

YOLO
LOCAL
AGENCY
FORMATION
COMMISSION



August 22, 2019

COMMISSION
CHAIR
OLIN WOODS
Public Member

VICE CHAIR
DON SAYLOR
Supervisor – 2nd District

WILL ARNOLD
Councilmember
City of Davis

GARY SANDY
Supervisor – 3rd District

TOM STALLARD
Councilmember
City of Woodland

ALTERNATES
RICHARD DELIBERTY
Public Member

JIM PROVENZA
Supervisor – 4th District

BABS SANDEEN
Councilmember
City of West Sacramento

STAFF
CHRISTINE M. CRAWFORD, AICP
Executive Officer

TERRI TUCK
Clerk to the Commission

MARK KRUMMENACKER
Financial Analyst

COUNSEL
ERIC MAY

625 Court Street, Suite 107
Woodland CA 95695

(530) 666-8048
lafco@yolocounty.org

www.yololafco.org

To: Honorable Judge David W. Reed
Superior Court of California, County of Yolo
1000 Main Street
Woodland, CA 95695

To: Yolo County Grand Jury
P.O. Box 2142
Woodland, CA 95776
via e-mail: grand.jury@yolocounty.org

From: Yolo LAFCo

RE: 2018-2019 Yolo County Grand Jury Report: Flood Management in the Urban Environment – Yolo LAFCo and the Role of Reclamation Districts 537 and 900 within the City of West Sacramento

Honorable Judge Reed:

The following is the response from the Yolo Local Agency Formation Commission (“LAFCo”) to the findings and recommendations in the 2018-2019 Yolo County Grand Jury Report titled, “Flood Management in the Urban Environment – Yolo LAFCo and the Role of Reclamation Districts 537 and 900 within the City of West Sacramento”.

GRAND JURY FINDINGS (F)

F3. Over the last four years, RD 537 and 900, City, and YLAFCo failed to effectively collaborate and communicate.

Response: We disagree wholly with this finding as it pertains to LAFCo.

While LAFCo will not comment on the communication and collaboration between the reclamation districts (RDs) and the City, the assertion that LAFCo did not fully communicate and collaborate with the other agencies is wholly unsupported. LAFCo has been involved in flood control governance issues for over 10 years, and LAFCo staff have never rejected a meeting from any agency. Indeed, the 2018-2019 Yolo County Grand Jury Report provides no instances during which LAFCo was not proactive and involved in communicating and collaborating with the RDs and the City. LAFCo can provide multiple examples of joint written communication throughout the process and have not declined any meeting request or failed to readily return phone calls. In addition, there are no known instances where Commissioners did not respond to phone calls or meeting requests with representatives of the RDs or the City.

F5. YLAFCo removed the recommendation that allows for the more common option of reclamation district consolidation from the Final MSR/SOI for RD 537 and 900 for unknown reasons.

Response: We disagree wholly with this finding.

The Report expresses confusion about the modification from the December 7, 2017, Draft Municipal Services Review (MSR), which provided two options for reorganizing the RDs' structure, to the February 22, 2018 Final MSR, which recommended the subsidiary district option¹. Although the Grand Jury and the RDs may disagree with the Commission's recommendation, it is no secret and readily known how and why that recommendation was made: (1) at a public meeting on December 7, 2017, the Commission reviewed the Draft MSR that had two options and decided that the final report should make a specific recommendation; and (2) at subsequent public hearing on February 22, 2018, after much deliberation the Commission adopted the final MSR containing one recommendation. The Grand Jury Report's language suggests this decision was made inappropriately and not transparent, which is clearly not the case.

The publicly-available audio recordings of LAFCo's December 7, 2017, and February 22, 2018, public meetings were provided to the Grand Jury. These meetings, attended by all the subject agencies, clearly demonstrate how and why the Commission decided to recommend one option in its final MSR. As the Commission considered the two governance options in the Draft MSR on December 7, 2017, several commissioners voiced their opinion that the Final MSR should identify a specific recommendation, and by failing to do so, LAFCo would be doing the public a disservice and "punting on the issue". The Commission directed staff to bring back additional information and analysis to inform a potential choice at its next meeting.

The February 22, 2018, staff report on the matter summarized these events as well and were also readily available to the Grand Jury on the LAFCo website. Staff provided additional analysis and presented an MSR that recommended that RD 900 and RD 537 become subsidiary districts to the City, in accordance with the Commission's expressed direction to ultimately recommend one option. At the February 22, 2018, Public Hearing, the Commission discussed the options at length, clearly stating its reasoning, and voted to approve the Final MSR by a 5-0 vote. Again, it is no secret and readily known how and why that decision was made.

F9. YLAFCo did not fully examine the potential cost savings or issue of liability before recommending in the Final MSR/SOI the singular option of the reclamation districts becoming subsidiaries of the City.

Response: We disagree wholly with this finding, and believe it misses the point.

While LAFCo is definitely concerned about the issue of cost, its main focus in matters such as this where public safety is involved is determining which entity will provide the most

¹ See Grand Jury Report p. 1 (stating it is "impossible to determine why the consolidation option that was in the 2017 Draft report was removed before the 2018 Final report was published"); *id.* p. 11 ("[I]t cannot be determined who made this change or why it was changed."); *id.* p. 13 ("[T]he Grand Jury [is] unclear of how YLAFCo selected one option over the other."); Finding 5 ("LAFCo removed the recommendation that allows for the more common option of reclamation district consolidation from the Final MSR/SOI for RD 537 and 900 for unknown reasons.").

effective delivery of services over the long term. The Commission requested additional information regarding cost and liability, however its recommendation on governance did not hinge on these factors. A full analysis of potential cost savings or liability is not required per Government Code Section 56430, which states:

56430(a) "The Commission shall prepare a written statement of its determinations with respect to each of the following:

- (1) Growth and population projections for the affected area.*
- (2) The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence.*
- (3) Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence.*
- (4) Financial ability of agencies to provide services.*
- (5) Status of, and opportunities for, shared facilities.*
- (6) Accountability for community service needs, including governmental structure and operational efficiencies.*
- (7) Any other matter related to effective or efficient service delivery, as required by commission policy."*

56430(b) "The commission may assess various alternatives for improving efficiency and affordability of infrastructure and service delivery within and contiguous to the sphere of influence, including, but not limited to, the consolidation of governmental agencies."

While costs savings or the issue of liability are relevant considerations, LAFCo deemed the information provided to be sufficient for the purposes of making a recommendation on governance for the municipal service review. Cost issues were further evaluated in the July 25, 2019 staff report on the competing proposals subsequent to issuance of the Grand Jury Report.

F10. YLAFCo has no internal procedure to trigger an independent, third-party examination into topics such as costs resulting from a governance change when the proposals are clearly contentious or unique. In addition, there is no mechanism to pay for such an examination.

Response: We disagree wholly with this finding.

LAFCo's fee schedule provides a mechanism to pay for such an examination as follows, "Any additional expenses incurred by the Commission, in excess of the deposited amount, will be billed to and paid by the applicant before completion of the LAFCo proceedings, including final recordation and filings." This includes any additional studies or analysis deemed necessary by LAFCo. A formal procedure is not required for third-party examination to occur. The Commission saw no need in this case to request a third party examination.

F11. Creating a governance change for a landowner district is fully within the authority of YLAFCo. However, YLAFCo knew its MSR decision came with "potentially significant ramifications," yet did so in contrast to its mission statement and stated best

practices. YLAFCo did not create the appearance of exercising due diligence in meeting its responsibilities to the community.

Response: We disagree wholly with this finding.

Please see the response to Finding F5. The Grand Jury Report confuses the difference between an MSR recommendation versus a change of organization decision. LAFCo's MSR action was a recommendation, not a decision. A full examination of cost and liability was provided as part of the actual reclamation district reorganization proposal decision process, which was considered at a LAFCo public hearing on July 25, 2019 (i.e. the hearing that actually approved the reorganization as opposed to merely a recommendation), subsequent to the issuance of the Report on June 28, 2019. The Grand Jury Report made this finding without the benefit of the exhaustive analysis and due diligence provided in the 200-page staff report and attachments found on LAFCo's website [here](#).

F12. YLAFCo took much longer than the five years mandated by LAFCo law to publish an MSR/SOI for Yolo County reclamation districts (13 years) and the City (eight years). This allowed mistrust and disagreements to fester.

Response: We disagree partially with this finding.

While it is factually accurate that LAFCo took longer than five years to publish its MSR, LAFCo MSRs are not written in a vacuum and it was determined by the Commission during its Annual Work Plan items each year it was valuable to delay the MSR so the Yolo County Flood Governance Study could be completed by the UC Davis Collaboration Center first because it would critically inform LAFCo's MSR. The UC Davis study was completed in 2014, and reviewed and adopted by the Department of Water Resources in 2015. LAFCo appropriately began its MSR/SOI process in FY 2015/16. In addition, there is no evidence to support the conclusion that the timing of the MSR has had any effect on mistrust and disagreements. The law affords LAFCo the flexibility to perform the reviews on such a schedule. See Gov. Code § 56425(g) (“[E]very five years thereafter, the commission shall, **as necessary**, review and update each sphere of influence.”) (emphasis added). Since this statement appears to be an opinion and speculation, the language of the Grand Jury Report should have been modified accordingly.

GRAND JURY RECOMMENDATIONS (R)

R3. By February 1, 2022, YLAFCo should revisit and publish the MSR/SOI for RD 537 and 900 earlier than scheduled to ensure whatever final decision in governance is made, the result is not detrimental to the functioning of flood protection.

Response: This recommendation requires further analysis.

The earliest possible date the RD 537 and RD 900 boundary changes will take effect is July 1, 2020. Currently, LAFCo has the MSR for the reclamation districts scheduled for fiscal year 2023/24. Therefore, the current schedule would provide for an MSR three years after the boundary changes would occur. LAFCo reviews this schedule every year at a minimum or anytime as needed and can assess if an earlier review is warranted.

R5. By January 1, 2020, YLAFCo should create an internal procedure/policy to conduct an independent, third-party examination when confronted by an extremely impactful

or unique issue on topics such as costs and liability, before any final recommendation is made by the YLAFCo Commission. Reliance on opinions paid for by affected parties should only be one basis for consideration. This new procedure/policy ensures due diligence, best practices, and is in the public's best interest.

Response: This recommendation has been implemented by LAFCo.

Notwithstanding the response to Finding F9, at its August 22, 2019 meeting LAFCo adopted a new Yolo LAFCo Project Policy 6.13 as follows:

6.13 Independent Third-Party Analysis

One of LAFCo's purposes is to make studies and to obtain and furnish information which will contribute to the logical and reasonable development of local agencies in each county and to shape the development of local agencies so as to advantageously provide for the present and future needs of each county and its communities. During the preparation of an MSR and/or SOI, LAFCo may consider obtaining any needed analysis or studies by soliciting or hiring consulting services.

- R6. By January 1, 2020, YLAFCo should ensure a mechanism exists, if legally feasible, for funding independent, third-party examinations when considering impactful or unique proposals (such as billing the affected or impacted parties).**

Response: This recommendation will not be implemented because it already exists.

LAFCo's fee schedule already provides a mechanism to pay for such an examination as follows, "Any additional expenses incurred by the Commission, in excess of the deposited amount, will be billed to and paid by the applicant before completion of the LAFCo proceedings, including final recordation and filings." This includes any additional studies or analysis deemed necessary by LAFCo.

- R7. By January 1, 2020, the Board of Supervisors should lead the creation of a multiagency and stakeholder flood committee or working group to facilitate collaboration among all Yolo County communities on all flood topics, plan for global warming flood changes, and present these discussions to the citizens. Since two Yolo County Supervisors are YLAFCo commissioners, those supervisors should present the formation of this committee to the full board.**

Response: The recommendation requires further analysis by Yolo County.

This year, Yolo County reinitiated FloodSAFE Yolo 2.0, a coordinated comprehensive flood management planning effort for the west side of the county. One of the goals is to establish a sustainable governance structure. Once that is established, it may offer an opportunity for greater coordination, but for now, it is the desire of the parties involved to start with a smaller area and demonstrate success before expanding. Should, however, the cities express interest in a countywide approach in the near term, LAFCo's understanding is the County stands ready to participate. Meanwhile, many agencies and stakeholders in Yolo County, including the County, participate in the following flood coordination groups:

- Westside Sacramento Integrated Regional Water Management (Lake, Solano, Napa and Yolo counties with Yolo County chairing the effort)
- Lower-Sacramento/Delta North Regional Flood Management Planning Group (Yolo and Solano counties, Reclamation District 2068/2098, WSAFCA, SAFCA, Solano County Water Agency)
- Central Valley Flood Control Association (50+ reclamation districts, 6 counties and 4 flood control agencies; Yolo County holds a seat on the Board)
- Central Valley Ag Floodplain Task Force Executive Committee
- Water Resources Association of Yolo County (County, all cities within Yolo County and Yocha Dehe Wintun Nation)