

## **The Sacramento LAFCo's Municipal Review Process: A Study in Complacency**

### **Summary**

The 2016 - 2017 Sacramento Grand Jury opened an investigation into Sacramento County's Local Area Formation Commission (SAC LAFCo), specifically its responsibility to oversee local government agencies through the preparation of Municipal Service Reviews (MSRs). This report looks at the MSR process as it relates to one important type of special district – water districts.

Water is essential to the quality of life in Sacramento County. The grand jury's interest in water grew out of concerns about the quality and cost-effective delivery of water in our community. The grand jury's research into Sacramento area water districts discovered that Sac LAFCo's failure to fulfill its statutory oversight responsibilities may have resulted in lost opportunities to consider important regional water issues in the county. It should be noted that these same deficiencies may apply to all local agencies within the purview of Sac LAFCo's responsibilities.

The grand jury investigation concludes that Sac LAFCo's MSR process is deficient in a number of areas:

- MSRs are not performed in a timely manner.
- The content of MSRs that were performed is inadequate. There is little analysis of special district's operations, the MSRs contain boilerplate conclusions, there is no use of experts and few recommendations are made regarding measures to improve performance.
- The MSR Review Worksheet and Questionnaire used to get information from special districts is outdated and fails to cover information required by law to be part of an MSR.
- Sac LAFCo fails to take advantage of its authority to look at regional issues, a particularly egregious omission in the water area.
- The Sac LAFCo Commission fails to set annual goals and performance measures for its staff.

### **Background**

Each of California's 58 counties contains numerous special districts, many having over 100. Special districts are a form of local government, providing service in an individual area such as water, parks, fire and libraries. Each county also has a Local Agency Formation Commission. LAFCos were created by the Legislature in 1963 to provide an oversight or watchdog role over special districts. LAFCos have both planning and regulatory powers. Their authority ranges from setting service area boundaries, looking at consolidation and/or reorganization of services and performing municipal service reviews (MSR) of municipalities and special districts within the county.

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The grand jury recognizes that water is the single most precious resource in almost every county in California. Sacramento is no exception. Water sustains a community's health, growth and quality of life. The extensive development of land in the county and increasing population, combined with drought, has put a significant strain on surface water available and the sustainability of the underground aquifer. Increased efforts to conserve water have been successful up to a point, but it is clear that there is a need to pursue long-term solutions for increased water storage and efficient water distribution.

There are 24 water purveyors in Sacramento County. In addition to the services provided directly by the County of Sacramento, there are three municipal water agencies, eight private water companies, and 12 independent special districts. The main oversight for the municipal water agencies and the independent water districts are their own governance boards and the SAC LAFCo.

In 2000, after the Commission on Local Governance for the 21st Century published a report entitled "Growth Within Bounds," the Legislature responded by passing additional land use reform measures in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Gov. Code Section 56001 et. Seq. Act). This is the current body of law governing LAFCos. The law requires that LAFCo update the "Spheres of Influence" (SOI) for all cities and special districts within the county. Specifically, the law states that "on or before January 1, 2008, and every five years thereafter, the commission shall, as necessary, review and update each sphere of influence." (Gov. Code Section 56425 [g]). An SOI designates an agency's probable future physical boundary and service area. A sphere of influence is often bigger than a local government's or special district's current jurisdiction. Before a commission revises a city's or special district's SOI, an MSR is prepared. In conducting an MSR, LAFCos must review all of the agencies that provide the public service within the study area. Since current law requires LAFCos to revise the SOIs every five years as necessary, it follows that LAFCos should also revise the MSRs every five years.

The MSR was a new component of the LAFCo law after the passage of the act and it was intended to support the SOI process. MSRs are conducted to ensure that special districts do their job in effectively delivering services to the public. Gov. Code Section 56430 states that the MSRs will consider the following factors:

- Infrastructure needs or deficiencies;
- The location and characteristics of any disadvantaged unincorporated communities; within or contiguous to the sphere of influence;
- Growth and population projections for the affected area;
- Financing constraints and opportunities;
- Cost avoidance opportunities;
- Opportunities for rate restructuring;
- Opportunities for shared facilities;
- Government structure options, including advantages and disadvantages of consolidation or reorganization of service providers;

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- Evaluation of management efficiencies; and
- Local accountability and governance.

It is clear from these provisions that the statute requires an analysis of community service needs, operational efficiencies and the effective delivery of services. In addition, Gov. Code Section 56668 requires LAFCos to consider timely availability of water supplies adequate for projected needs as specified in Gov. Code Section 65352.5.

### **Methodology**

During the course of the investigation, the grand jury interviewed senior management personnel from the following organizations:

- Sacramento Local Area Formation Commission (including a commissioner),
- California Association of Local Area Formation Commissions,
- Contra Costa LAFCo,
- Rio Linda/Elverta Water District,
- Citrus Heights Water District,
- Sacramento Suburban Water District,
- San Juan Water District,
- The Water Forum and
- The Regional Water Authority.

In addition, the grand jury reviewed the following documents:

- Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Govt. Code Section 56001 et. Seq.);
- Municipal service reviews for water districts in Sacramento County from 2000-2016;
- Municipal service reviews for water districts in other counties, including Alameda, Contra Costa, Lake, San Mateo, Marin, and Sonoma;
- MSR guidelines published by the Governor's Office of Planning and Research;
- MSR guidelines published by Sacramento LAFCo (2002); and
- Various news articles related to water districts and water issues in Sacramento.

### **Discussion**

**MSRs are not performed in a timely manner.** The act made significant changes to the responsibilities of LAFCos. First, the law requires that SOIs for each special district be reviewed and updated every five years as necessary. Second, the act requires that an MSR be completed on every special district prior to the SOI review. Taken together, these two requirements appear to also mandate that MSRs be prepared every five years for each special district. Sac LAFCo staff has interpreted the law to allow MSRs to be performed only as the local LAFCo deems necessary and there is complete discretion when MSRs are done for special districts within

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Sacramento County. Consistent with this reading of the law, very few MSR's have been completed by the Sac LAFCo. According to information on the Sac LAFCo website, only eight water district MSR's have been completed since the act was passed in 2000. This means that only half of the 16 water purveyors under Sac LAFCo's authority have been reviewed. It should also be noted that the MSR's for other types of districts in the county have not been completed in a timely manner, either. Even allowing for a more flexible interpretation of the five-year requirement, this performance record is woefully inadequate and needs to be addressed.

In fact, Sac LAFCo is not keeping pace with other LAFCos in California. In testimony provided to the Little Hoover Commission by the California Association of Local Agency Formation Commissions (Ca LAFCo) in August of 2016, the executive director of Cal LAFCo stated that "[a] recent poll of LAFCos regarding MSR's found that most LAFCos have conducted at least one, if not two, complete rounds of SOI updates and, as a result, one or two rounds of MSR's." The sample size for the poll included

26 LAFCos diverse in size, budget, staffing and type (urban, suburban and rural). The poll's findings indicate that "among these 26 LAFCos, the number of independent special districts subject to review ranged from nine to 105 ... an MSR had been conducted on 1,058 of them at some point in the last 10 years. This is an average completion rate of 92 percent and does not account for all of the municipal services provided by cities that must also be reviewed." According to its website, Sac LAFCo has completed eight MSR's on water districts in the county since 2001. This represents only 53 percent of the water providers, excluding private water districts. Further, only 27 MSR's have been completed for all 100 special districts in the county.

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An MSR does not need to be done on each individual district. A review can include multiple districts at the same time to gain a more global perspective on a type of service, such as water, or on all services needed within a specific geographical area. In fact, in its 2002 Municipal Service Review Guidelines (Guidelines), Sac LAFCo described the planned process for doing MSR's in Sacramento County as follows:

"There are a number of ways to conduct the MSR process. Individual service providers may be reviewed, or those with shared interest may be grouped together for review (fire, park, water, cemetery, etc.). Municipal service reviews could also be conducted for either (a) a specific geographic area, i.e., north of the American River/ south of the American River, or (b) urban service delivery/ rural service delivery needs. Each approach has merit and should be considered in the formulation of the MSR process." (Guidelines, p.3)

Other counties have taken this broader approach to doing municipal service reviews in an effort to be more efficient and to consider issues that have a broad impact beyond the political boundaries of a specific district. Specifically, the Contra Costa County LAFCo has done its MSR's by type of service (e.g. parks, fire and water). It has completed a first round of MSR's for

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all of the municipalities and special districts within the county and is beginning a second round of MSRs based on priorities set by its commission. This is no minor feat. Contra Costa County has 19 incorporated cities and 78 special districts.

The content of the MSRs that are performed are inadequate. The State Office of Planning and Research (OPR) was required under the act to prepare guidelines for the preparation of MSRs. This task was completed in 2003. Among other things, the guidelines contain detailed

information regarding findings that should be made to bridge the analytical gap between the information gathered and the conclusions and recommendations made.

The guidelines include this statement: “LAFCoS are required to conduct comprehensive reviews of all municipal services provided by agencies with existing or needed SOIs.” (Guidelines, p.2) The guidelines also contain detailed information regarding the suggested content of MSRs. Legislative reports also have concluded that MSRs must include a comprehensive review of special district operations.

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A review of the few MSRs prepared for water districts by Sac LAFCo indicates that they are inadequate. They are not comprehensive, largely contain conclusions only and do not analyze required issues. Basically, they are done in a boilerplate fashion. The six MSRs done for water districts contain much of the same language, regardless of the size of the district or the complexity of its issues. The “analysis” is often limited to a one-line statement such as:

“The Commission determines that the District is capable of continuing to provide water services in the future” or “the Commission determines that the District is managed effectively and efficiently.” There is no reason given for these conclusions, no comparison made to other districts and no back-up documentation to support the findings.

The MSR performed on the Rio Linda/Elverta Community Water District illustrates the poor job being done by Sac LAFCo. During the 2010 – 2012 timeframe, there were several reports regarding failures by the district in providing water service to its customers. Two grand jury reports and several Sacramento Bee articles detailed the glaring problems and the grand jury directed Sac LAFCo to respond. Several state and federal regulatory agencies also identified serious problems with the water quality in the district. On Dec. 1, 2010, Sac LAFCo commission encouraged the district to hire an independent third party to evaluate its management issues and suggested that it enter into voluntary receivership and proceed with reorganization (Sac LAFCo Minutes 12/01/10). However, an MSR on the district was not completed until 2016. Surprisingly, the MSR stated, with no analysis or findings, that the district was managed effectively and efficiently and that the district was providing good service. While this is possibly

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true, the MSR contains nothing to support the conclusions. Given the controversies surrounding the district in 2010 - 2012, the MSR should have provided information and analysis as to how the district turned itself around. Additionally, recent information shows that the Rio Linda/Elverta District continues to have serious operational problems largely due to its dependence on a failing groundwater well system with significant water pollution issues.

There are other examples of where a comprehensive MSR could have identified issues before they became major problems. The Del Paso Manor Water District prepared a 2009 master plan that identified significant infrastructure rebuilding needs. By contrast, LAFCo's 2005 MSR said "the district has no immediate unmet infrastructure needs or existing deficiencies." It seems unlikely that, in a period of four years, the district would go from having no unmet infrastructure needs to significant rebuilding needs. This discrepancy was recently highlighted in a Sacramento Bee article discussing the district's proposal to raise water rates by 350 percent to address these unmet needs.

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Given the totality of the circumstances, and the importance of water quality to the people of this county, the public deserves a better MSR product than what is being delivered by Sac LAFCo. Other county LAFCos are doing a much better job preparing MSRs. For example, the MSRs of Alameda, Contra Costa, Lake, San Mateo, Marin and Sonoma counties are quite extensive with detailed analysis and exhibits. Many make meaningful comparisons between districts, including budgets and rates, as well as providing information on best practices in the industry with regard to water quality, storage and conservation. Staff at Contra Costa LAFCo indicated that the main reason for the high quality of its MSRs is due to the use of professional consultants who have the expertise necessary to fully analyze the important issues related to the type of services being reviewed.

The grand jury concludes that a key to achieving better outcomes with the MSR process is through the use of private consultants. The staff of Sac LAFCo simply doesn't have the expertise or the time to stay on top of all of the technical issues that impact water services, including water safety, delivery infrastructure and conservation. Particularly, the use of experts on MSRs for water districts would be especially helpful given the complexity of the issues facing Sacramento County.

There are other problems with the Sac LAFCo MSR process. Sac LAFCo has developed a questionnaire that is given to districts at the outset of the MSR process. However, this questionnaire is out of date and does not ask for all information required to be analyzed in an MSR. For example, the act requires that an MSR analyze how services are being performed in disadvantaged areas of a special district. While the questionnaire asks for information on these "environmental justice" issues, none of the water district MSRs done by Sac LAFCo has any

analysis of these issues.

Sac LAFCo has no schedule for doing MSR as was recommended by the state Office of Planning and Research in its guidelines. Other county LAFCOs have annual schedules, detailed work plans, and more comprehensive approaches to meeting the statutory requirements, including customized questionnaires and supplemental document requests.

In addition, the Sac LAFCo website is out of date, so the public cannot easily obtain information about the many issues faced by water districts in the county. This lack of attentiveness to planning, scheduling and reporting shows a general lack of concern and a pattern of complacency.

**Sac LAFCo fails to look at important regional water issues.** Water services are one of the most important municipal services. This fact is particularly true in light of the state's recent lengthy drought. In Sacramento County, there are 24 separate entities providing essentially the same water service. Many of these entities are special districts, but others are municipal water agencies or county service areas and some are private water companies. Given these numbers, serious questions arise as to whether consolidation or reorganization of water services would bring better efficiency.

The grand jury recognizes that consolidation and reorganization efforts can be challenging to accomplish. Short of these options, there are many other opportunities for better service.

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***The grand jury believes that Sac LAFCo, through its MSR process, could help facilitate regional water solutions and sensible integration of water services.***

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Sensible integration of water services along geographical areas is one. In Sacramento, there are several examples of regional cooperation. There is a Sacramento Water Forum and Regional Water Authority to address such regional issues as sharing water supplies and integrating groundwater and surface water sources.

However, these efforts rely on the cooperation of the various individual entities and none has the regulatory authority that LAFCo has to initiate and/or encourage significant change.

The grand jury believes that Sac LAFCo, through its MSR process, could help facilitate regional water solutions and sensible integration of water services. The act allows MSR to be performed on a regional or geographic basis. Yet Sac LAFCo continues to do MSR only on individual special districts, including water.

As an alternative, two regional MSR could be performed for water districts, one in the north area of the county and one for the south. Such regional water MSR could help facilitate regional water solutions. Regional MSR could also look at private water companies and county service areas. Sac LAFCo staff believes that they have no jurisdiction over such entities, but the act clearly provides otherwise.

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**FY 2016-17 Summary Budget Comparison – Contra Costa & Sacramento LAFCoS**

Budget Category	Contra Costa LAFCo	SAC LAFCo
Salaries & Benefits (3 Permanent Staff)	\$403,257	\$544,500
Commission Stipends & Reimbursement	\$30,000	\$9,000
General Operating Expenses:		
• Accounting/Auditing Fees	\$20,900	\$9,500
• Legal Fees	\$40,000	\$60,000
• <b>MSRs</b>	<b>\$117,950</b>	
• <b>Other Professional Services</b>		<b>35,000</b>
Other Services, Supplies and Operating Expenses	\$161,626	\$359,100
Contingencies and Trusts	\$120,000	\$15,220
<b>Total Appropriations</b>	<b>\$893,733</b>	<b>\$1,032,320</b>

LAFCo’s Budget. Sac LAFCo has a budget of over \$1 million. Yet it performs few MSRs and those that are done are inadequate. The grand jury looked at other county LAFCos similar in size to Sacramento with comparable budgets. Many of these LAFCos are able to conduct MSRs with detailed content through the use of expert consultants. As mentioned earlier, Contra Costa LAFCo has completed all of its MSR reviews with a permanent staff of three and a budget that is smaller than Sac LAFCo. However, its budget has a line item of \$117,950 for MSRs which is dedicated to funding technical consultants to complete the reviews.

In contrast, Sac LAFCo has a much smaller budget for “Other Professional Services” which may include funding to hire consultants, but the grand jury was advised by Sac LAFCo staff that consultants were “generally not used” to perform MSRs because the reviews were done “in house.” There was also somewhat of a sense of pride on the part of the commission that the staff was doing well because it was under budget for the current fiscal year.

The grand jury is concerned that being under budget is not necessarily related to doing a good job. It would be a far better outcome to use the full budget and hire professionals with the expertise to meet the statutory mandate and fulfill the mission of the organization. A performance audit of Sac LAFCo’s budget and operations could help to identify how the budget could be modified to increase funding for consultants in order to correct the MSR deficiencies identified. An audit could also examine:

- Ways to increase the number of MSRs done in Sacramento County,
- Methods for obtaining information from special districts in a timely manner,
- Techniques for engaging districts in meaningful discussion of improving operations and
- Standards to improve the analytical review of the questionnaires and other data provided by the districts.

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**Relationship of Commission to Staff.** Final action on Sac LAFCo business is the responsibility of a part-time commission composed of seven members, all of whom are appointed and serve staggered four- year terms. Two represent the county, two represent the cities within the county, two represent the special districts and one is appointed to represent the public at large. There are also several alternates. The Sac LAFCo Commission meets monthly or bi-monthly and approves most documents and actions taken by the staff as part of a consent agenda without much review or discussion. There is also minimal governance exercised by the commission in terms of creating an annual plan or performance objectives for the staff to follow in setting workload priorities for the year.

The grand jury concludes that the Sac LAFCo Commission needs to take a stronger position in providing direction to its staff. Specifically, it needs to adopt an annual plan to ensure the timely preparation of MSRs and other critical deliverables required by law. Further, the commission needs to assess the agency's performance each year with regard to achieving the specific workload goals that have been developed.

### Findings

- F1. Sac LAFCo does not perform MSRs in a timely manner.
- F2. The questionnaire used by Sac LAFCo is out of date and incomplete.
- F3. The content of MSRs is inadequate, failing to include analysis and findings to support conclusions and consideration of regional issues.
- F4. MSRs do not contain required analysis of environmental justice issues.
- F5. Sac LAFCo does not retain experts to help perform MSRs, particularly in the water area.
- F6. Sac LAFCo fails to use its authority to look at county and private water entities and provide recommendations regarding sensible integration of water supply and water quality solutions on a regional basis.
- F7. Sac LAFCo's budget does not support the best use of resources to accomplish its mandatory requirement to complete quality MSRs in a timely manner.
- F8. The LAFCo Commission does not adopt an annual plan or provide adequate direction to its staff, nor does it conduct annual reviews of staff performance.

### Recommendations

- R1. MSRs should be completed for all special districts every five years.
- R2. The questionnaire sent to special districts at the start of the MSR process must be updated to address all of the current requirements in the law, as well as specific issues that are important to this region and problems that have been identified in prior reviews.
- R3. The content of MSRs should be improved to provide for more independent analysis of all of the issues facing Sacramento County with regard to water quality, infrastructure maintenance, conservation, storage and delivery.
- R4. MSRs must analyze required information on environmental justice issues.
- R5. Sac LAFCo should hire experts to assist in the preparation of MSRs.

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- R6. Sac LAFCo's process for conducting MSR's on water districts should be conducted on a regional or geographic basis, including county service areas and private water companies so that appropriate analysis of consolidation, reorganization possibilities and sensible integration efforts are seriously evaluated.
- R7. A performance audit of Sac LAFCo's MSR program should be conducted to assist the staff to identify ways to meet statutory requirements and achieve better outcomes within existing resources.
- R8. The Sac LAFCo Commission should adopt an annual plan, provide better direction to its staff and require that an annual performance review be conducted for each staff member.

### **Request for Responses**

Penal Code sections 933 and 933.05 require that the following officials submit specific response to the findings and recommendations in this report to the Presiding Judge of the Sacramento Superior Court by Sept. 30, 2017.

#### **Sacramento LAFCo**

All Findings and Recommendations

#### **Mail or hand-deliver a hard copy of the response to:**

Kevin R. Culhane, Presiding Judge  
Sacramento County Superior Court  
720 9th Street, Department 47  
Sacramento, CA 95814

#### **In addition, email the response to:**

Becky Castaneda, Grand Jury Coordinator at [castanb@saccourt.com](mailto:castanb@saccourt.com)