

**MODOC LAFCO**  
**HEARING DRAFT**  
**HOT SPRING VALLEY WATER DISTRICT**  
**MUNICIPAL SERVICE REVIEW**

**Adopted**  
**August 21, 2012**  
**Resolution 2012-0008**

Big Sage Reservoir



<http://www.eugenecarsey.com/camp/modoc/bigsage01.jpg>

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**Big Sage Reservoir**



<http://www.eugenecarsey.com/camp/modoc/bigsage02dam01.jpg>

## **INTRODUCTION**

### **1 INTRODUCTION**

#### **1.1 LAFCO's Responsibilities**

LAFCOs in California are independent agencies created by the California Legislature in 1963 to encourage the orderly formation of local governmental agencies and to conserve and preserve natural resources.

Statewide there are 58 LAFCOs working with nearly 3,500 governmental agencies (400+ cities, and 3,000+ special districts). Agency boundaries are often unrelated to one another and sometimes overlap at random, often leading to higher service costs to the taxpayer and general confusion regarding service area boundaries. LAFCO decisions strive to balance the competing needs in California for efficient services, affordable housing, economic opportunity, and conservation of natural resources.

LAFCOs are responsible for coordinating logical and timely changes in local governmental boundaries, conducting special studies that review ways to reorganize, simplify, and streamline governmental structure, preparing a review of services called a Municipal Service Review and preparing a Sphere of Influence thereby determining the future "probable" boundary for each city and special district within each county. The Commission's efforts are directed toward seeing that services are provided legally, efficiently and economically while agricultural and open-space lands are protected.

LAFCOs do not have enforcement authority nor do they have the authority to initiate a city or district annexation or detachment proceeding. LAFCOs may initiate consolidation or dissolution proceedings; however, these proceedings are subject to the voter approval or denial. The Legislature has given LAFCOs the authority to modify any proposal before it to ensure the protection of agricultural and open space resources, discourage urban sprawl and promote orderly boundaries and the provision of adequate services.

#### **1.2 Municipal Service Review Requirements**

The Cortese-Knox-Hertzberg Act as amended by AB1744 and regulations call for a review of the municipal services provided in the county or other appropriate area designated by the LAFCO. The LAFCO is required to prepare a written statement of its determinations with respect to each of the following:

1. *Growth and Population*
2. *Capacity and Infrastructure*
3. *Financial Ability*
4. *Shared Facilities*
5. *Government Structure and Accountability*

### **1.3 Preparation of the MSR**

Research for this Municipal Service Review (MSR) was conducted during 2011 and 2012. This MSR is intended to support preparation and update of the Sphere of Influence, in accordance with the provisions of the Cortese-Knox-Hertzberg Act. The objective of this Municipal Service Review (MSR) is to develop recommendations that will achieve the following:

- Promote more efficient and higher quality public service patterns.
- Identify areas for public service improvements.
- Assess the adequacy of service provision as it relates to determination of appropriate sphere of influence boundaries.

While LAFCO prepared the MSR document, LAFCO did not engage the services of experts in engineering, irrigation, accounting or other specialists in related fields, but relied upon published reports and the Hot Valley Springs Water District staff for information.

Therefore, this MSR reflects LAFCO's recommendations, based on available information during the research period and provided by Hot Valley Springs Water District Board members, residents, and staff to assist in its determinations related to promoting more efficient and higher quality service patterns; identifying areas for service improvement; and assessing the adequacy of service provision for the Hot Valley Springs Water District.

This MSR includes relevant information from the various reports. Since the reports were prepared at different times there may be occasional differences in data.

### **1.4 Description of Public Participation Process**

Modoc LAFCO proceedings are subject to the provisions of California's open meeting law, the Ralph M. Brown Act (Government Code Sections 54950 et seq.) The Brown Act requires advance posting of meeting agendas and contains various other provisions designed to ensure that the public has adequate access to information regarding the proceedings of public boards and commissions. Modoc LAFCO complies with the requirements of the Brown Act.

The State MSR Guidelines provide that all LAFCOs should encourage and provide multiple public participation opportunities in the municipal service review process. MSR policies have been adopted by the Modoc LAFCO. Modoc LAFCO has discussed and considered the MSR process in open session, and has adopted a schedule for completing the various municipal service reviews and sphere of influence updates for Modoc County. Each Municipal Service Review will be prepared as a Draft, and will be subject to public and agency comment prior to final consideration by the Modoc LAFCO. Additional information on local government issues is found in Appendix A at the end of this report.

## **1.5 California Environmental Quality Act (CEQA)**

The Municipal Service Review is a planning study that will be considered by Modoc LAFCO in connection with subsequent proceedings regarding the Hot Valley Springs Water District and the Sphere of Influence. The Sphere of Influence review or update that will follow has not been approved or adopted by LAFCO.

This MSR is funded in the Modoc LAFCO's 2011-2012 Budget. This MSR includes an analysis, to the extent required by Section 15262 of the CEQA Guidelines, of the environmental factors that may be affected by the Municipal Service Review process, but will not include the preparation of an environmental review document.

### **Big Sage Reservoir**



<http://www.eugenecarsey.com/camp/modoc/big sage.htm>

## **2 SETTING**

### **2.1 Alturas Groundwater Basin**

The following information on the Alturas Groundwater Basin, South Fork Pit River Subbasin<sup>1</sup> (Groundwater Basin Number: 5-2.01) located in Lassen and Modoc counties will be presented as the setting for the Hot Springs Valley Water District. The South Fork Pit River Subbasin has a Surface Area of 114,000 acres (178 square miles).

#### ***Basin Boundaries and Hydrology***

*The South Fork Pit River Groundwater Subbasin is bounded on the east by Plio-Pleistocene basalt and Pleistocene Pyroclastic rocks of the Warner Mountains, to the north by Pleistocene basalt of Devils Garden, to the south by Plio-Pleistocene basalt, and to the west by Warm Springs tuff (Gay 1968).*

*The South Fork Pit River enters the basin near the community of Likely and flows north through the South Fork Pit River Valley to its confluence with the North Fork Pit at the town of Alturas. Annual precipitation ranges from 13- to 19-inches.*

#### **Hydrogeologic Information**

##### **Water-Bearing Formations**

*The principal water-bearing formations are Holocene sedimentary deposits (which include alluvial fan deposits, intermediate alluvium, and basin deposits), Pleistocene lava flows and near-shore deposits, and Plio-Pleistocene Alturas Formation and basalts. The following summary of water-bearing formations is from DWR (1963).*

##### **Holocene Sedimentary Deposits**

*The Holocene sedimentary deposits include alluvial fan deposits, intermediate alluvium, and basin deposits – each up to a thickness of 75 feet. Alluvial fan deposits consist of unconsolidated to poorly consolidated, crudely stratified silt, sand and gravel with lenses of clay. These deposits generally have high permeability and are capable of yielding large amounts of water to wells. This unit may include confined as well as unconfined water.*

*Intermediate alluvium consists of unconsolidated poorly sorted silt and sand with some lenses of gravel. These deposits have moderate permeability and yield moderate amounts of water to shallow wells. Basin deposits consist of unconsolidated, interstratified clay, silt and fine sand. These deposits have moderate to low permeability and yield small amounts of water to wells.*

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<sup>1</sup>State of California, Department of Water Resources, California's Groundwater Bulletin 118 Last update 2/27/04, Sacramento River Hydrologic Region, Alturas Groundwater Basin  
[http://www.water.ca.gov/pubs/groundwater/bulletin\\_118/basindescriptions/5-2.01.pdf](http://www.water.ca.gov/pubs/groundwater/bulletin_118/basindescriptions/5-2.01.pdf), August 29, 2011

### **Pleistocene Near-Shore Deposits**

*The Pleistocene near-shore deposits consist of slightly consolidated to cemented, poorly to well stratified pebble and cobble gravel with lenses of sand and silt to a thickness of 200 feet. The most extensive near-shore deposits occur in the northeast corner of the basin where the North Fork Pit River enters the valley. Other minor areas of these deposits occur but are not considered significant as water-bearing areas.*

*These deposits have moderate permeability and may yield fair to moderate amounts of unconfined and confined water to wells.*

### **Pleistocene and Plio-Pleistocene Volcanic Rocks**

*The Pleistocene volcanic rocks consist of lava flows of layered, jointed basalt ranging in thickness from 50- to 250-feet. These basalt flows serve as recharge zones where exposed in the uplands surrounding the basin. Within the basin, where saturated, scoriaceous zones and joints in the basaltic flows can yield moderate amounts of water to wells. These flows occur interbedded with the upper member of the Alturas Formation in the valley areas.*

### **Plio-Pleistocene Alturas Formation**

*The Plio-Pleistocene Alturas Formation consists of moderately consolidated, flat-lying beds of tuff, ashy sandstone and diatomite, and is widespread both at the surface and at depth.*

*The upper and lower sedimentary members of the formation are each about 400 feet thick, and are separated by a basalt member and the Warm Springs tuff. The sediments of the Alturas Formation are the principal water-yielding materials in the South Fork Pit River subbasin. These sediments have a moderate to high permeability and, where saturated, can yield large amounts of groundwater to wells. The formation contains both confined and unconfined groundwater.*

### **Restrictive Structures**

*Exposures of Warm Springs tuff in Sections 10 and 15, Township 42 North, Range 11 East, act as a partial barrier to the westward movement of groundwater from South Fork Pit River Valley to Warm Springs Valley (DWR 1963).*

### **Groundwater Level Trends**

*Water levels generally declined up to 10 feet in the northern part of the basin during the period from the early 1980's through the early 1990's and have recovered to former levels through 1999.*

### **Groundwater Storage**

#### **Groundwater Storage Capacity**

*The groundwater storage capacity to a depth of 800 feet is estimated to be approximately 7,500,000 acre feet for the entire Alturas Groundwater*

Basin (including the South Fork Pit River Subbasin and the Warm Springs Valley Subbasin) (DWR 1963).

**Groundwater Budget (Type B)**

Estimates of groundwater extraction are based on surveys conducted by the California Department of Water Resources during 1997. Surveys included land use and sources of water. Estimates of groundwater extraction for agricultural and municipal/industrial uses are 13,000, and 260, acre-feet respectively. Deep percolation of applied water is estimated to be 9,600 acre-feet.

**Groundwater Quality**

**Characterization**

Sodium bicarbonate and sodium-calcium bicarbonate type waters are the predominant water types in the basin. The concentration of total dissolved solids ranges between 180- to 800-mg/L, averaging 357 mg/L (DWR unpublished data).

**Impairments**

Some wells in the Alturas Groundwater Basin have high concentrations of total dissolved solids, nitrate, iron, or boron (DWR 1963).

**Well Characteristics**

**Well yields (gal/min)**

Irrigation      Range: 55 – 5000      Average: 1075 (82 Well Completion Reports)

**Total depths (ft)**

Domestic      Range: 34 – 750      Average: 218 (356 Well Completion Reports)

Irrigation      Range: 90 – 1029      Average: 493 (82 Well Completion Reports)

**Active Monitoring Data**

<b>Agency</b>	<b>Parameter</b>	<b>Number of wells /measurement frequency</b>
DWR	Groundwater levels	8 wells semi-annually
DWR	Miscellaneous Water Quality	8 wells biennially (including both Subbasins 5-2.01 and 5-2.02)
Department of Health Services	Miscellaneous Water Quality	8

## **Basin Management**

**Groundwater management:** Modoc County adopted a Groundwater Management Ordinance in 2000.

### **Water agencies**

#### **Public**

City of Alturas, California Pines Community Service District, Hot Springs Valley Irrigation District.

#### **Private**

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## 2.2 Modoc County Agriculture

The value of all agricultural products produced in Modoc County for 2008 (the most recent report available) was \$108,879,894. This represents an overall increase of approximately 10% from the previous year due to an increase in field crop revenue. The value of field crops in Modoc County in 2008 is shown in the table below.<sup>2</sup>

<b>Field Crops in Modoc County 2008<sup>3</sup></b>					
<b>Crop</b>	<b>Acres</b>	<b>Production Per Acre</b>	<b>Total Production</b>	<b>Price Per Unit</b>	<b>Total Value</b>
Barley	2255	2.75	6,201 Tons	\$300	\$1,860,375
Wheat	8330	3.25	27,072 Tons	\$225	\$6,091,313
Oats	70	2.25	157 Tons	\$175	\$27,563
Peas	153	1.55	230 Tons	\$500	\$114,750
Alfalfa	34,400	5.30	182,320 Tons	\$200	\$36,464,000
Grain Hay	10,050	3.00	30,150 Tons	\$150	\$4,522,500
Meadow Hay	20,000	1.75	35,000 Tons	\$110	\$3,850,000
Pasture (Irrigated)	50,000		250,000 *AUM	\$22	\$5,500,000
Pasture (Dryland)	320,000		336,000 *AUM	\$12	\$4,032,000
<b>TOTAL</b>					<b>\$62,462,500</b>

\*Animal Unit Months, an AUM is equal to 31 days x 26 pounds per day or about 800 pounds of air-dried forage.<sup>4</sup>

<sup>2</sup> Modoc County Department of Agriculture, 2008 Crop Report, Joseph A. Moreo Agricultural Commissioner, 202 West Fourth Street, Phone 530-233-6401, Fax 530-233-5542, July 1, 2009, Page 1.

<sup>3</sup> Modoc County Department of Agriculture, 2008 Crop Report, Joseph A. Moreo Agricultural Commissioner, 202 West Fourth Street, Phone 530-233-6401, Fax 530-233-5542, July 1, 2009, Page 2.

<sup>4</sup> <http://ag.arizona.edu/arec/pubs/rmg/1%20rangelandmanagement/1%20aum93.pdf>, January 12, 2012.

### **3 HOT SPRINGS VALLEY WATER DISTRICT**

#### **3.1 Background**

##### **3.1.1 History**

The Hot Springs Valley Irrigation District was started in 1919 under the Wright Irrigation Act.<sup>5</sup> In 1921 the District completed the construction of the dam which formed Big Sage Reservoir with a capacity of 77,000 acre feet. Water from Big Sage Reservoir provides a supplemental supply of water for lands within the District which were being served from the natural flow of the Pit River.<sup>6</sup> In 1923, the District received Permit 1768 from the State Water Rights Board authorizing the District to appropriate 50,000 acre-feet per annum from the Big Sage Drainage Area, tributary to Rattlesnake Creek for irrigation purposes.<sup>7</sup> Below Big Sage Dam, Rattlesnake Creek flows southeast 6 miles, then turns and flows southwest 3.5 miles and discharges into the Pit River. Below the mouth of Rattlesnake Creek, Pit River meanders southwest 25 miles through the Hot Springs Valley Irrigation District.<sup>8</sup>

In 2010, the name was changed to the Hot Springs Valley Water District.

##### **3.1.2 Grand Jury Report 2003-2004**

The Modoc County Grand Jury noted the following problems for the Hot Springs Valley Irrigation District in June 2004:

###### ***Hot Springs Valley Irrigation District (HSVID)***

###### **Issues:**

*The Grand Jury reviewed the legally required response from HSVID to the FY 2002-03 Grand Jury recommendations.*

- *Elections procedures are being followed satisfactorily.*
- *Conflict of dual elective office issues has been resolved by the resignation of the involved board member.*
- *The State Water Resources Control Board Cease-and-Desist Orders are covering District and downstream water rights issues.*

###### **Procedures:**

*Since satisfactory answers for the following questions were not received in response to the FY 2002-03 Grand Jury Report, the FY 2003-04 Grand Jury submitted the following questions:*

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<sup>5</sup> Hot Springs Valley Irrigation District, Financial Statements Modified Cash Basis and Independent Auditor's Report, Prepared by Carlos E. Soler, 910 Florin Road Suite 200, Sacramento California 95831, Phone 916-424-6233, [www.colercpa.com](http://www.colercpa.com), June 30, 2008, Page 5.

<sup>6</sup> STATE OF CALIFORNIA STATE WATER RIGHTS BOARD, DECISION APPROVING APPLICATION 20904 IN PART AND GRANTING PETITIONS TO CHANGE PLACE OF USE AND TO EXTEND TIME FOR BENEFICIAL USE OF WATER UNDER PERMIT 1768 (APPLICATION 3353), Page 4, December 22, 1964.

<sup>7</sup> STATE OF CALIFORNIA STATE WATER RIGHTS BOARD, DECISION APPROVING APPLICATION 20904 IN PART AND GRANTING PETITIONS TO CHANGE PLACE OF USE AND TO EXTEND TIME FOR BENEFICIAL USE OF WATER UNDER PERMIT 1768 (APPLICATION 3353), Page 2, December 22, 1964.

<sup>8</sup> STATE OF CALIFORNIA STATE WATER RIGHTS BOARD, DECISION APPROVING APPLICATION 20904 IN PART AND GRANTING PETITIONS TO CHANGE PLACE OF USE AND TO EXTEND TIME FOR BENEFICIAL USE OF WATER UNDER PERMIT 1768 (APPLICATION 3353), Page 4, December 22, 1964.

- *Has the recommended and required audit been completed?*
- *Requested HSVID provide Code support to its contention Board members are not required to file Form 700.*

*In addition, the Grand Jury requested HSVID furnish copies of recent Cease-and-Desist orders from the State Water Resources Control Board. The Grand Jury also informed HSVID that the special district is subject to conflict of interest code requirements according to the Fair Political Practices Commission (FPPC).*

**Findings:**

- *HSVID acknowledges its responsibility for but has not yet attained the required audit.*
- *Forms 700 for each current HSVID Board member have been completed and filed with the County Clerk.*
- *HSVID acknowledges its responsibility for having a conflict of interest code, and for meeting State requirements in this regard. As of this writing, the code has not been filed with the County.*

**Recommendations:**

*The FY 2004-05 Grand Jury should follow this issue to assure that the findings listed above are fulfilled and that HSVID has filed a copy of their annual audit with the CA State Controller and the Modoc County Auditor.<sup>9</sup>*

### **3.1.3 Newspaper Story**

The following story about the Hot Valley Springs Water District was prepared by Brian Melley of the Associated Press on April 13, 2004:

***Water, irritation, and litigation in a remote California county***  
*ALTURAS, California — On the outskirts of town, where tumbleweeds strain against barbed wire and sagebrush sprouts on the roadside, a sign reads, "Where the West still lives." One member of the Modoc County Board of Supervisors shoes horses for a living. Cowboy hats, boots, and Wrangler jeans are the get-up of choice. But a dustup in this high desert town of 3,200 has revived the Old West's mean side, with death threats, fistfights, and a sheriff confiscating guns. At the heart of the nasty dispute is water: in this case, Rattlesnake Creek.*

*For more than a dozen years, the Stream meant a good life for ranchers Lawrence and Sandi Ray. It ran across their land, watering their cattle and the hay grown to feed them. They had moved from the Sacramento Valley seeking cheap water, and they found plenty of it at their Rattlesnake Creek Ranch. The trouble started on Thanksgiving 2000, when the Rays came upon two of their cows struggling in mud. They got one to safety, but the other animal didn't fare so well. After investigating, Lawrence Ray blamed the local water master for opening their dam without their permission, letting water flow downstream and leaving*

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<sup>9</sup> Modoc County Grand Jury Report 2003-2004, June 25, 2004

*treacherous muddy banks.*

*The Rays nursed the pregnant cow for 10 days, then, realizing it wouldn't survive, called the Sheriff to take photographs and shot the animal in the head. They demanded \$800 in compensation. The Hot Spring Valley Water District wouldn't pay, saying it was simply preparing the Rays' dam for winter when the flow was changed. When the Rays threatened to sue, the District struck first, going to court and claiming ownership of the dam. The Rays countersued.*

*In the course of their suit, the Rays discovered the District was selling water to a hydroelectric plant and they found canceled checks showing District officials got paid by the power company. The three-year fight over the small stream has sadly illustrated the West's bitter water wars. As it progressed, the Water district's reservoir nearly ran dry, a grand jury found the District rife with problems, and emotions have been worn raw in Modoc County.*

*"I wasn't a very hateful person 'til I moved up here," Lawrence Ray says now. "But Modoc is a tough, tough place."*

*As California copes with growth expected to bloat the state from 35 million to 50 million people in 20 years, the population in its third-smallest county has shrunk to fewer than 10,000. Changes in federal logging policies wiped out the local timber industry, closing several sawmills. One railroad pulled up tracks leading to town. As in much of the Golden State's interior, the land is dry and dusty much of the year. But precious spring runoff flows from Devil's Garden into Rattlesnake Creek.*

*Around the turn of the last century, local ranchers who watched Rattlesnake Creek go dry in the summer recognized the value of storing spring rain. They pooled resources to form Hot Spring Valley Water District, and the State let them create the Big Sage Reservoir; the dam was completed in 1921. The District was licensed to store water from October through April and to release water to water stock and wildlife from May through September.*

*But the Rays noticed something odd. Each fall for three years, large quantities of water mysteriously flowed down the Rattlesnake from the Big Sage and swamped their pasture. This was after the irrigation season, when nothing was being grown. When the Rays asked about it, they were told the district was making good on a settlement with Pacific Gas & Electric, which ran a power plant 75 miles downstream on the Pit River. PG&E had filed a claim against several water districts, contending they crippled power plants on the lower Pit River by holding too much water upstream.*

*The drawn-out dispute, finally settled with the fall-release compromise, left Hot Spring with \$50,000 in legal and engineering bills and just \$5.16 in the bank, according to court papers. The District needed to raise cash,*

*and it found a way. Down the Pit River between Hot Spring Valley and PG&E's powerhouses, the Muck Valley Hydroelectric Project churns about 30 megawatts of power. District water master Joseph Battram arranged a deal between the district and Muck Valley's owner, Idaho-based Malacha Hydro Limited Partnership.*

*Malacha would pay for use of the water en route to PG&E. Hot Spring board members "could not believe the District's good fortune," Battram said in court papers. Battram and Malacha did not return several phone calls seeking further comment.*

*The water-sharing had grown complex, and this led to questions, especially as locals learned that checks totaling about \$560,000 were paid to the district in 1998 and 1999. Malacha, through a subsidiary called Big Valley Ranches, also paid three Hot Spring board members to work on dam improvements or release water from their own dams.*

*The payments to the District permitted water rate reductions, and the payments to individuals represented "a great little windfall ... for the ranchers who were struggling to make ends meet," said Willy Hagge, board president at the time.*

*Hagge was paid \$15,000, and two other board members received a total of \$25,000. Battram received at least \$41,000, according to canceled checks from Big Valley Ranches. But not everyone was happy. The Rays, through their lawyer, said water belonging to all District members was being released from the Big Sage reservoir — and all should be compensated, not a few individual ranchers.*

*Water has dominated Western politics and commerce since the first settlers rolled across the Great Plains. Dams went up to capture water, prevent floods, and provide power. Farmers fought to keep their water as cities' demand grew. Enormous diversions keep metropolises like Los Angeles from going thirsty. Indian tribes, environmentalists, farmers, and the federal government have battled over rivers.*

*The complex water code boils down to a few basic principles. Among them: You can't steal someone's water, and you can't easily sell it downriver. "When I was a kid I remember the old-timers saying you just don't sell water," said Modoc County rancher John Gilstrap. "It's not something you can take to the bank. When they started selling water it started snowballing, and here we are."*

*Besides filing countersuits over the cow and the dam in state court, the Rays accused Battram, Malacha, and Big Valley Ranches in federal court of racketeering for allegedly conspiring to take water from the district for power generation. All the parties have denied the charges.*

*The Rays' complaints prompted investigations by the State Water Resources Control Board and the Modoc County grand jury. "The Rays*

*feel that by going the route that they're taking perhaps they can weaken the resolve of the Water board, and all it has done is strengthen our resolve," Hagge said.*

*Sandi Ray said she and her husband would not give up. "There's a time when you have to make a stand and this is ours," she said. "Until we lose our ranch we're fighting it."*

*Lawrence Ray, a short, stocky, balding man with a ruddy face, beefy hands, and a hot temper, said he has threatened to kill Battram if he comes on his property and was charged last year with three counts of making terrorist threats. The sheriff ordered Ray to get rid of his collection of guns, and he confiscated two remaining weapons.*

*Battram left his job on a workers' compensation claim due to the stress, Hagge said. At the District's annual meeting last year, Ray stood up to denounce the board and was shouted down by Pete Carey, a rancher paid by Big Valley Ranches for releasing water. Ray suggested they go outside to settle things. Before he could get to the door, Ray said he was on the floor being kicked and punched. He ended up in the hospital.*

*Ray and Carey were both put on probation for disturbing the peace. Ray has since filed a personal injury lawsuit against Carey. The State Water Resources Control Board recently ended a 2.5-year investigation by ordering the Hot Spring Valley Water District to stop the releases to PG&E and Malacha.*

*The District water storage license permitted only for irrigation, wildlife, or stock water. The fall releases to the power companies may have depleted the reservoir, the board concluded. The State found no evidence to support the District's contention that it owned the Rays' dam, the claim that started the legal spat.*

*The Modoc County grand jury, meanwhile, concluded the district breached state and county competitive bidding policies and that board members violated conflict-of-interest laws. Meanwhile, California Attorney General Bill Lockyer ruled that a complaint by the Rays against Hagge for simultaneously holding two public offices — county supervisor and water district member — could go ahead. Hagge resigned from the water district board three days later.*

*Since then, Hagge lost his seat on the board of supervisors to a rancher who made a campaign issue of Hagge's water district dealings. There was a time when Lawrence Ray taunted Hagge by saying, "That \$800 cow looks pretty cheap now." That time has long passed.*

*In December, the Rays sold their 973 head of cattle to help pay their legal bills, which exceed \$150,000. Cows continue to graze on the pasture surrounding the creek, but they belong to someone leasing the land while*

*the Rays try to sell Rattlesnake Creek Ranch. So far, the only interested buyer shied away when he learned of the dispute over water.*<sup>10</sup>

The 2008 Audit report noted that

The Organization was involved in a legal action and settled with plaintiff without admission of guilt. As part of the settlement Hot Springs Valley Irrigation District agreed to pay the plaintiff a total sum of \$7500 as reimbursement for attorney fees. HSVI agreed to give a credit of \$2,500 each year for three years to the plaintiff starting in 2077 and ending 2009.<sup>11</sup>

### **3.2 Hot Springs Valley Water District Contact Information**

Contact information for the Hot Springs Valley Water District is as follows:

Secretary: Holly Fitch, PO Box 1420, Alturas, CA 96101  
E-Mail: [hsvi@frontiernet.net](mailto:hsvi@frontiernet.net) Phone: 530-233-2327

Water Master: Vacant

Hot Springs Valley Water District  
619 N. Main Street, Alturas, CA 96101-3495

The Secretary is employed as an employee; however, should the District prefer to hire the Secretary as an independent contractor a sample contract is provided in Appendix B at the end of this report.

### **3.3 Hot Springs Valley Water District Directors**

The Directors serve four-year terms and are listed below:

Division 1: John Picotte, PO Box 756, Alturas, CA 96101 (expires 12/14)  
Division 2: Paul Dolby, PO Box 1630, Alturas, CA 96101 (expires 12/14)  
Division 3: Dyan Sponseller, HCR 4, Box 42509, Alturas, CA 96101 (expires 12/12)  
Division 4: Dan Lowry, PO Box 520, Alturas, CA 96101 (expires 12/14)  
Division 5: Richard Jennings, HCR 2, Box 304, Canby, CA 96015 (expires 12/12)

The Directors meet on the first Thursday of each month at 5:00 pm at the Elks Lodge (where the office is located). There are 53 members in the District. The primary crop grown in the District is alfalfa.

### **3.4 Hot Springs Valley Water District Water Facilities**

The Hot Springs Valley Water District depends on the Big Sage Reservoir (12 miles northwest of Alturas) for water. The water available is determined by the amount of

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<sup>10</sup> <http://www.waterconserve.org/shared/reader/welcome.aspx?linkid=30757>, August 26, 2011.

<sup>11</sup> Hot Springs Valley Irrigation District, Financial Statements Modified Cash Basis and Independent Auditor's Report, Prepared by Carlos E. Soler, 910 Florin Road Suite 200, Sacramento California 95831, Phone 916-424-6233, [www.colercpa.com](http://www.colercpa.com), June 30, 2008, Page 7.

water in the Reservoir at the start of the season. In 2011 the District had 37,000 acre feet of water.<sup>12</sup>

Big Sage Reservoir has been operated since 1926 with its discharge valve opened about May 15 and closed about October 15 of each year. The winter inflows to Big Sage have varied between a maximum of 48,400 acre-feet and a minimum of zero and have averaged 15,200 acre-feet during the period of record. The reservoir releases plus evaporation and other losses during the irrigation season have averaged 14,800 acre-feet.<sup>13</sup>

Big Sage is a large, shallow reservoir surrounded by juniper woodland and sagebrush. Established to provide irrigation water, it also offers abundant recreational opportunities. A new boat ramp was constructed in 1997. The reservoir is several thousand acres and the campground (operated by the Modoc National Forest) lies on the shore near the boat ramp. Birds find safe refuge for nesting on a number of the islands scattered across the reservoir.

Big Sage Reservoir is accessed by traveling west 3 miles from Alturas on Highway 299, turn north on Crowder Flat Road #73 for 6 miles, turn right on County Road #180, go 3 miles to Big Sage Dam and campground. The elevation is 5,100 feet above sea level.<sup>14</sup>

The District originally had no water conveyance facilities. District control of stored water ended when the water is released from Big Sage Reservoir during the irrigation season. It was then the responsibility of District members to divert the released water for their own use. Prior to 1950, use of releases from Big Sage Reservoir for irrigation was limited to those lands which could be flooded by closing check dams located in the channel of the Pit River and to those lands lying north of Rattlesnake Creek and the Pit River which were irrigated from the Kelly Ditch.

In 1950, electric power became available and numerous pumps and pipelines were installed to provide for better irrigation of lands previously irrigated and also to irrigate lands located at elevations too high to be reached by the flooding method.<sup>15</sup>

### **3.5 Finances**

#### **3.5.1 Financial Background**

The 2008 audit for the Hot Springs Valley Water District gives the following description of the District's financial situation:

*Hot Springs Valley Irrigation District provides proprietary-fund-type services (i.e. domestic and irrigation water) to customers in a limited geographic area. Consequently, the ability of the District's funds to cover*

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<sup>12</sup> Hot Springs Valley Water District, Holly Fitch, Secretary, Phone: 530-233-2327, September 2, 2011.

<sup>13</sup> STATE OF CALIFORNIA STATE WATER RIGHTS BOARD, DECISION APPROVING APPLICATION 20904 IN PART AND GRANTING PETITIONS TO CHANGE PLACE OF USE AND TO EXTEND TIME FOR BENEFICIAL USE OF WATER UNDER PERMIT 1768 (APPLICATION 3353), Page 7, December 22, 1964.

<sup>14</sup> US Forest Service, Modoc National Forest, <http://www.fs.fed.us/r5/modoc/recreation/camping/bigsgereservoir.shtml>, September 7, 2011.

<sup>15</sup> STATE OF CALIFORNIA STATE WATER RIGHTS BOARD, DECISION APPROVING APPLICATION 20904 IN PART AND GRANTING PETITIONS TO CHANGE PLACE OF USE AND TO EXTEND TIME FOR BENEFICIAL USE OF WATER UNDER PERMIT 1768 (APPLICATION 3353), Page 5, December 22, 1964.

*their operating costs is at risk due to this geographic concentration of customers in the area. As with the majority of municipalities and other quasi-governmental units that operate similar proprietary funds, a downturn in the local economy or other unforeseen circumstances could adversely affect the District's ability to collect amounts due from customers or to continue to generate the revenue needed to cover the costs of providing services.*<sup>16</sup>

According to the audit, the financial statements of the Agency have been prepared on the modified cash basis of accounting, certain revenues are recognized when received rather than when earned and certain expenses and purchases are recognized when cash is disbursed rather than when the obligation is incurred. In addition, investments are in market value, fixed assets are recorded, and payroll liabilities are recognized.<sup>17</sup>

The District is required by statute to invest its cash in accounts covered by federal depository insurance. However, at June 30, 2008, the carrying amount of the District's cash in bank was \$174,549 so the bank balance was not fully covered by federal depository insurance.<sup>18</sup>

### **3.5.2 Fee Assessments**

The Hot Springs Valley Irrigation District's Board of Directors determines the minimum annual assessment for each acre of land that has water rights in the District. Assessments are not refunded and, upon failure to pay, water rights are lost for the year. Assessments are levied in March of each year on approximately 13,000 acres of land within the District's boundaries, and are due and payable in two installments. The first payment is due October 1 and is delinquent on November 1. The second payment is due March 1 of the following year and is delinquent May 1. The assessments are billed and collected by the District upon request. The assessment rate for the year ended June 30, 2008 was \$0.50 per acre. All assessments are deemed fully collectible and, therefore, no allowance for uncollectable amounts has been recorded.

The District Board of Directors also establishes a rate per acre-foot of water required in excess of that provided by the minimum rate per acre of land. Acreage assessments to landowners are recognized as revenue in the year assessed.<sup>19</sup>

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<sup>16</sup> Hot Springs Valley Irrigation District, Financial Statements Modified Cash Basis and Independent Auditor's Report, Prepared by Carlos E. Soler, 910 Florin Road Suite 200, Sacramento California 95831, Phone 916-424-6233, [www.colercpa.com](http://www.colercpa.com), June 30, 2008, Page 7.

<sup>17</sup> Hot Springs Valley Irrigation District, Financial Statements Modified Cash Basis and Independent Auditor's Report, Prepared by Carlos E. Soler, 910 Florin Road Suite 200, Sacramento California 95831, Phone 916-424-6233, [www.colercpa.com](http://www.colercpa.com), June 30, 2008, Page 5.

<sup>18</sup> Hot Springs Valley Irrigation District, Financial Statements Modified Cash Basis and Independent Auditor's Report, Prepared by Carlos E. Soler, 910 Florin Road Suite 200, Sacramento California 95831, Phone 916-424-6233, [www.colercpa.com](http://www.colercpa.com), June 30, 2008, Page 7.

<sup>19</sup> Hot Springs Valley Irrigation District, Financial Statements Modified Cash Basis and Independent Auditor's Report, Prepared by Carlos E. Soler, 910 Florin Road Suite 200, Sacramento California 95831, Phone 916-424-6233, [www.colercpa.com](http://www.colercpa.com), June 30, 2008, Page 6.

### 3.5.3 Revenue and Expenses

The revenue and expenses for the Hot Springs Valley Irrigation District for 2006, 2007 and 2008 are shown below:

<b>Revenue for Hot Springs Valley Irrigation District</b>			
<b>Revenue</b>	<b>June 30, 2006<sup>20</sup></b>	<b>June 30, 2007<sup>21</sup></b>	<b>June 30, 2008<sup>22</sup></b>
<b>Assessment</b>	\$9,233	\$7,561	\$11,340
<b>Water Sales</b>	74,728	55,135	78,642
<b>Other Income</b>	925	(81)	4,201
<b>TOTAL</b>	<b>\$84,886</b>	<b>\$62,615</b>	<b>\$94,183</b>

<b>Expenses for Hot Springs Valley Irrigation District</b>			
<b>Expenses</b>	<b>June 30, 2006<sup>23</sup></b>	<b>June 30, 2007<sup>24</sup></b>	<b>June 30, 2008<sup>25</sup></b>
Salaries and wages	\$11,271	\$11,199	\$31,165
Professional fees	0	0	0
Legal fees	2,627	1,198	2,138
Supplies	540	370	0
Postage and delivery	181	148	145
Utilities	2,363	1,652	2,303
Insurance	272	971	158
Rent	3,000	3,100	3,000
Repairs and maintenance	355	4,881	0
Depreciation and amortization	1,792	1,792	1,792
Permit fees	1,850	5,639	0
Dam fees	5,176	2,551	0
Other operating expenses	1,052	10,266	22,365
<b>Total Expenses</b>	<b>\$30,479</b>	<b>\$43,767</b>	<b>\$63,066</b>
<b>Net Income (Loss)</b>	<b>\$54,407</b>	<b>\$18,848</b>	<b>\$31,117</b>

The revenue exceeds the expenses for the three years shown. The amount of money spent on "Other" seems rather large and might need to be clarified.

<sup>20</sup> Hot Springs Valley Irrigation District, Financial Statements Modified Cash Basis and Independent Auditor's Report, Prepared by Carlos E. Soler, 910 Florin Road Suite 200, Sacramento California 95831, Phone 916-424-6233, [www.colercpa.com](http://www.colercpa.com), June 30, 2006, Page 3.

<sup>21</sup> Hot Springs Valley Irrigation District, Financial Statements Modified Cash Basis and Independent Auditor's Report, Prepared by Carlos E. Soler, 910 Florin Road Suite 200, Sacramento California 95831, Phone 916-424-6233, [www.colercpa.com](http://www.colercpa.com), June 30, 2007, Page 3.

<sup>22</sup> Hot Springs Valley Irrigation District, Financial Statements Modified Cash Basis and Independent Auditor's Report, Prepared by Carlos E. Soler, 910 Florin Road Suite 200, Sacramento California 95831, Phone 916-424-6233, [www.colercpa.com](http://www.colercpa.com), June 30, 2008, Page 3.

<sup>23</sup> Hot Springs Valley Irrigation District, Financial Statements Modified Cash Basis and Independent Auditor's Report, Prepared by Carlos E. Soler, 910 Florin Road Suite 200, Sacramento California 95831, Phone 916-424-6233, [www.colercpa.com](http://www.colercpa.com), June 30, 2006, Page 3.

<sup>24</sup> Hot Springs Valley Irrigation District, Financial Statements Modified Cash Basis and Independent Auditor's Report, Prepared by Carlos E. Soler, 910 Florin Road Suite 200, Sacramento California 95831, Phone 916-424-6233, [www.colercpa.com](http://www.colercpa.com), June 30, 2007, Page 3.

<sup>25</sup> Hot Springs Valley Irrigation District, Financial Statements Modified Cash Basis and Independent Auditor's Report, Prepared by Carlos E. Soler, 910 Florin Road Suite 200, Sacramento California 95831, Phone 916-424-6233, [www.colercpa.com](http://www.colercpa.com), June 30, 2008, Page 3.

### **3.5.4 Requirements for Audits**

The California Government Code regarding Audits is as follows:

**26909. (a)**

*(1) The county auditor shall either make or contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of every special district within the county for which an audit by a certified public accountant or public accountant is not otherwise provided. In each case, the minimum requirements of the audit shall be prescribed by the Controller and shall conform to generally accepted auditing standards.*

*(2) Where an audit of a special district's accounts and records is made by a certified public accountant or public accountant, the minimum requirements of the audit shall be prescribed by the Controller and shall conform to generally accepted auditing standards, and a report thereof shall be filed with the Controller and with the county auditor of the county in which the special district is located. The report shall be filed within 12 months of the end of the fiscal year or years under examination.*

*(3) Any costs incurred by the county auditor, including contracts with, or employment of, certified public accountants or public accountants, in making an audit of every special district pursuant to this section shall be borne by the special district and shall be a charge against any unencumbered funds of the district available for the purpose.*

*(4) For a special district that is located in two or more counties, the provisions of this subdivision shall apply to the auditor of the county in which the treasury is located.*

*(5) The county controller, or ex officio county controller, shall effect this section in those counties having a county controller, or ex officio county controller.*

*(b) A special district may, by unanimous request of the governing board of the special district, with unanimous approval of the board of supervisors, replace the annual audit required by this section with one of the following, performed in accordance with professional standards, as determined by the county auditor:*

*(1) A biennial audit covering a two-year period.*

*(2) An audit covering a five-year period, if the special district's annual revenues do not exceed an amount specified by the board of supervisors.*

*(3) An audit conducted at specific intervals, as recommended by the county auditor, that shall be completed at least once every five years.*

**(c)**

*(1) A special district may, by unanimous request of the governing board of the special district, with unanimous approval of the board of supervisors, replace the annual audit required by this section with a financial review, in accordance with the appropriate professional standards, as determined by the county auditor, if the following conditions are met:*

*(A) All of the special district's revenues and expenditures are transacted through the county's financial system.*

*(B) The special district's annual revenues do not exceed one hundred fifty thousand dollars (\$150,000).*

*(2) If the board of supervisors is the governing board of the special district, it may, upon unanimous approval, replace the annual audit of the special district required by this section with a financial review in accordance with the appropriate professional standards, as determined by the county auditor, if the special district satisfies the requirements of subparagraphs (A) and (B) of paragraph (1).*

*(d) Notwithstanding the provisions of this section, a special district shall be exempt from the requirement of an annual audit if the financial statements are audited by the Controller to satisfy federal audit requirements.*

*26910. The auditor may at any reasonable time and place examine the books and records of any special purpose assessing or taxing district located wholly in the county.*

The Modoc County Auditor has made each special district responsible for its own audit. The District thus has the responsibility to contract with an independent firm to prepare an audit at least every two years. The items needed for an audit are shown below:

Items needed for audit

1. Cancelled checks together with supporting information such as invoices and receipts. Please note the budget account for each check.
2. Minutes of all board meetings during the audit period.
3. Summaries of insurance policies in force during the audit period.
4. Trial balance and/or general ledger as of the end of each year under audit.
5. Documentation of loans or leases during the audit period, if any.
6. Details of fixed assets purchased or sold during audit period.
7. Copies of Federal payroll tax returns, form 941, for each calendar quarter during the audit period.
8. Details of compensated time off balances and computations of accruals as of the end of each audit year.
9. Details of payroll taxes payable as of the end of each audit year.
10. Detail support for other items appearing on the balance sheet for each year end.
11. Reconciliations and copies of bank statements as of year ends for any bank accounts.
12. PERS information binder that was sent by PERS the preceeding October.

A sample request for proposals is found in Appendix C of this report.

### **3.5.5 Insurance**

The Hot Springs Valley Irrigation District is exposed to various risks of loss related to torts, theft of, damage to, and destruction of assets; errors and omissions; injuries to employees; and natural disasters. Hot Springs Valley Irrigation District carries commercial insurance for all such risks of loss, including worker's compensation and employees health and accident insurance. Settled claims resulting from these risks have not exceeded commercial insurance coverage in any of the past three fiscal years.<sup>26</sup>

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<sup>26</sup> Hot Springs Valley Irrigation District, Financial Statements Modified Cash Basis and Independent Auditor's Report, Prepared by Carlos E. Soler, 910 Florin Road Suite 200, Sacramento California 95831, Phone 916-424-6233, [www.colercpa.com](http://www.colercpa.com), June 30, 2008, Page 3.

**4 MUNICIPAL SERVICE REVIEW**

Modoc LAFCO is responsible for determining if an agency is reasonably capable of providing needed resources and basic infrastructure to serve areas within its boundaries and, later, within the Sphere of Influence.

LAFCO will do the following:

1. Evaluate the present and long-term infrastructure demands and resources available to the District.
2. Analyze whether resources and services are, or will be, available at needed levels.
3. Determine whether orderly maintenance and expansion of such resources and services are planned to occur in line with increasing demands.

The Final Municipal Service Review Guidelines prepared by the Governor’s Office of Planning and Research recommend issues relevant to the jurisdiction be addressed through written determinations called for in the Cortese-Knox-Hertzberg Act.

Determinations are provided for each of the five factors, based on the information provided in this Municipal Service Review.

**4.1 Growth and Population Projections for the Hot Springs Valley Water District Area**

*Purpose:*

*To evaluate service needs based on existing and anticipated growth patterns and population projections.*

**4.1.1 Population Growth for the Hot Springs Valley Water District Area**

There is no population data specifically for the Hot Springs Valley Water District but the following table shows 2010 Census Data for Modoc County and for California:

	<b>Modoc County</b>	<b>California</b>
Population, 2010	9,686	37,253,956
Population, percent change, 2000 to 2010	2.5%	10.0%
Population, 2000	9,449	33,871,648
Persons under 5 years, percent, 2010	5.6%	6.8%
Persons under 18 years, percent, 2010	21.9%	25.0%
Persons 65 years and over, percent, 2010	19.7%	11.4%
Female persons, percent, 2010	49.6%	50.3%

<sup>27</sup> US Census Bureau, <http://quickfacts.census.gov/qfd/states/06/06049.html>, January 4, 2012

Modoc County has a slower population growth rate, fewer younger people, and more older people (over 65) than the State of California.

#### **4.1.2 MSR Determinations on Growth and Population for Hot Springs Valley Water District**

- 1-1) The Hot Springs Valley Water District is not expected to increase in population because the little growth expected for Modoc County will occur within established communities.

#### **4.2 Capacity and Infrastructure**

*Purpose:*

*To evaluate the infrastructure needs and deficiencies in terms of supply, capacity, condition of facilities and service quality.*

##### **4.2.1 Infrastructure Background**

The Big Sage Reservoir is the primary infrastructure for the Hot Springs Valley Water District.

#### **4.2.2 MSR Determinations Regarding Capacity and Infrastructure for Hot Springs Valley Water District**

- 2-1) The capacity and infrastructure for the Hot Springs Valley Water District are adequate.

#### **4.3 Financial Ability**

*Purpose:*

*To evaluate factors that affect the financing of needed improvements and to identify practices or opportunities that may help eliminate unnecessary costs without decreasing service levels.*

##### **4.3.1 Financial Considerations**

The District is in adequate financial condition but the District should have an audit prepared for the past three fiscal years and the District should organize the bank accounts so they will be covered by federal depository insurance.

#### **4.3.2 MSR Determinations on Financial Ability for Hot Springs Valley Water District**

- 3-1) The District should comply with the State Law and have an audit completed every year.
- 3-2) The District should comply with State Law and have the bank deposits organized so that they are insured.

#### **4.4 Opportunities for Shared Facilities**

*Purpose:*

*To evaluate the opportunities for a jurisdiction to share facilities and resources to develop more efficient service delivery systems.*

##### **4.4.1 Hot Springs Valley Water District Facilities**

The Hot Springs Valley Water District facilities are not available to be shared since the District uses all the water available. The District might consider sharing administration with another District.

#### **4.4.2 MSR Determinations on Shared Facilities for Hot Springs Valley Water District**

- 4-1) The District uses all of the water available so it is not possible to share with other districts.

#### **4.5 Government Structure and Accountability**

*Purpose:*

*To consider the advantages and disadvantages of various government structures that could provide public services, to evaluate the management capabilities of the organization and to evaluate the accessibility and levels of public participation associated with the agency's decision-making and management processes.*

##### **4.5.1 Government Structure**

The District has a Board of Directors and regular meetings are held. Since there is a history of controversy within the District; the Board should make every effort to make sure that all meetings are noticed and that all decisions are made in open sessions.

**4.5.2 MSR Determinations on Government Structure and Accountability for Hot Springs Valley Water District**

- 5-1) The Board of Directors meets on a regular basis and complies with the Brown Act.
- 5-2) The Board of Directors should procure the services of an auditor and bring the District into compliance by arranging for audits for fiscal years 2008-09, 2009-10 and 2010-11.

## **APPENDIX A - LOCAL GOVERNMENT ISSUES**

### **1 Municipal Financial Constraints**

Municipal service providers are constrained in their capacity to finance services by the inability to increase property taxes, requirements for voter approval for new or increased taxes, and requirements of voter approval for parcel taxes and assessments used to finance services. Municipalities must obtain majority voter approval to increase or impose new general taxes and two-thirds voter approval for special taxes.

Limitations on property tax rates and increases in taxable property values are financing constraints. Property tax revenues are subject to a formulaic allocation and are vulnerable to State budget needs. Agencies formed since the adoption of Proposition 13 in 1978 often lack adequate financing.

#### **1.1 California Local Government Finance Background**

The financial ability of the cities and special districts to provide services is affected by financial constraints. City service providers rely on a variety of revenue sources to fund city operating costs as follows:

- Property Taxes
- Benefit Assessments
- Special Taxes
- Proposition 172 Funds
- Other contributions from city or district general funds.

As a funding source, property taxes are constrained by Statewide initiatives that have been passed by voters over the years and special legislation. Seven of these measures are explained below:

##### **A. Proposition 13**

Proposition 13 (which California voters approved in 1978) has the following three impacts:

- Limits the ad valorem property tax rate
- Limits growth of the assessed value of property
- Requires voter approval of certain local taxes.

Generally, this measure fixes the ad valorem tax at one percent of value; except for taxes to repay certain voter approved bonded indebtedness. In response to the adoption of Proposition 13, the Legislature enacted Assembly Bill 8 (AB 8) in 1979 to establish property tax allocation formulas.

##### **B. AB 8**

Generally, AB 8 allocates property tax revenue to the local agencies within each tax rate area based on the proportion each agency received during the three fiscal years preceding adoption of Proposition 13. This allocation formula benefits local agencies, which had relatively high tax rates at the time Proposition 13 was enacted.

##### **C. Proposition 98**

Proposition 98, which California voters approved in 1988, requires the State to maintain a minimum level of school funding. In 1992 and 1993, the Legislature began shifting billions of local property taxes to schools in response to State budget deficits. Local property taxes were diverted from local governments into the Educational Revenue Augmentation Fund (ERAF) and transferred to school districts and community college districts to reduce the amount paid by the State general fund.

Local agencies throughout the State lost significant property tax revenue due to this shift. Proposition 172 was enacted to help offset property tax revenue losses of cities and counties that were shifted to the ERAF for schools in 1992.

D. Proposition 172

Proposition 172, enacted in 1993, provides the revenue of a half-cent sales tax to counties and cities for public safety purposes, including police, fire, district attorneys, corrections and lifeguards. Proposition 172 also requires cities and counties to continue providing public safety funding at or above the amount provided in FY 92-93.

E. Proposition 218

Proposition 218, which California voters approved in 1996, requires voter- or property owner-approval of increased local taxes, assessments, and property-related fees. A two-thirds affirmative vote is required to impose a Special Tax, for example, a tax for a specific purpose such as a fire district special tax.

F. Proposition 26

Proposition 26 approved by California voters on November 2, 2010, requires that certain state fees be approved by two-thirds vote of Legislature and certain local fees be approved by two-thirds of voters. This proposition increases the legislative vote requirement to two-thirds for certain tax measures, including those that do not result in a net increase in revenue. Prior to its passage, these tax measures were subject to majority vote.

However, majority voter approval is required for imposing or increasing general taxes such as business license or utility taxes, which can be used for any governmental purpose. These requirements do not apply to user fees, development impact fees and Mello-Roos districts.

G. Mello-Roos Community Facilities Act

The Mello-Roos Community Facilities Act of 1982 allows any county, city, special district, school district or joint powers authority to establish a Mello-Roos Community Facilities District (a "CFD") which allows for financing of public improvements and services. The services and improvements that Mello-Roos CFDs can finance include streets, sewer systems and other basic infrastructure, police protection, fire protection, ambulance services, schools, parks, libraries, museums and other cultural facilities. By law, the CFD is also entitled to recover expenses needed to form the CFD and administer the annual special taxes and bonded debt.

A CFD is created by a sponsoring local government agency. The proposed district will include all properties that will benefit from the improvements to be constructed or the services to be provided. A CFD cannot be formed without a two-thirds majority vote of residents living within the proposed boundaries. Or, if there are fewer than 12 residents, the vote is instead conducted of current landowners.

In many cases, that may be a single owner or developer. Once approved, a Special Tax Lien is placed against each property in the CFD. Property owners then pay a Special Tax each year.

If the project cost is high, municipal bonds will be sold by the CFD to provide the large amount of money initially needed to build the improvements or fund the services. The Special Tax cannot be directly based on the value of the property. Special Taxes instead are based on mathematical formulas that take into account property characteristics such as use of the property, square footage of the structure and lot size. The formula is defined at the time of formation, and will include a maximum special tax amount and a percentage maximum annual increase.

If bonds were issued by the CFD, special taxes will be charged annually until the bonds are paid off in full. Often, after bonds are paid off, a CFD will continue to charge a reduced fee to maintain the improvements.

#### H. Development Impact Fees

A county, cities, special districts, school districts, and private utilities may impose development impact fees on new construction for purposes of defraying the cost of putting in place public infrastructure and services to support new development.

To impose development impact fees, a jurisdiction must justify the fees as an offset to the impact of future development on facilities. This usually requires a special financial study. The fees must be committed within five years to the projects for which they were collected, and the district, city or county must keep separate funds for each development impact fee.

### **1.2 *Financing Opportunities that Require Voter Approval***

Financing opportunities that require voter approval include the following five taxes:

- Special taxes such as parcel taxes
- Increases in general taxes such as utility taxes
- Sales and use taxes
- Business license taxes
- Transient occupancy taxes

Communities may elect to form business improvement districts to finance supplemental services, or Mello-Roos districts to finance development-related infrastructure extension. Agencies may finance facilities with voter-approved (general obligation) bonded indebtedness.

### **1.3 *Financing Opportunities that Do Not Require Voter Approval***

Financing opportunities that do not require voter approval include imposition of or increases in fees to more fully recover the costs of providing services, including user fees and Development Impact Fees to recover the actual cost of services provided and infrastructure.

Development Impact Fees and user fees must be based on reasonable costs, and may be imposed and increased without voter approval. Development Impact Fees may not be used to subsidize operating costs. Agencies may also finance many types of facility improvements through bond instruments that do not require voter approval.

Water rates and rate structures are not subject to regulation by other agencies. Utility providers may increase rates annually, and often do so. Generally, there is no voter approval requirement for rate increases, although notification of utility users is required. Water providers must maintain an enterprise fund for the respective utility separate from other funds, and may not use revenues to finance unrelated governmental activities.

## **2 Public Management Standards**

While public sector management standards do vary depending on the size and scope of an organization, there are minimum standards. Well-managed organizations do the following eight activities:

1. Evaluate employees annually.
2. Prepare a budget before the beginning of the fiscal year.
3. Conduct periodic financial audits to safeguard the public trust.
4. Maintain current financial records.
5. Periodically evaluate rates and fees.
6. Plan and budget for capital replacement needs.
7. Conduct advance planning for future growth.

8. Make best efforts to meet regulatory requirements.

Most of the professionally managed and staffed agencies implement many of these best management practices. LAFCO encourages all local agencies to conduct timely financial record-keeping for each city function and make financial information available to the public.

**3 Public Participation in Government**

The Brown Act (California Government Code Section 54950 et seq.) is intended to insure that public boards shall take their actions openly and that deliberations shall be conducted openly. The Brown Act establishes requirements for the following:

- Open meetings
- Agendas that describe the business to be conducted at the meeting
- Notice for meetings
- Meaningful opportunity for the public to comment

Few exceptions for meeting in closed sessions and reports of items discussed in closed sessions.

According to California Government Section 54959

*Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.*

Section 54960 states the following:

*(a) The district attorney or any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body,...*

**APPENDIX B SAMPLE AGREEMENT WITH INDEPENDENT CONTRACTOR**

AGREEMENT FOR SERVICES

THIS NONEXCLUSIVE AGREEMENT is hereby entered into by The \_\_\_\_\_  
District ("District") and \_\_\_\_\_ ("Name"), contractor.

Name agrees to provide administrative services as listed in Exhibit A attached to the  
\_\_\_\_\_ District beginning \_\_\_\_\_ 2011. She will provide those services  
using her own office and equipment, and on her own schedule. The manner in which she  
completes projects for the District shall be at her own direction and under her own control.  
Therefore, Name agrees and understands that she is not an employee of the District, but rather is  
an independent contractor. She is not entitled to State Unemployment Insurance or Worker's  
Compensation Insurance.

So long as the District's work is completed in a timely manner, Name may provide professional  
services to other clients as she wishes.

Name is fully responsible for payment of all federal, state and local income taxes and  
contributions including Self-Employment taxes.

Contractor shall maintain all automobile liability and medical insurance during the term of this  
agreement.

Name shall be paid \$50 per ----- as approved by the Board of Directors. Name shall  
submit invoices to the District no less often than quarterly, itemizing her work for the District.

This agreement may be terminated by either party notifying the other 30 days prior to the date of  
termination; otherwise contract shall be renewable on July 1 each year.

Upon termination, all documents, records and other materials that Name produces during the  
term of the agreement and any renewals shall be the property of the District, and surrendered to  
it. Name may retain copies of all such items, except those that may be confidential.

\_\_\_\_\_  
Name Date

Address

\_\_\_\_\_  
District Date

-----CA

Exhibit "A"

District Administrative Services include the following tasks:

1. Prepare Agendas for all meetings (average 12 meetings per year)
2. Have Agendas reviewed by District Counsel prior to mailing
3. Prepare Agenda packets and mail
4. Post Agenda at meeting place, e-mail agenda to interested parties
5. Attend all meetings, take and prepare minutes for all meetings
6. Prepare claims
7. Check District Post Office Box (average twice weekly)
8. Respond to mail as needed (Pay PG&E Bill each month, add claims and correspondence to agenda, respond to correspondence if needed prior to next meeting)
9. Prepare Legal Notices for Public Hearings (average 2 per year)
10. Maintain Petty Cash for postage and office supplies
11. Respond to e-mail and phone calls
12. Maintain District Records
13. Submit minutes, agendas and other items to Consulting CPA for Audit
14. Prepare mass mailing for service charges hearing
15. Research parcel numbers and permits for annual tax resolution
16. Prepare financial report for USDA Rural Development
17. Prepare Budget and Budget Transfers as needed
18. Other tasks assigned by the Board of Directors

**APPENDIX C SAMPLE REQUEST FOR PROPOSAL FOR AUDIT SERVICES**

\_\_\_\_\_ DISTRICT  
PO Box \_\_\_\_\_, \_\_\_\_\_, CA Zip Code

**REQUEST FOR PROPOSALS FOR ACCOUNTING SERVICES TO  
PROVIDE REQUIRED AUDITS FOR  
\_\_\_\_\_ DISTRICT**

**1. Introduction**

The \_\_\_\_\_ District seeks proposals from Certified Public Accountants to perform annual or biannual audits as required by the State of California. The scope of work involves securing the information from the \_\_\_\_\_ DISTRICT and providing the Audit to the District by the required June 30, 2011 deadline. The Certified Public Accountant chosen will need to cooperate with the Modoc County Department Auditor to procure the necessary information. \_\_\_\_\_ CSD processes all claims and maintains all funds with the \_\_\_\_\_ Bank.

**2. Submittal Requirements**

There is no expressed or implied obligation for \_\_\_\_\_ DISTRICT to reimburse responding firms for any expenses incurred in preparing proposals in response to this request. To be considered, a response to this request must be received by the \_\_\_\_\_ District, PO Box ----, \_\_\_\_\_ CA by \_\_\_\_\_, **2011**. Proposals sent by private delivery may be sent to ----- CA by Noon \_\_\_\_\_ **2011**.

**3. Evaluation Process**

During the evaluation process, \_\_\_\_\_ DISTRICT reserves the right, where it may serve \_\_\_\_\_ DISTRICT's best interest, to request additional information or clarifications from responders, or to allow corrections of errors or omissions. At the discretion of \_\_\_\_\_ DISTRICT, firms submitting proposals may be requested to make oral presentations as part of the evaluation process. \_\_\_\_\_ DISTRICT reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether or not that proposal is selected. Submission of a proposal is acceptance by the firm of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the District and the firm selected. It is anticipated that the selection of a firm will be completed by \_\_\_\_\_ 2011. Following the notification of the selected firm, it is expected a contract will be executed between both parties no later than five days thereafter.

**4. Proposal Requirements**

Responses to the RFP must include all of the following:

1. A statement about the firm that describes history, competencies and resumes of the principal and of all the professionals who will be involved in the work. This statement should address the following:
  - a. Experience with Audits for Special Districts in California and completion of necessary reports to the California State Controller
  - b. Ability to work cooperatively with the Modoc County Auditor
  - c. Ability to perform the work, stay within budget and meet deadlines
  - d. A statement that the firm carries errors and omissions, general liability and workers' compensation insurance, and the limits of liability on all of those.

2. A proposed form of contract for the work, and the rates and estimates of total cost. The proposal should include the cost for completion of the Biennial Audit for Fiscal Years 2008-2009 and 2009-2010 by June 30, 2011 and the cost to perform Annual or Biennial Audits in the future.

**5. Evaluation Criteria**

Proposals will be evaluated based upon their response to the provisions of this Request for Proposals and by the following criteria:

- a. Expertise with Audits for Special Districts in California
- b. Ability to work with pertinent parties and knowledgeable experts
- c. Cost Estimates
- d. Ability to complete the work in a timely manner

Please note that this will be a competitive selection process.

Based on the criteria above, the completeness of the responses, cost and the overall project approach identified in the proposals received, the most qualified firms may be invited, at their expense, for an interview with the \_\_\_\_\_ DISTRICT Board of Directors.

Following interviews, the most qualified firm will be selected and a recommended agreement including budget, schedule and a scope of services will be negotiated.

**6. Additional Information**

Firms are encouraged to contact \_\_\_\_\_, at 530-----or E-Mail \_\_\_\_\_ with any questions relating to this RFP.

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- US Forest Service, Modoc National Forest,  
<http://www.fs.fed.us/r5/modoc/recreation/camping/bigsgagereservoir.shtml>, September 7, 2011.

## **PREPARERS**

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## **ABBREVIATIONS**

<b>AB</b>	Assembly Bill
<b>AF</b>	Acre-foot (of water)
<b>CEQA</b>	California Environmental Quality Act
<b>cfs</b>	cubic feet per second
<b>CKH</b>	Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000
<b>District</b>	Hot Springs Valley Water District
<b>ERAF</b>	Educational Revenue Augmentation Fund
<b>FPPC</b>	Fair Political Practices Commission (California)
<b>HSVID</b>	Hot Springs Valley Irrigation District (Name before 2010)
<b>HSVWD</b>	Hot Springs Valley Water District
<b>LAFCO</b>	Local Agency Formation Commission
<b>MSR</b>	Municipal Service Review (LAFCO)
<b>OPR</b>	Office of Planning and Research (California)
<b>SOI</b>	Sphere of Influence (LAFCO)

## **DEFINITIONS**

**Acre foot:** The volume of water that will cover one acre to a depth of one foot, 325,850 U.S. Gallons or 1,233,342 liters (approximately).

**Bond:** An interest-bearing promise to pay a stipulated sum of money, with the principal amount due on a specific date. Funds raised through the sale of bonds can be used for various public purposes.

**California Environmental Quality Act (CEQA):** A State Law requiring State and local agencies to regulate activities with consideration for environmental protection. If a proposed activity has the potential for a significant adverse environmental impact, an environmental impact report (EIR) must be prepared and certified as to its adequacy before taking action on the proposed project.

**Gravity flow:** flow of water in a pipe on a descending path.

**Irrigation system:** a complete set of system components including the water source, the water distribution network, and the general irrigation equipment.

**Lateral:** a pipe line other than the main water pressure line used to move water to the various delivery devices.

**Local Agency Formation Commission (LAFCO):** A five-or seven-member commission within each county that reviews and evaluates all proposals for formation of special districts, incorporation of cities, annexation to special districts or cities, consolidation of districts, and merger of districts with cities. Each county's LAFCO is empowered to approve, disapprove, or conditionally approve such proposals. The LAFCO members generally include two county supervisors, two city council members, and one member representing the general public. Some LAFCOs include two representatives of special districts.

**Operations and maintenance costs:** The ongoing, repetitive costs of operating and maintaining a water system.

**Proposition 13:** (Article XIII A of the California Constitution) Passed in 1978, this proposition enacted sweeping changes to the California property tax system. Under Proposition 13, property taxes cannot exceed 1% of the value of the property and assessed valuations cannot increase by more than 2% per year. Property is subject to reassessment when there is a transfer of ownership or improvements are made.<sup>28</sup>

**Proposition 218:** (Article XIII D of the California Constitution) This proposition, named "The Right to Vote on Taxes Act", filled some of the perceived loopholes of Proposition 13. Under Proposition 218, assessments may only increase with a two-thirds majority vote of the qualified voters within the District. In addition to the two-thirds voter approval requirement, Proposition 218 states that effective July 1, 1997, any assessments levied may not be more than the costs necessary to provide the service, proceeds may not be used for any other purpose other than providing the services intended, and assessments may only be levied for services that are immediately available to property owners.<sup>29</sup>

**Water year (WY):** Period of time beginning October 1 of one year and ending September 30 of the following year and designated by the calendar year in which it ends. A calendar year used for water calculations. The US Bureau of Reclamation water year is March 1st to February 28th and October 1st to September 30th is the water account year.

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<sup>28</sup> [http://www.californiataxdata.com/A\\_Free\\_Resources/glossary\\_PS.asp#ps\\_08](http://www.californiataxdata.com/A_Free_Resources/glossary_PS.asp#ps_08)

<sup>29</sup> [http://www.californiataxdata.com/A\\_Free\\_Resources/glossary\\_PS.asp#ps\\_08](http://www.californiataxdata.com/A_Free_Resources/glossary_PS.asp#ps_08)

