies of Superior Court minute order (jury decision in complainant's criminal case)
- Copies of the Motion for Return (of complainant's horses) and the Courts Ruling

### **Background**

The complainant lives on 118 acres in a remote area of El Dorado County. She states that in February 2002 she had a total of thirteen horses in a large acreage pasture, which is not within view of her home. In early February 2002 she realized that three of the horses from the pasture were missing. Since the fences and gates were all intact, she originally believed the horses had been stolen. The Sheriff's Department was contacted and they referred her to Animal Control where, on 02/08/02, she located and identified the three horses missing from her pasture.

Animal Control states they seized the three loose horses on 02/05/02. They refused to return the horses (which were underweight) because of their concern that the owner had criminally neglected them. A chronology of subsequent events is as follows:

- February 8, 2002 – The complainant was served with a “Notice of Seizure of Animals” form and advised she had a right to a post seizure hearing (597.1PC). The purpose of the hearing was to determine if the seizure was appropriate and to determine if the animals would continue to be held. The complainant exercised her right to a hearing.

Note: The Animal Control officer serving the notice observed the complainant’s remaining ten horses from a distance while he was at her home. He has advised he did not observe any signs of those ten animals being in danger.

- February 13, 2002 – A post-seizure hearing was conducted. Those in attendance included the complainant and her husband, an attorney from County Counsel, the Kennel Supervisor, the Chief Animal Control Officer and the Hearing Officer. The Hearing Officer was a Public Health Department employee. The Hearing Officer decided that the seizure was appropriate and that the horses would be “held by Animal Control for care and safekeeping until the matter is adjudicated”.
- March 13, 2002 – Correspondence was sent to the complainant stating that the cost of seizing and boarding the horses currently totaled \$2,873.05. She had until March 28, 2002 to make payment. If payment was not made, the horses would be deemed to be abandoned and disposed of by the impounding officer.
- March 26 or 27, 2002 – Complainant’s husband contacted the Chief Animal Control Officer at her office for the purpose of paying the bill. Complainant states her husband did not pay the bill because he was advised he would not get the horses back even if he did.

The Chief Animal Control Officer stated that “I advised Mr. (complainant’s husband) that if he and his wife wanted to maintain their ultimate right to retain the animals, should the criminal charges be withdrawn or should there be an acquittal at trial, they should pay the bill presented by the County”.

Out of Context - The current Chief Animal Control Officer advised that if the complainant had paid the bill it would have preserved their ownership; however, they would have then been liable for the continuing costs of maintenance for the three horses regardless of the outcome of the criminal court case. If the complainant had retained ownership of the horses, their total bill would have exceeded \$18,000.00 by the time their trial concluded.

- June 2002 – The three horses were put up for bid and adopted out.
- February 20, 2003 – Jury trial decision – Complainant’s not guilty of cruelty to animals.
- April 4, 2003 – Complainant’s Motion for Return of Property (horses) submitted to the court.

- May 30, 2003 – A Court hearing denied the Motion for Return and also made a judgment in favor of El Dorado County for the seizure and care of two horses for \$1,915.36 (The third horse seized did not belong to the complainant.)
- June 2, 2003 – Animal Control submitted a “collection referral form” in the amount of \$2,873.05 against the complainant.

Note: The status of this collection is unknown to the Grand Jury.

### Facts

1. Three of the complainants horses, running loose and significantly underweight, were seized by Animal Control
2. Based on the fact that the three horses were loose and underweight, Animal Control prepared a 597.1PC crime report (permitting animals to go without care), naming the owners as suspects. (Note: The District Attorney’s Office subsequently upgraded the charge to 597(b)/PC Cruelty to Animals (which potentially carries more severe penalties.)
3. The complainant attempted to recover her horses from Animal Control and was denied by a Hearing Officer (a county employee).
4. Animal Control demanded \$2,873.05 from the complainant in lieu of forfeiting ownership
5. The complainant forfeited three horses with a total value of between \$4,000 and \$5,000 (complainants estimate).
6. Ownership of complainant’s three horses was transferred for high bids of \$425.00 and 300.00 and \$65.00.
7. The complainant and her husband were prosecuted for three counts of 597(b)/P.C. Cruelty to Animals. They were found not guilty on all counts by an El Dorado County jury.
8. Animal Control initiated a lien for \$2,873.05 against the complainant.
9. The complainant believes that ownership of her horses was transferred to county employees or their friends, and states that rumor exists in the community.
10. The new owners of the horses were contacted and they advised that Animal Control had conducted follow-ups to insure that the horses were receiving proper care.

### Findings

1. Animal Control acted within their statutory and discretionary authority.
2. The Grand Jury has contacted the current owners of the three horses and finds no evidence of impropriety in the transfer of ownership.
3. There is no record of the discussions during the 597.1 hearing. Therefore, there is no indication that other options for handling this situation were considered.
4. The crime report prepared by Animal Control is extremely brief, making reference to loose horses and underweight horses. These two elements, standing alone, do not support a prosecution for cruelty to animals under any concept of fairness.
5. The Policy and Procedures Manual for Animal Control is out dated and disorganized.
6. Animal Control has an adequate process for handling animal adoptions.

7. Grand Jury's contacts with Animal Control personnel indicate they are a conscientious and committed group of employees working in a difficult environment.
8. There has been no reconciliation between the \$1,915.36 court judgment for the county and the \$2,873.05 collection referral form initiated by Animal Control.

### **Recommendations**

1. Develop a formal structured process for determining the reasonableness of returning (or not returning) animals to their owner.  
Comment: The Grand Jury cannot identify any reasons why these horses, upon payment of seizure and maintenance charges, should not have been returned to the owners. A return in an incident such as this could be made contingent on an agreement that Animal Control be permitted to make inspections. Such an arrangement would be consistent with stated goals of Animal Control, such as reuniting animals with their owners and the education of owners. This arrangement would of course not be appropriate if overt abuse was suspected, or the owner simply did not have the means to care for the animals. However, that does not appear to be the case in this incident.
2. Use non-county employees as Hearing Officers in 597.1 hearings.  
Comment: While the statute allows the use of employees to perform the duties of hearing Officer, this clearly does not have the appearance of fairness.
3. Prepare a formal record of 597.1 hearings.  
Comment: For all practical purposes, the decision of the hearing officer was a decision to permanently confiscate the property of the complainant. That level of government action requires documentation.
4. Provide additional training to Animal Control Officers relative to the preparation of crime reports and identification of the elements of the crimes they are likely to encounter.
5. Update and organize the Animal Control Policies and Procedures manual.
6. Animal Control needs to reconcile the Court judgment against the complainant for \$1,915.36 and the \$2,873.05 collection referral form they initiated.

The El Dorado County Board of Supervisors, coordinating with the above mentioned agencies, is required by Penal Code 933 and 933.05 to respond to all Findings and Recommendations contained within this report.

See Notice to Respondents for the proper method to respond to the Findings and Recommendations

**Members of the  
2004-2005 El Dorado County Grand Jury**

David Davinroy, Foreman  
Van L. Dossey, Foreman Pro-tem  
Colleen Young  
Patricia Murphy  
Doug Clough  
David Dalzell  
Floyd Knapp  
Phil Davis  
Al Diller  
Chad Gilzean  
Robert Hanson  
Ross Johnson  
Val Kesler  
Richard Lucy  
Lorraine McLaughlin  
Liz Pazdra  
David Perez  
Joseph Salerno  
Peri Curry