

UVSD Response to the 2013 Grand Jury Report - Forming and Reforming a Community

In the above indicated Report, the Grand Jury has requested that the Ukiah Valley Sanitation District (UVSD) respond to Findings F3, F4 and F6 as well as Recommendations R1 to R4.

Board's Response

Findings

The Board disagrees wholly or partially with Findings F3, F4 & F6. (Statement follows.)

Recommendations

Recommendations R1 to R4 require actions by another agency; they cannot be implemented by the UVSD Board of Directors. Therefore, it is the Board's opinion that the Recommendations are not warranted and not reasonable for the UVSD and not warranted and not reasonable for LAFCO for the reasons provided in the following statements.

Board Statements

The Board believes that the viewpoint expressed by the Grand Jury about LAFCO and its role in district functions seriously misunderstands the actual role of LAFCO, thus the GJ's Findings and Recommendations are flawed. We also believe that the GJ has committed an ethical violation by willfully misrepresenting fact in this Report. Therefore, the following observations are offered to support the Board's belief.

Role and Responsibilities of LAFCO

Under the State Constitution the legislature has the role and responsibility for the forming or creation of local government agencies such as counties, cities and districts and the changing of their boundaries. The legislature has delegated its role for some local government agencies (cities and some types of districts) to the Local Agency Formation Commission (LAFCO). Each county has a LAFCO and LAFCO's have county wide jurisdiction in carrying out their responsibilities.

Under LAFCO law (G.C. 56000 – 57000) LAFCOs has four primary roles or responsibilities:

1. Review and allow or disallow the formation or creation of new service provider agencies under its purview (i.e. cities and certain types of districts).
2. Review and allow or disallow changes of boundaries of existing agencies, known as “changes of organization” (G.C. 56021).
3. Determine the Sphere of Influence (SOI) for cities and districts (G.C. 56425).
 - A SOI is defined as a “plan for the probable physical boundaries and service area of a local agency.” (G.C. 56076)
 - To develop or update a SOI for an agency, LAFCO is required to conduct a review (known as Municipal Service Review or MSR) of the agency's ability to provide

services within its current jurisdictional boundaries and its proposed SOI. (G.C. 56430)

- The MSR is an adjunct study to the Sphere of Influence study process and is to occur “before or in conjunction with” the SOI determination.
- The requirement to conduct a MSR study does not exist independent of the SOI process. It is not an agency planning or regulatory document.

4. Determine the maximum service area of an agency. (G.C. 56378)

In performing the above indicated roles, LAFCO is to make decisions regarding agency boundaries that provide for the orderly and efficient extension of government services that meet the purposes of LAFCO as provided by the legislature.

Purpose of LAFCO

The GJ's Report indicates: "The two primary purposes of LAFCO are: discourage urban sprawl and encourage orderly government."¹ This statement gets it wrong.

Government Code Section 56301 states: "Among the purposes of a commission are discouraging urban sprawl, preserving open space and prime agricultural lands, efficiently providing government services and **encouraging the orderly formation** and development of local agencies based upon local conditions and circumstances." (underline/bold added)

"Encouraging the orderly formation and development of local agencies" is a significantly different statement than the GJ's statement that one of the primary purposes of LAFCO is to "encourage orderly government". This mistaken belief about LAFCO's role in "encouraging orderly government" colors the GJ's Report which implies that LAFCO has the right to intrude upon the operations, management and planning of existing government agencies such as districts to see that they are "orderly". LAFCO simply does not have that authority; it has not been given that purpose or power by the Legislature. By this statement, the GJ appears to greatly misunderstand the actual role of LAFCO.

Should the GJ think that the phrase "efficiently providing government services" somehow gives LAFO the right to intrude on the operations and management of an existing agency to see about the efficiency of the agency's service provision, the GJ should read the complete Section 56301. They will then see that context is important to this phrase. Guidance as to the meaning of this phrase is provided further down in this Section whereby it is indicated that when LAFCO is considering the formation of a new agency, the commission is to "make a determination as to whether existing agencies can feasibly provide the needed service or services in a more **efficient and accountable manner.**" (bold added)

¹ Page 1, Grand Jury Report, May 1, 2013, Forming and Reforming a Community

Thus, as is often the case in law, early statements are modified by later statements; one has to read the whole statute in context as well as other statutes that may also modify. Generally, for purposes of interpreting a law, one has to review the whole of a law and cannot pick and choose phrases for interpretation. We point this out because the general context and flavor of this Report indicates that the GJ is under the misapprehension that LAFCO has powers and duties that it does not have.

Under LAFCO law, LAFCO is to effect the purposes provided in Section 56301 by allowing or disallowing the expansion of the boundaries of existing agencies under its purview and/or by allowing or disallowing the creation of new service provider agencies. Once territory is within the jurisdictional boundaries of an agency such as an independent special district, LAFCO has no authority over the provision of services or the operations of that agency. It has no authority to see if the operations of that agency are "orderly" or otherwise and has no authority for the planning and regulation of service provision. Cities are under the purview of LAFCO as to incorporation and boundary changes; to "gut check" our previous statement, contemplate the idea that LAFCO would go to a city and tell them how to be "orderly" in their operations. Hard to imagine, isn't it? It would be no less true for independent special districts.

Powers and Duties of LAFCO

This Report makes the declaratory statement that, "LAFCO has planning and regulatory powers"² That is simply not the case. The Report does not provide citations for its sources as to how the GJ came to declare this statement. If the GJ has been informed otherwise, it has been seriously misled. Statements by others are not a sufficiently credible source for such a powerful statement of fact. If told by others that this is the case, the GJ should have verified the exact location in LAFCO law that provides these "planning and regulatory powers". That would have been basic research for a Report such as this.

The powers and duties of LAFCO are defined in G.C. Section 56375. Nowhere in that Section does it state that LAFCO is provided "planning and regulatory powers". Actually, LAFCO when reviewing a change of organization proposal is specifically enjoined by G.C. Section 56375 from imposing conditions that would "directly regulate land use density, property development or subdivision requirements"; these are the general planning powers of cities and counties.

District Boards of Directors have been given the authority by the Legislature to provide services within their jurisdictional boundaries as authorized by their Principal Act and to plan for this provision of services. LAFCO has not been given power to affect internal planning decisions or the development of planning documents as represented by budgets, capital improvement plans, engineering plans, management plans or other such plans of a district. There is a reason that districts are known as "independent special districts", only the districts boards and staff have the power to plan for their respective agencies and to make decisions as to oversight and control.

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It is true that LAFCO's decision to approve or not approve a change of organization (G.C. Section 56021) or its decision to determine a Sphere of Influence (G.C. Section 56425) has a planning effect as far as the boundaries of districts. This however does not allow LAFCO to plan for districts or provide for the "regulation of services"³ within a district. In the case of water or wastewater agencies, the Legislature, the California State Districts Association, the state Department of Water Resources, the state Department of Health Services and the Regional Water Quality Control Board would be considerably surprised to learn that LAFCO has somehow been given this regulatory power by the Grand Jury.

Additionally, nowhere in Section 56375 is LAFCO provided the power to "perform oversight and control of all of the interfacing government agencies within the county"⁴ or to "conduct outreach"⁵ to help "the districts meet and perform their services"⁶ or "to arbitrate and resolve disputes and operational/service differences."⁷ Parsing those statements provides the following response:

- "Oversight and Control" implies that LAFCO is somehow in charge of the operations and management of agencies. Oversight and control is the primary duty of the Board of Directors of an independent special district. There is no place in LAFCO law that gives LAFCO the authority to preempt or supersede the Board's duties. It simply lacks that authority; it would be illegal for them to attempt to do so. Additionally, for the GJ to make that statement, they would have to believe that the respective Boards of Directors do not understand and are not performing their statutory functions. This certainly is not the case for the UVSD and the GJ has not made that case.
- "All of the interfacing government agencies within the county" would include state and federal agencies as well as the County, school districts, college districts, air pollution control districts and other agencies for which LAFCO has no authority whatsoever. See G.C. Section 56036 for those agencies for which LAFCO is specifically excluded from exercising any activity. This statement simply lacks precision; lack of precision leads to sloppy thinking which causes poor decisions, e.g. findings and recommendations.
- 'Conduct outreach" to help "the districts meet and perform their services" sounds like the GJ thinks that districts needs missionary work from LAFCO. It implies that LAFCO has the necessary expertise and resources to assist all of the various independent districts within the County. Does the GJ really think that LAFCO knows how to perform the services provided by a hospital district, a fire district, water and wastewater districts and all of the other kinds of districts within this county? Does the GJ actually think that the Boards of Directors and management of these districts know less than LAFCO? This

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statement also assumes that LAFCO has the resources to do such a thing (see comments below about LAFCO). It also implies that the existing management and Board of Directors have little comprehension as to how to perform the services for which the agency was formed. Again, this simply is not the case.

- "Arbitrate and resolve disputes and operational/service differences." We are not sure what that statement actually intends because we do not know what "disputes" the GJ thinks needs to be arbitrated by LAFCO (no specific disputes were mentioned in the Report) or what "operational/service differences" exist that would require arbitration at all, let alone arbitration from a non-arbitration-trained LAFCO staff. An arbitrator or mediator has to be a neutral third party. By the nature of its statutory role, LAFCO will have to make decisions about districts as to boundary changes or SOI assignments, this disqualifies it as being neutral. The appointments of commissioners are made by the County, cities and districts; these agencies may have issues with each other so the appointed commissioners will not be seen as neutral deciders. Given that the E.O. is a creature of the Commission (he or she serves at the pleasure of the Commission) that person will not be seen as a neutral person as well. If two districts decided they needed arbitration for a dispute that has risen between them, LAFCO is not where they would go for arbitration. The natural response to this kind of statement is the GJ does not understand arbitration processes, districts or LAFCO

Mendocino LAFCO Circumstances

Mendocino LAFCO Commissioners are volunteers. Six of them are elected to other agency's Boards or Councils and then appointed to the Commission; the public member is appointed by the other six. The Commissioners come together once a month for a one to three hour meeting and occasionally some of them meet in sub-committee. Most of the Commissioners are very busy with their primary elected positions and/or their jobs or businesses. Based on long observation, it would be a good bet that most Commissioners have not read the statutory requirements for LAFCO (G.C. Sections 56000 - 57000), the principal acts of districts, the myriad regulatory requirements that districts must meet or even understand the various regulatory permit processes that various districts must accomplish. They do not make a study of the laws and regulations as they apply to various districts (e.g. fire districts, hospital districts, water districts, sewer districts and many others). Therefore, they are generally not very knowledgeable of all the laws and regulations that affect various districts. Clearly, it is not their job to be knowledgeable about these laws and regulations; it is the role of the individual district's Boards of Directors and management to know these things.

They certainly don't have the time to attend "frequent meetings with member agencies"⁸ nor would they necessarily have any understanding as to the issues before all types of districts unless the district staff spent an inordinate amount of time briefing them. This would require valuable

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staff time that would be taken away from the management and operations of these districts. The GJ presumes that the commissioners and district boards and staff have that kind of time to spend in not particularly useful meetings.

Independent special districts have Boards of Directors who spend a great deal of time understanding the special needs of their particular district and provide "oversight and control" to the staff of their district. This is their role; it is not the role of LAFCO commissioners or LAFCO staff.

Regarding LAFCO staff, the present Executive Officer has been in that position for approximately one year. He lives 4 to 5 hours away from Mendocino County. Prior to his appointment to this position, he probably did not know the names of Mendocino County districts, he certainly was not aware of the specific conditions, circumstances or issues that these districts face. It is doubtful that he has since become an expert about these districts superior to the existing expertise of the boards of directors and management.

His contract calls for him to provide 167 hours per year to the executive officer position.⁹ This equates to 3.2 hours per week; many of those hours are telecommute hours, not actual hours in the County. To suggest that he can somehow understand the issues before the districts, provide "leadership"¹⁰ and "outreach"¹¹ to help districts "perform their services"¹², attend "frequent meetings with the member agencies"¹³ and "arbitrate" issues for them in this amount of time is ludicrous on the surface. In this amount of time, he couldn't accomplish phone calls once a week to all 50 of the special districts within Mendocino County.

And, we can assure the GJ that no independent special district would recognize that he had the necessary expertise to provide leadership, outreach and arbitration or the right or authority to meddle in the management affairs of independent special districts.

Municipal Service Reviews

As previously indicated, in order to prepare and to update spheres of influence (SOI) in accordance with G.C. Section 56425, the commission is required to perform an adjunct study to the SOI study know as a "service review" (G.C. Section 56430) and prepare written "determinations" in six categories. The SOI study and its companion MSR study are prepared at most once every five years. There is no actual statutory requirement that MSRs be completed every five years nor is there a statutory requirement that SOIs be determined every five years. This only occurs if the commission considers it "necessary". (See Subsection (g) of Section 56425.)

⁹ LAFCO FY 2013-2014 Budget

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Within the state, the development of these service review reports have become formulaic reports prepared by consultants who obtain their information from existing documents and information (e.g. interviews of managers, district websites, budgets, capital improvement plans, management plans, engineering reports and plans, reports to regulatory agencies and other internal reports such as agendas, agenda summary reports and minutes) created by the districts. The MSR reports as produced by most consultants and most LAFCOs are simply documents that reorganize existing information developed by the districts into a report format acceptable to G.C. Section 56430. The information in these service review reports is not original content developed by the consultants nor is there much in way of original insight about the districts in these reports.

At best, MSRs are a snapshot in time about the district. Mostly, they are little more than "cut and paste" jobs using information culled from documents previously developed by the agencies in the Report. Generally speaking, little or no new information or insights are produced by these Reports. They are dated immediately upon creation because they rely upon dated information from dated documents. In any case, circumstances within districts change faster than once every five years.

Any person who reads a MSR and then thinks he or she understands the districts for which the report is written and can somehow apply that "understanding" to assist districts as indicated by this GJ Report is woefully simplistic in their thinking. To get an inkling of the limitations of MSRs, read some of the determinations and then wonder about the insightfulness of these reports. As an example, the recent districts' MSR that was created by a Sacramento area consultant and accepted by LAFCO contained these wonderfully "insightful" determinations:¹⁴

1. The UVSD is able to provide services with limited staffing of a part-time general manager and part-time staff.
2. The UVSD is governed by a five-member board of directors elected at large to four-year staggered terms. They meet regularly on the third Thursday of the month at the UVSD office boardroom at 151 Laws Avenue. Meetings are noticed according to the Brown Act.
3. The UVSD maintains a website that includes all agenda material and meeting minutes. The website offers a method to communicate board actions and items of interest to customers.
4. The board has three standing committees—Finance, Planning and Technical, and Governance—that can focus on relevant issues and develop policies within the purview of the committee.
5. LAFCO policies relating to updating spheres of influence may impact how the UVSD provides services outside current boundaries.

¹⁴ Municipal Service Review Ukiah Valley Special Districts, LAFCO of Mendocino County, E. Mulberg & Associates, page 3-32

These MSR Reports are therefore not very useful tools for managing districts or providing oversight as the GJ suggests that LAFCO utilize to provide "assistance in helping districts meet and perform their services."¹⁵

Contrary to what the writer or writers of this GJ Report thinks, district Boards of Directors and District Managers have far more knowledge and understanding of the issues and circumstances of their district than either LAFCO commissioners, LAFCO's 3.2 hour Executive Officer or that contained in a MSR. We wonder if the GJ actually meant to be that insulting to districts or conversely, if they are that oblivious.

UVSD Report

The Grand Jury mentions a study created by John Dickerson for UVSD titled, "Consolidation of Wastewater and Water Services in the Ukiah Valley". The Board agrees it is a good report. It provides a depth of review and financial analysis that can be of assistance for Ukiah area water districts and UVSD's general interest to reorganize into a larger regional agency. Notably, this Report was not created by LAFCO; given the limitations of LAFCO and given the "cut-and-paste" process described above for LAFCO reports, a similar report would likely not be created.

For the GJ's reference and knowledge, Mr. Dickerson obtained some of his insights for this Report when he worked for the former executive officer of LAFCO as a financial analyst. At that time he was assisting the then executive officer prepare an in-depth MSR regarding sewer services provided by the City of Ukiah and UVSD. During the course of the in-depth financial review performed by Mr. Dickerson, several millions of dollars were discovered to be of issue between the City and District which was ultimately resolved in favor of the District.

Because of this circumstance and other statements in the proposed MSR Report that the City did not like, the report containing that analysis was prevented from being completed. Past Grand Juries have been given copies of the initial administrative version of this report; it should be in your archives.

Of final note, is that after this experience, the then executive officer was informed by two "lengthy service"¹⁶ commissioners (perhaps the same as the lengthy service commissioners interviewed by the GJ) that he was never to hire Mr. Dickerson again to assist in the financial analysis for any MSR and that this depth of analysis was not needed for MSRs. Thus, the UVSD Board finds it ironic that the GJ approvingly mentions a report created for the UVSD by a capable financial analyst that was determined to be persona non grata by two "lengthy service" commissioners.

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Present Working Efforts of Ukiah Valley Water and Wastewater Districts

The GJ may or may not be aware that Redwood Valley CWD, Calpella CWD, Millview CWD, Hopland PUD and Willow CWD are sharing management, operations and maintenance personnel, equipment, billing operations and office staff. Additionally, past meetings have been held with these agencies and UVSD as to the possibility of forming a regional water and wastewater agency.

If the UVSD is successful in removing itself from the burden of the present Participation Agreement with the City of Ukiah, it too will likely seek to enter into similar contractual arrangements for the sharing of resources. The UVSD and the other mentioned water agencies have not failed to understand the value of working together and the potential “sweet spot” possible with a reorganization to a larger water/wastewater agency. This cooperation and discussion of future possibilities are occurring without any “coordination with local agencies by LAFCO”¹⁷ and likely without LAFCO's awareness.

Conclusion

The Grand Jury is a fact-finding and deliberative body. It reviews issues that it considers appropriate and publishes a report whereby it opines on these issues. When a GJ report is published, it is presumed that the GJ thoughtfully deliberated as to the facts and information they gathered, carefully verified the facts and information utilized for the report, formed an opinion accordingly and carefully wrote, reviewed and thoroughly vetted its report before release so that no inadvertent misrepresentation of facts or misunderstandings occurred. The public should therefore be able to trust that the facts and information provided in the report are accurate to the best of the GJ's knowledge and ability, trust that which was published in the Report was intended and trust that no willful misrepresentation of facts were in the Report.

Reasonable people can disagree about the GJ's opinion but as indicated they should be able to trust that GJ's report is factual and accurate. If they cannot have this level of trust, then little trust can be affirmed for the report in question. If it appears the GJ willfully misrepresents the facts in a report, then the mistrust extends to the GJ as a deliberative body.

In the Approach¹⁸ section of your Report, you indicate that the GJ interviewed "past and current executive officers". When we read that, we naturally assumed that you had interviewed our current District Manager who is the most recent past LAFCO executive officer.

Given the misinformation and misunderstandings in this Report, we questioned our District Manager as to whether he had an opportunity to provide information that would have perhaps better informed the GJ as to LAFCO's role in general and in particular its role with districts (e.g. the citations and information provided above). He responded that he had not been called before

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the Grand Jury regarding LAFCO; he had had no input to the GJ regarding the subject matter of this Report. He further indicated that had he been interviewed, he would have given the GJ information such as the citations provided above that would have clarified LAFCO's actual purposes, powers and duties.

We then asked him who the other "past executive officers" could have been, if not him. He responded that in the past approximately 25 years there have only been three Mendocino LAFCO executive officers, other than the current one. One of those past executive officers is dead and the other is a person who has not been a Mendocino LAFCO E.O. for more than 12 years and lives in another part of the State. He thought it was hardly likely that the Grand Jury interviewed her for a report about today's circumstances. Thus, the Report by implication indicates he was interviewed by the GJ.

For the GJ to provide to the public the impression that he had been interviewed for this Report when he was not, speaks poorly for the integrity of this Report and the Grand Jury. It is astounding to us that the GJ would indicate that they interviewed him for this Report when they clearly know that they did not. To us, this is a gross misrepresentation of fact. By providing this impression, it also suggests that our current District Manager contributed to the erroneous facts, information and poor general knowledge about LAFCO that is in this Report, thus, portraying him as not having much in the way of knowledge about LAFCO's purposes, powers and duties. We therefore believe that the GJ has committed an ethical violation against him. The GJ is greatly remiss for these actions.

In general, the UVSD Board has a great deal of respect for the Grand Jury and appreciation for the work that the volunteer members perform. However, we find that this Report lacks integrity, reflects insufficient knowledge about the role and authority of LAFCO and reflects insufficient knowledge about the powers and duties of districts as provided by their Principal Acts.

This Report implies that existing districts such as the UVSD do not know how to manage and operate its own affairs or cooperate with each other, thus needing the supposed expertise of LAFCO. That simply is not the case; therefore the UVSD Board is providing this strong disagreement with this Report.