

Grand Jury Report

RESPONSE FORM

Grand Jury Report Title : LOBBIES, LAWSUITS & LEGISLATION

Report Dated : June 3, 2010

Response Form Submitted By:

Mendocino County Water Agency
Board of Directors
c/o Executive Office
Attn: Steve Dunnicliff
501 Low Gap Road
Ukiah, CA 95482

Response MUST be submitted, per Penal Code §933.05, no later than:

September 1, 2010

I have reviewed the report and submit my responses to the FINDINGS portion of the report as follows:

- I (we) agree with the Findings numbered:
5,9,10,11,13,14,15,16,17 (See Attached)
- I (we) disagree wholly or partially with the Findings numbered below, and have attached, as required, a statement specifying any portion of the Finding that are disputed with an explanation of the reasons therefore.
1,2,3,4,6,7,8,12,18 (See Attached)

I have reviewed the report and submit my responses to the RECOMMENDATIONS portion of the report as follows:

- The following Recommendation(s) have been implemented and attached, as required, is a summary describing the implemented actions:

- The following Recommendation(s) have not yet been implemented, but will be implemented in the future, attached, as required is a time frame for implementation:

- The following Recommendation(s) require further analysis, and **attached as required**, is an explanation and the scope and parameters of the planned analysis, and a time frame for the matter to be prepared, discussed and approved by the officer and/or director of the agency or department being investigated or reviewed: (This time frame shall not exceed six (6) months from the date of publication of the Grand Jury Report)

2 (See Attached)

- The following Recommendations will NOT be implemented because they are not warranted and/or are not deemed reasonable, **attached, as required** is an explanation therefore:

1,3,4 (See Attached)

I have completed the above responses, and have attached, as required the following number of pages to this response form:

Number of Pages attached: 7

I understand that responses to Grand Jury Reports are public records. They will be posted on the Grand Jury website: www.co.mendocino.ca.us/grandjury. The clerk of the responding agency is required to maintain a copy of the response.

I understand that I must submit this signed response form and any attachments as follows:

First Step: E-mail (word documents or scanned pdf file format) to:

- The Grand Jury Foreperson at: grandjury@co.mendocino.ca.us
- The Presiding Judge: grandjury@mendocino.courts.ca.gov
- The County's Executive Office: ceo@co.mendocino.ca.us

Second Step: Mail all originals to:

Mendocino County Grand Jury
P.O. Box 939
Ukiah, CA 95482



Printed Name: CARRE BROWN

Title: Chair, Mendocino County Water Agency Board of Directors

ATTEST:

Carmel J. Angelo, Clerk of the Board
Mendocino County Board of Supervisors



DEPUTY

Signed: _____

Date: _____

ATTACHMENT

REPORT: LOBBIES, LAWSUITS & LEGISLATION

Findings

1. ***Beginning in 2009, NOAA issued a biological opinion which placed flow controls on water releases from Lake Mendocino in order to protect endangered salmonids, without regard to the needs of local farmers and the economy of the region.***

The Mendocino County Water Agency Board of Directors disagrees partially with this finding.

The Mendocino County Water Agency Board of Directors note that the Biological Opinion referenced in the Grand Jury's report was issued by the National Marine Fisheries Service (NMFS) on September 24, 2008 rather than "beginning in 2009".

2. ***On November 18, 2009, the NOAA forced SCWA to reopen the 1986 Decision 1610 by Spring of 2011 to decrease the flow of water from Lake Mendocino to reduce velocity in the Russian River, from 185 cubic feet/second to 125 cubic feet/second.***

Due to the lack of information, the Mendocino County Water Agency Board of Directors neither agrees nor disagrees with this finding.

The Mendocino County Water Agency Board of Directors does not have any information regarding the actions NOAA may have taken on November 18, 2009

3. ***The FERC restricted the flow into the Eel River diversion canal, Decision 77, reducing the flow into Lake Mendocino by approximately 33%. Friends of the Eel River filed a petition with the SWRCB to eliminate all diversions of water from the Eel River***

The Mendocino County Water Agency Board of Directors disagrees partially with this finding.

Based on recent Potter Valley Project operations, the Mendocino County Water Agency Board of Directors believes that implementation of the 2004 Potter Valley Project has reduced Eel River diversions into Lake Mendocino by as much as 60 percent, rather than the 33 percent figure stated in the Grand Jury's report.

4. **Lake Mendocino was originally built for flood control. Control of water release is based on date and/or storage level. These agencies have control: Corps, RRFCD, and SCWA.**

The Mendocino County Water Agency Board of Directors disagrees partially with this finding.

The Mendocino County Water Agency Board of Directors note that the U.S. Army Corps of Engineers Water Control Manual for Coyote Valley Dam and Lake Mendocino states that the "...Lake Mendocino provides storage for flood control, municipal and industrial water supply, irrigation, recreation and power". Although flood control may arguably be the primary purpose of Lake Mendocino, it is not the only official purpose of the project.

5. **Mendocino County and RRFCD, have rights to only 8,000 acre feet per year from Lake Mendocino regardless of lake level. SCWA has majority rights to the water in Lake Mendocino, (37,544 acre feet/year). They sell water to Mendocino, Sonoma, and Marin Counties.**

The Mendocino County Water Agency Board of Directors agrees with this finding.

6. **The Corps has used the same manual to govern the management of the dam since the 1950's. The dam's original purpose was flood control.**

The Mendocino County Water Agency Board of Directors disagrees partially with this finding.

As stated in the response to Findings # 4, although flood control may arguably be the primary purpose of Lake Mendocino, pursuant to the U.S. Army Corps of Engineers Water Control Manual for Coyote Valley Dam and Lake Mendocino, other official uses include municipal and industrial water supply, irrigation, recreation and power.

7. **An independent report to the SWRCB on November 18, 2009, stated that Mendocino County agricultural related production, receipts, and payroll for 2008 accounted for \$458 million.**

Due to the lack of information, the Mendocino County Water Agency Board of Directors neither agrees nor disagrees with this finding.

The Mendocino County Water Agency Board of Directors does not have any information regarding the November 18, 2009 report referenced by the Grand Jury

8. URSA, RWVD, and RRFCD jointly installed USGS gauges in the river at Talmage to monitor water flow and frost control draw downs from the Russian River

The Mendocino County Water Agency Board of Directors disagrees partially with this finding.

It is the Mendocino County Water Agency Board of Directors understanding that a single USGS gauge, rather than multiple gauges, was installed on the Russian River near Talmage, and that the cost of installing and operating the gauge has or will be borne, at least in part, by the Redwood Valley County Water District, and the Mendocino County Russian River Flood Control and Water Conservation Improvement District, and that URSA has had no direct role in the construction or operation of this gauge.

9. Farmers are constructing ponds on their properties to store water for frost control and irrigation, to mitigate the drawdown of river water.

The Mendocino County Water Agency Board of Directors agrees with this finding.

10. There is no centralized governance over the management of water in this County and no one agency speaks for the water needs of this County. The MCWA, a special district created by the State Legislature, has no water rights and little authority or funding.

The Mendocino County Water Agency Board of Directors agrees with this finding

11. This County is at an extreme disadvantage communicating its needs with regulatory agencies, because there are many entities with competing interests, voices, and territorial disputes. Sonoma County is successful; they control more water and speak with one powerful voice.

The Mendocino County Water Agency Board of Directors agrees with this finding

- 12. County water districts lack the funding they need for effective management and capital improvements. Many of their installations and equipment are undersized and outmoded. Their limited number of rate-payers makes it impossible to fund needed improvements, such as water storage and conveyance.**

Due to the lack of information, the Mendocino County Water Agency Board of Directors neither agrees nor disagrees with this finding.

The Mendocino County Water Agency Board of Directors does not oversee the operation and management of County water districts and does not have sufficient information to determine whether or not all county water districts lack the funds necessary for effective management or capital improvements. Similarly, the Mendocino County Water Agency Board of Directors lacks sufficient information to determine whether or not most of the equipment owned and maintained by the various County water districts is undersized and outmoded. While the Mendocino County Water Agency Board of Directors agree in general that having a limited number of rate-payers makes it difficult to accumulate sufficient capital to fund water infrastructure improvements, the Mendocino County Water Agency Board of Directors does not have sufficient information to determine whether or not the "limited" number of rate-payers makes it "impossible" to fund needed improvements, such as water storage and conveyance.

- 13. There is no comprehensive plan for water sharing within the County. Millview and RVWD have instituted moratoriums on new hookups.**

The Mendocino County Water Agency Board of Directors agrees with this finding.

- 14. Each of the small districts has something to offer that could be shared and utilized for the good of County water users.**

The Mendocino County Water Agency Board of Directors agrees with this finding.

- 15. LAFCO is legally mandated to study and evaluate current operations of local governments/special districts in order to discourage overlapping jurisdictions and duplication of services.**

The Mendocino County Water Agency Board of Directors agrees with this finding.

- 16. LAFCO sets guidelines for the merger of districts and encourages small districts to restructure into a viable entity. One water district manager is now serving three of these small districts. All districts still**

maintain a Board of Directors, individual budgets, policies and procedures.

The Mendocino County Water Agency Board of Directors agrees with this finding.

17. **The City of Ukiah produces approximately 4,000 acre feet of treated waste water each year, currently stored in percolation ponds near the Russian River.**

The Mendocino County Water Agency Board of Directors agrees with this finding.

18. **In 2002, City of Ukiah staff claimed that they were exploring the possibility of using treated waste water for the Municipal Golf Course, city parks, and the Ukiah Cemetery District. In the 2002-2003 GJ Final Report, *Recommendation C*, was to continue efforts to use treated waste water for the Municipal Golf Course, City Parks and the Cemetery District.**

Due to the lack of information, the Mendocino County Water Agency Board of Directors neither agrees nor disagrees with this finding.

The Mendocino County Water Agency Board of Directors does not have any information regarding the statement referenced by the Grand Jury and attributed to City of Ukiah staff. However, the Mendocino County Water Agency Board of Directors is aware of Recommendation C of the 2002-2003 GJ Final Report

Recommendations

The Mendocino County Grand Jury recommends that:

1. **a joint powers authority¹, (JPA), be established to work with LAFCO to develop a unified organization that has the resources to meet the needs of all districts in a consistent and professional manner, and to speak with one voice and one vision. The consolidated authority would represent interests from the Russian River South to the Sonoma County line. (All Findings)**

The Recommendation will not be implemented by the Mendocino County Water

¹ A Joint Powers Authority (JPA) is an institution permitted under the law, whereby two or more public authorities (e.g. local governments, or utility or transport districts) can operate collectively.

Agency Board of Directors

While the Mendocino County Water Agency Board of Directors supports consolidation of consenting water districts, the Mendocino County Water Agency Board of Directors does not believe that the formation of a Joint Powers Authority is needed to assist LAFCO with the development of a "unified organization that has the resources to meet the needs of all districts in a consistent and professional manner, and to speak with one voice and one vision". The Mendocino County Water Agency Board of Directors believes that it would be more appropriate for a committee of interested stakeholders to work with LAFCO, rather than a Joint Powers Authority, and that one of the possible outcomes of this work would be the creation of a single entity – a Joint Powers Authority – that would constitute the unified organization referenced by the Grand Jury.

- 2. Mendocino County Water Agency, which has no control over water rights, become more involved with districts by providing guidance on conservation measures, public training, uniform controls, and legislative assistance. The staff must provide leadership in the process of consolidating water districts and/or establishing a JPA. (Finding 10)**

The Recommendation requires further analysis

Due to funding limitations it remains unclear whether or not the Mendocino County Water Agency will have, in the foreseeable future, the financial resources to provide "guidance on conservation measures, public training, uniform controls, and legislative assistance" over and above the current level of effort.

- 3. The City of Ukiah develops uses for treated waste water other than storing it in percolation ponds; the City of Ukiah promotes negotiations with regional water managers to develop infrastructure funding for alternative uses of treated waste water. (Findings 17-18)**

The Recommendation will not be implemented by the Mendocino County Water Agency Board of Directors

The Mendocino County Water Agency Board of Directors has no direct control over the manner in which the City of Ukiah operates its waste water treatment facilities, or chooses to use treated waste water, and therefore is not well positioned to implement this Recommendation.

4. a JPA formed for the development for consolidation of districts, be fashioned like Upper Russian River Sustainability Alliance's agreement of joint cooperation. (Findings 8-9)

The Recommendation will not be implemented by the Mendocino County Water Agency Board of Directors

As indicated in the response to Recommendation # 1, the Mendocino County Water Agency Board of Directors does not believe that a JPA is needed or even the most appropriate entity to work with LAFCO on the development of a strategy for consolidating water districts.