

# Modoc Local Agency Formation Commission

## REGULAR MEETING AGENDA

Website: [www.modoclafco.org](http://www.modoclafco.org)

**Tuesday August 11, 2015 – 4:00 PM**

**City Council Chambers  
Alturas City Hall  
200 North Street, Alturas, CA 96101**

**1. Call to order / Pledge of Allegiance**

Commissioners

David Allan, County Member  
Jim Irvin, City Member, Vice-Chair  
T.J. Jerry Shea, Public Member  
John Dederick, City Member, Chair  
Kathie Alves, County Member

LAFCO Staff

John Benoit, Executive Officer  
Scott Browne, LAFCO Counsel  
Kim Hunter, Clerk

Alternate Members

Clinton Davis, Public Member Alt.  
  
Geri Byrne, County Member Alt.  
Cheryl Nelson, City Member Alt.

**2. Election of Chair and Vice-Chair for Fiscal Year 2015-2016**

- a. Election of Chair*
- b. Election of Vice-Chair*

**3. Approval of Agenda (Additions and Deletions)**

**4. Approval of the Minutes: June 9, 2015**

**5. Correspondence:**

**6. Public Comment**

This is the time set aside for citizens to address the Commission on any item of interest to the public that is within the subject matter jurisdiction of the Commission. For items that are on the agenda, public comment will be heard when the item is discussed. If your comments concern an

item that is noted as a public hearing, please address the Commission after the public hearing is opened for public testimony. The Chair reserves the right to limit each speaker to three (3) minutes. Please understand that by law, the Commission cannot make decisions on matters not on the agenda.

**6. Ratify Claims for June 2015 and Authorize Payment of Claims for July 2015**

- a. *Approve payment of expenses for June 2015 and July 2015.*

**Workshop**

**7. Service Review and Sphere of Influence Update for the Hafer Hills Estates County Service Area**

- a. *Conduct Workshop on the Service Review and SOI for the Hafer Hills Estates County Service Area*

**8. Executive Officer's Monthly Report**

*Ground Water Service Areas  
Big Valley Water Users  
Mayers Healthcare District Annexation  
SB-88 Water District Consolidations  
Capistrano Taxpayers Assn. v. City of San Juan Capistrano  
2014-2015 Grand Jury Report*

**9. Commissioner Reports - Discussion**

This item is placed on the agenda for Commissioners to discuss items and issues of concern to their constituency, LAFCO, and legislative matters.

**10. *Adjourn to next meeting: Due to Columbus day falling on Monday the next meeting has been scheduled one week prior to the regular meeting date. October 6, 2015***

*Any member appointed on behalf of local government shall represent the interests of the public as a whole and not solely the interest of the appointing authority Government Code Section 56325.1*

*The Commission may take action upon any item listed on the agenda. Unless otherwise noted, items may be taken up at any time during the meeting.*

Public Comment

Members of the public may address the Commission on items not appearing on the agenda, as well as any item that does appear on the agenda, subject to the following restrictions:

- Items not appearing on the agenda must be of interest to the public and within the Commission's subject matter jurisdiction.
- No action shall be taken on items not appearing on the agenda unless otherwise authorized by Government Code Section 54954.2 (known as the Brown Act, or California Open Meeting Law).

#### Public Hearings

Members of the public may address the Commission on any item appearing on the agenda as a Public Hearing. The Commission may limit any person's input to a specified time. Written statements may be submitted in lieu of or to supplement oral statements made during a public hearing.

#### Agenda Materials

*Materials related to an item on this agenda submitted to the Commission after distribution of the agenda area available for review for public inspection in the Modoc County Planning Department office located at on 203 W. 4<sup>th</sup> Street, Alturas CA. [such documents are also available on the Modoc LAFCO website ([www.modoc.lafco.ca.gov](http://www.modoc.lafco.ca.gov)) to the extent practicable and subject to staff's ability to post the documents prior to the meeting]*

#### Accessibility

An interpreter for the hearing-impaired may be made available upon request to the Executive Officer 72 hours before a meeting.

The location of this meeting is wheelchair-accessible.

#### Disclosure & Disqualification Requirements

Any person or group of persons acting in concert who directly or indirectly contribute \$1,000 or more in support of or in opposition to a change of organization or reorganization that has been submitted to Modoc LAFCO must comply with the disclosure requirements of the Political Reform Act of 1974 applicable to local initiative measures to be submitted to the electorate. These requirements contain provisions for making disclosures of contributions and expenditures at specified intervals; they may be reviewed at Government Code §§56700.1 and 81000 *et seq.* Additional information about the requirements pertaining to local initiative measures to be presented to the electorate can be obtained by calling the Fair Political Practices Commission at (916) 322-5660. A LAFCO Commissioner must disqualify herself or himself from voting on an application involving an "entitlement for use" (such as an annexation or sphere amendment) if, within the last twelve months, the Commissioner has received \$250 or more in campaign contributions from the applicant, any financially interested person who actively supports or opposes the application, or an agency (such as an attorney, engineer, or planning consultant) representing the applicant or an interested party. The law (Government Code Section 84308) also requires any applicant or other participant in a LAFCO proceeding to disclose the contribution amount and name of the recipient Commissioner on the official record of the proceeding. Contact LAFCO Staff LAFCO staff may be contacted at (530) 233-9625 or by email at [lafco@modoc.lafco.ca.gov](mailto:lafco@modoc.lafco.ca.gov) Copies of reports to the extent feasible are located on the LAFCO webpage at: [www.modoclafco.org](http://www.modoclafco.org)

**Local Agency Formation Commission  
Of Modoc County  
Regular Meeting**

**Minutes of June 9, 2015**

**1. Call to Order:**

Chair Dederick called the meeting to order at 4:10 p.m., in the City Council Chambers, Alturas City Hall. Commissioners Allan, Dederick, Irvin, Shea and County Commissioner Alternate Byrne were present. Commissioner Alternate Davis was also present. Commissioner Alves was absent.

Staff Present: John Benoit, Executive Officer.

Pledge of Allegiance

**2. Approval of Agenda**

Commissioner Allan made the motion to approve the agenda as submitted; seconded by Commissioner Shea. In favor: Allan, Byrne, Dederick, Irvin and Shea.

**3. Approval of Minutes**

Commissioner Shea noted corrections regarding confusing language in the last paragraph of page 2 of the April 14, 2015 minutes. Commissioner Irvin made the motion to approve the minutes for with corrections; seconded by Commissioner Shea. In favor: Allan, Byrne, Dederick, Irvin and Shea.

**4. Correspondence**

One item of correspondence was noted which was included in the staff report. This item was a copy of a May 21, 2015 letter to Governor Brown from the California Special Districts Association (CSDA) in regards to the Drought Water System Consolidation Budget Trailer Bill SB-88. Executive Officer Benoit explained that this letter was included in the staff report to illustrate the difficulty of forced consolidation of districts. An unfriendly consolidation can be problematic and result in litigations even if the district does not have the capability to property operate. Most players are not in favor of Trailer Bill 88, including CSDA, RCRC and Calafco.

**5. Public Comment: None.**

**6. Ratify Claims for April 2015 and Authorize Payment of Claims for May 2015.**

*a. Approve payment of expenses for April 2015 and May 2015.*

Commissioner Shea made the motion to approve payment of expenses for April 2015 and May 2015; seconded by Commissioner Irvin. In favor: Allan, Byrne, Dederick, Irvin and Shea.

## **PUBLIC HEARINGS**

### **7. Service Review and Sphere of Influence Update for the Tule Lake Irrigation District.**

- a. Receive Executive Officer's Report and Conduct Public Hearing*
- b. Consider Resolution 2015-0004 approving the Municipal Service Review for services provided by the Tule Lake Irrigation District.*
- c. Consider Resolution 2015-0005 approving Sphere of Influence Update for the Tule Lake Irrigation District to be coterminous with the district's boundaries.*

Executive Officer Benoit gave a brief overview of the Municipal Service Review and Sphere of Influence for the Tule Lake Irrigation District. This is a routine review of service capacity. During the review, it was discovered that the boundaries of the district were not clearly known. As a result, a great deal of research went into determining and correctly mapping the district boundaries. No issues of concern were identified regarding the capacity to provide services. Staff recommended approval of the proposed actions and noted that the Tule Lake Irrigation District did receive a copy of the draft MSR/SOI update and was notified of the meeting. No comments were received.

(Item 7b and 7c.) Commissioner Irvin made the motion to adopt Resolution 2015-0004 and 2015-0005 approving a Municipal Service Review for services provided by the Tule Lake Irrigation District and a Sphere of Influence Update for the Tule Lake Irrigation District to be coterminous with the district's boundaries; seconded by Commissioner Allan. In favor: Allan, Byrne, Dederick, Irvin and Shea.

### **8. Final LAFCo FY 2015-2016 Budget**

- a. Review and Discuss final 2015-2016 LAFCo Budget*
- b. Consider Resolution 2015-0006 adopting a final Modoc LAFCo Budget for FY 2015-2016.*

Chair Dederick noted that the proposed budget had been reviewed at the April 14, 2015 and approved. Executive Officer Benoit confirmed that no changes had been made.

Commissioner Shea made the motion to approve Resolution 2015-0006 adopting the final Modoc LAFCo budget for FY 2015-2016; seconded by Commissioner Allan. In favor: Allan, Byrne, Dederick, Irvin and Shea.

### **9. Authorize Commission and Staff to attend the Calafco Annual Conference in Sacramento on September 2-4, 2015.**

- a. Authorize Commissioners and Staff to attend Calafco Annual Conference in Sacramento.*

Executive Officer Benoit asked if any LAFCo commission members would be interested in attending the Calafco Annual Conference. Clinton Davis, Public Member Alternate, expressed that he would like to attend.

**10. Appoint voting member to vote on behalf of Modoc LAFCo at Calafco's Annual Conference.**

- a. Appoint voting member and voting member alternate to vote on behalf of Modoc LAFCo.*

Motion made by Commissioner Irvin to appoint Clinton Davis as voting member and John Benoit as member alternate; seconded by Commissioner Allan. In favor: Allan, Byrne, Dederick, Irvin and Shea.

**11. Consider Nomination for Calafco Executive Board of Directors**

- a. Consider Nomination for a County Member or a Special District member (Special District Member is not applicable in Modoc County).*

No nominations were made and no action was taken on this item.

**12. Consider Nominations for Calafco Achievement Awards**

No nominations were made and no action was taken on this item.

**13. Executive Officer's Monthly Report**

*Southern Cascade CSD – Proceedings Terminated  
Big Valley Water Users  
Mayers Healthcare District Annexation  
New Website [www.modoclafco.org](http://www.modoclafco.org)*

*Southern Cascade Community Service District (CSD) formation:* Proceedings terminated because the vote was short by four votes and did not pass.

*Big Valley Water Users:* The Big Valley Water Users currently have a Watermaster agreement through a court decree with territory in both Modoc and Lassen counties. Since a bill sponsored by Assemblyman Brian Dahle was not successful, there is anticipation that the owners of land subject to the Modoc County Court decree will submit an application for the formation of a Watermaster district. Commissioner Byrne inquired about if such district was formed if it could also serve as the Groundwater Sustainability Agency (GSA) for the Big Valley Groundwater Basin. Benoit explained that the area subject to the Court Decree is much smaller than what would be required for the GSA. This issue was further discussed. More information is expected to be forthcoming regarding the Big Valley Water Users' potential application.

*Mayers Memorial Healthcare District Annexation:* Executive Officer Benoit noted that the Shasta LAFCo appears to be in a state of disarray since the change in their Executive Officer a few months ago. He has heard no news about the proposed district annexation.

**14. Commissioner Reports – Discussion**

No Commissioner reports.

**15. Adjourn to next regular meeting: August 11, 2015**

There being no further business to come before this Commission; Commissioner Alternate Byrne made the motion to adjourn the meeting; seconded by Commissioner Irvin. In favor: Allan, Byrne, Dederick, Irvin and Shea.

With no further business the meeting adjourned at 5:40 p.m.

# Modoc Local Agency Formation Commission

## CLAIMS

for

June and July 2015

Authorize the following claims for FY 2014-2015

July 1, 2015	Staff Services June 2015	\$ 4,003.82
June 9, 2015	Commissioner Stipends	\$ 600.00
	<b>TOTAL:</b>	<b>\$ 4,603.82</b>

Authorize the following Claims for FY 2015-2016

Aug 1, 2015	Staff Services July 2015	\$ 4,225.15
July 1, 2015	Calafco Dues 2015-2016	\$ 785.00
July 1, 2015	Calafco Conf. Registration – Davis	\$ 425.00
	<b>TOTAL:</b>	<b>\$ 5,435.15</b>

**DATED:** August 11, 2015

**APPROVED:** August 11, 2015

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**John Dederick or Jim Irvin, Vice-Chair Modoc  
Local Agency Formation Commission**

**Attest:**

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**John Benoit  
Executive Officer**





**CERTIFIED FOR PUBLICATION**  
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION THREE

CAPISTRANO TAXPAYERS  
ASSOCIATION, INC.,

Plaintiff and Respondent,

v.

CITY OF SAN JUAN CAPISTRANO,

Defendant and Appellant.

G048969

(Super. Ct. No. 30-2012-00594579)

OPINION

Appeal from a judgment of the Superior Court of Orange County, Gregory Munoz , Judge. Affirmed in part; reversed in part and remanded.

Colantuono & Levin, Colantuono, Highsmith & Whatley, Michael G. Colantuono, Tiana J. Murillo and Jon di Cristina; Rutan & Tucker, Hans Van Ligten and Joel Kuperberg for Defendant and Appellant.

Best, Best & Krieger and Kelly J. Salt for the Association of California Water Agencies, League of California Cities and California State Association of Counties as Amicus Curiae on behalf of Defendant and Appellant.

We conclude the trial court erred in holding that Proposition 218 does not allow public water agencies to pass on to their customers the capital costs of improvements to provide additional increments of water – such as building a recycling plant. Its findings were that future water provided by the improvement is not immediately available to customers. (See Cal. Const., art. XIII D, § 6, subd. (b)(4)) [no fees “may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question”].) But, as applied to water delivery, the phrase “a service” cannot be read to differentiate between recycled water and traditional, potable water. Water *service* is already “immediately available” to all customers, and *continued* water service is assured by such capital improvements as water recycling plants. That satisfies the constitutional and statutory requirements.

However, the trial court did not err in ruling that Proposition 218 requires public water agencies to calculate the actual costs of providing water at various levels of usage. Article XIII D, section 6, subdivision (b)(3) of the California Constitution, as interpreted by our Supreme Court in *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 226 (*Bighorn*) provides that water rates must reflect the “cost of service attributable” to a given parcel.<sup>3</sup> While tiered, or inclined rates that go up progressively in relation to usage are perfectly consonant with article XIII D, section 6, subdivision (b)(3) and *Bighorn*, the tiers must still correspond to the actual cost of providing service at a given level of usage. The water agency here did not try to calculate the cost of actually

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<sup>3</sup> Until *Bighorn*, there was a question as to whether Proposition 218 applied at all to water rates. In 2000, the appellate court in *Howard Jarvis Taxpayers Assn. v. City of Los Angeles* (2000) 85 Cal.App.4th 79, 83 (*Jarvis v. Los Angeles*), held that a city’s water rates weren’t subject to Proposition 218, reasoning that water rates are mere commodity charges. *Bighorn*, however, formally disapproved *Jarvis v. Los Angeles* and held that water rates *are* subject to article XIII D of the California Constitution. (*Bighorn, supra*, 39 Cal.4th at p. 217, fn. 5.)

providing water at its various tier levels. It merely allocated all its costs among the price tier levels, based not on costs, but on pre-determined usage budgets. Accordingly, the trial court correctly determined the agency had failed to carry the burden imposed on it by another part of Proposition 218 (art. XIII D, § 6, subd. (b)(5)) of showing it had complied with the requirement water fees not exceed the cost of service attributable to a parcel. That part of the judgment must be affirmed.

#### IV. CONCLUSION

All of which leads us to the conclusion City Water's pricing violates the constitutional requirement that fees "not exceed the proportional cost of the service

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The relevant text from article XIII C, section 1, subdivision (e)(5) is:

"(e) As used in this article, "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following: [¶] . . . [¶] (5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law."

attributable to the parcel.” This is not to say City Water must calculate a rate for 225 Elm Street and then calculate another for the house across the street at 226. Neither the voters nor the Constitution say anything we can find that would prohibit tiered pricing.

But the tiers must be based on usage, not budgets. City Water’s Article X, section 2 position kept it from explaining to us *why* it cannot anchor rates to usage. Nothing in our record tells us why, for example, they could not figure out the costs of given usage levels that require City Water to tap more expensive supplies, and then bill users in those tiers accordingly. Such computations would seem to satisfy Proposition 218, and City Water has not shown in this record it would be impossible to comply with the Constitutional mandate in this way or some other. As the court pointed out in *Howard Jarvis Taxpayers Ass’n v. City of Fresno* (2005) 127 Cal.App.4th 914, 923, the calculations required by Proposition 218 may be “complex,” but “such a process is now required by the California Constitution.”

Water rate fees to fund the costs of capital-intensive operations to produce more or new water, such as the recycling plant at issue in this case, do not contravene article XIII, section 6, subdivision (b)(4) of the Constitution. While that provision precludes fees for a service not immediately available, both recycled water and traditional potable water are part of the same service – water service. And water service most assuredly is immediately available to City Water’s customers now.

But, because the record is unclear whether low usage customers might be paying for a recycling operation made necessary only because of high usage customers, we must reverse the trial court’s judgment that the rates here are *necessarily* inconsistent with subdivision (b)(4), and remand the matter for further proceedings with a view to ascertaining the portion of the cost of funding the recycling operation attributable to those customers whose additional, incremental usage requires its development.

By the same token, we see nothing in article XIII, section 6, subdivision (b)(3) of the California Constitution that is incompatible with water agencies passing on

the true, marginal cost of water to those consumers whose extra use of water forces water agencies to incur higher costs to supply that extra water. Precedent and common sense both support such an approach. However, we do hold that above-cost-of-service pricing for tiers of water service is not allowed by Proposition 218 and in this case, City Water did not carry its burden of proving its higher tiers reflected its costs of service. In fact it has practically admitted those tiers don't reflect cost of service, as shown by their tidy percentage increments and City Water's refusal to defend the calculations. And so, on the subdivision (b)(3) issue, we affirm the trial court's judgment.

Given the procedural posture the case now finds itself in, the issue of who is the prevailing party is premature. That question should be first dealt with by the trial court only after all proceedings as to City Water's rate structure are final. Accordingly, we do not make an appellate cost order now, but reserve that matter for future adjudication in the trial court. (See *Neufeld v. Balboa Ins. Co.* (2000) 84 Cal.App.4th 759, 766 [deferring question of appellate costs in case being remanded until litigation was final].)

## Senate Bill No. 88

### CHAPTER 27

An act to add Sections 116680, 116681, 116682, and 116684 to the Health and Safety Code, to add and repeal Sections 21080.08, 21080.45, and 21080.46 of the Public Resources Code, and to amend Sections 375, 375.5, 377, 1058.5, 1552, 1846, 5103, and 5104 of, to add Sections 377.5, 79708.5, and 79716.5 to, and to add Article 3 (commencing with Section 1840) to Chapter 12 of Part 2 of Division 2 of, the Water Code, relating to water, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 24, 2015. Filed with  
Secretary of State June 24, 2015.]

#### legislative counsel's digest

SB 88, Committee on Budget and Fiscal Review. Water.

(1) Existing law, the California Safe Drinking Water Act, provides for the operation of public water systems, and imposes on the State Water Resources Control Board various responsibilities and duties. Existing law requires the state board to conduct research, studies, and demonstration projects relating to the provision of a dependable, safe supply of drinking water, to adopt regulations to implement the California Safe Drinking Water Act, and to enforce provisions of the federal Safe Drinking Water Act. Existing law prohibits a person from operating a public water system unless the person first submits an application to the state board and receives a permit issued by the state board, as specified.

This bill would authorize the state board to order consolidation with a receiving water system where a public water system, or a state small water system within a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water. This bill would authorize the state board to order the extension of service to an area that does not have access to an adequate supply of safe drinking water so long as the extension of service is an interim extension of service in preparation for consolidation. The bill would require the state board, prior to ordering consolidation or extension of service, to conduct an initial public meeting and a public hearing and to make specified findings. The bill would limit the liability of a consolidated water system, wholesaler, or any other agency in the chain of distribution that delivers water to a consolidated water system, as specified.

(2) Existing law, the California Environmental Quality Act (CEQA), requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project

116682. (a) Where a public water system, or a state small water system within a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water, the State Water Resources Control Board may order consolidation with a receiving water system as provided in this section and Section 116684. The consolidation may be physical or operational. The State Water Resources Control Board may also order the extension of service to an area that does not have access to an adequate supply of safe drinking water so long as the extension of service is an interim extension of service in preparation for consolidation. The State Water Resources Control Board may set timelines and performance measures to facilitate completion of consolidation.

(b) Prior to ordering consolidation or extension of service as provided in this section, the State Water Resources Control Board shall do all of the following:

(1) Encourage voluntary consolidation or extension of service.  
(2) Consider other enforcement remedies specified in this article.  
(3) Consult with, and fully consider input from, the relevant local agency formation commission regarding the provision of water service in the affected area, the recommendations for improving service in a municipal service review, and any other relevant information.

(4) Consult with, and fully consider input from, the Public Utilities Commission when the consolidation would involve a water corporation subject to the commission's jurisdiction.

(5) Consult with, and fully consider input from, the local government with land use planning authority over the affected area, particularly regarding any information in the general plan required by Section 65302.10 of the Government Code.

(6) Notify the potentially receiving water system and the potentially subsumed water system, if any, and establish a reasonable deadline of no less than six months, unless a shorter period is justified, for the potentially receiving water system and the potentially subsumed water system, if any, to negotiate consolidation or another means of providing an adequate supply of safe drinking water.

(A) During this period, the State Water Resources Control Board shall provide technical assistance and work with the potentially receiving water system and the potentially subsumed water system to develop a financing package that benefits both the receiving water system and the subsumed water system.

(B) Upon a showing of good cause, the deadline may be extended by the State Water Resources Control Board at the request of the potentially receiving water system, potentially subsumed water system, or the local agency formation commission with jurisdiction over the potentially subsumed water system.

(7) Obtain written consent from any domestic well owner for consolidation or extension of service. Any affected resident within the consolidation or extended service area who does not provide written consent shall be ineligible, until the consent is provided, for any future water-related

(e) Upon ordering consolidation or extension of service, the State Water Resources Control Board shall do all of the following:

(1) As necessary and appropriate, make funds available, upon appropriation by the Legislature, to the receiving water system for the costs of completing the consolidation or extension of service, including, but not limited to, replacing any capacity lost as a result of the consolidation or extension of service, providing additional capacity needed as a result of the consolidation or extension of service, and legal fees. Funding pursuant to this paragraph is available for the general purpose of providing financial assistance for the infrastructure needed for the consolidation or extension of service and does not need to be specific to each individual consolidation project. The State Water Resources Control Board shall provide appropriate financial assistance for the infrastructure needed for the consolidation or extension of service. The State Water Resources Control Board's existing financial assistance guidelines and policies shall be the basis for the financial assistance.

~~(2) Ensure payment of standard local agency formation commission fees caused by State Water Resources Control Board-ordered consolidation or extension of service.~~

(3) Adequately compensate the owners of a privately owned subsumed water system for the fair market value of the system as determined by the Public Utilities Commission for water corporations subject to the commission's jurisdiction or the State Water Resources Control Board for all other water systems.

~~(4) Coordinate with the appropriate local agency formation commission and other relevant local agencies to facilitate the change of organization or reorganization.~~

(f) For the purposes of this section, the consolidated water system shall not increase charges on existing customers of the receiving water system solely as a consequence of the consolidation or extension of service unless the customers receive a corresponding benefit.

(g) Division 3 (commencing with Section 56000) of Title 5 of the Government Code shall not apply to the consolidation or extension of service required pursuant to this section.

SEC. 4. Section 116684 is added to the Health and Safety Code, to read:

116684. (a) Liability of a consolidated water system, wholesaler, or any other agency in the chain of distribution that delivers water to a consolidated water system shall be limited as described in this section.

(b) (1) The consolidated water system, wholesaler, or any other agency in the chain of distribution that delivers water to a consolidated water system, shall not be held liable for claims by past or existing customers or those who consumed water provided through the subsumed water system concerning the operation and supply of water from the subsumed water system during the interim operation period specified in subdivision (d) for any good faith, reasonable effort using ordinary care to assume possession of, to operate, or to supply water to the subsumed water system.

# Local Government – Surprise Valley Health Care District

June 12, 2015

## **SUMMARY**

The investigation of the 2014-2015 Grand Jury showed that there is a high level of concern over the ability of the Surprise Valley Health Care District to survive. The lack of accurate fiscal information, including up-to-date audits, has contributed to the current financial crisis. In spite of the friction between various factions, all parties appear to genuinely be working toward finding solutions. The Grand Jury recommends that the Board attend trainings to enhance their ability to handle the District and that they ensure they have competent personnel on all levels of management. The Grand Jury also recommends that the Administration seek and provide training for personnel who use the new medical records software.

## **GLOSSARY**

CAO – Chief Administrative Officer

CEO – Chief Executive Officer

DON – Director of Nursing

FY – Fiscal Year

GJ – Grand Jury

MMC – Modoc Medical Center

SNF – Skilled Nursing Facility

SVHCD – Surprise Valley Health Care District

## **BACKGROUND**

The SVHCD Board upheaval was brought to the attention of the Grand Jury by the news media. Various members of the county urged the Grand Jury to initiate an investigation.

## **METHODOLOGY**

The Modoc Grand Jury interviewed members of the Board of Directors; former and current staff members, including the current CEO and the Director of Nursing; the CAO of Modoc Medical Center; and some Surprise Valley residents. The GJ also reviewed documents provided by interviewees.

## DISCUSSION

The Surprise Valley Health Care District (SVHCD) provides a critical access hospital, a provider-based rural health clinic, a distinct-part skilled nursing facility (SNF) and a basic life-support ambulance service to residents who reside in Ft. Bidwell, Lake City, Cedarville and Eagleville. SVHCD is the largest employer in the valley. SVHCD receives funds from a tax assessment on the residents who live in its service area.

During the Modoc Grand Jury investigation it quickly became apparent that there was concern throughout Surprise Valley about the future of the District. The Grand Jury learned that the lack of job training for management and the lack of training for Board members have led to a slow decline in employee morale and in their trust of the leadership provided by the administration and by the Board. These and other factors have contributed to the current situation.

Mismanagement of the SVHCD has been evident for at least the past five years. Not enough financial information was presented to the Board, and audits were not kept current. Consequently the SVHCD Board made some uninformed decisions. As a result poor practices ensued, such as continued payment of insurance benefits for former employees, overstaffing, and employment of undocumented immigrants. Some employees felt that the Board was micro-managing and began to distrust the Board's management decisions. Many employees felt that the Board wanted to "shut down" the hospital, which made for very tense situations. The Board members themselves were stressed.

The former administrator resigned in July 2014. SVHCD's Board requested assistance from Modoc Medical Center (MMC). MMC agreed to allow their CAO to contract with SVHCD to serve as interim CAO for three months, one day per week to help with finances and administration. Many employees interpreted his presence as a way for MMC to either take over the hospital or to close it down completely.

SVHCD used funds from the Vesper Society to engage AKT, CPAs and Business Consultants, to analyze the District's organizational and financial situation. AKT found that SVHCD was over-staffed in some areas and lacked sufficient funds to continue at the present level. The results of this analysis helped guide some changes made in personnel, salaries and administration. Employees were also asked to help with problem solving. They volunteered to take a 10% pay cut, and the Board accepted their offer. In July 2014, the Department Heads and Management Team recommended closing the Clinic one day a week. All parties appeared to be working toward solutions.

To comply with federal mandates, SVHCD started using a software program that would combine all medical and financial records. In order to save money, the economical option selected, at a cost exceeding \$400,000, did not include technical support and training. When the staff encountered problems, there was no one to offer advice. Switching to this program on June 1, 2014, before the end of the fiscal year, caused additional problems. Both employees

and former Board members have mentioned the transition to this software as a major problem facing the District.

In order to continue receiving support from MMC, the SVHCD Board adopted a pre-employment drug screening policy, based on MMC's policy. The Leadership Team did not implement it because it had not been revised to fit SVHCD's situation; therefore total compliance would be impossible. Furthermore, while the Board claimed to have adopted the policy, the current CEO points out that the minutes show no record of a vote.

The rural health districts of the region have agreed to form a Joint Power Interstate Authority (JPIA). As proposed, each district will maintain its fiscal autonomy, but share resources, such as expensive medical equipment, billing services, Information Technology services and more. This is projected to be an effective cost saving measure for all four districts: Mayers Memorial Hospital District of Fall River Mills, Lake Hospital District of Lakeview, MMC and SVHCD.

During this Grand Jury's tenure, the entire SVHCD Board resigned, and as of April 6, 2015, five new board members have been appointed. The former Board resigned one at a time so the District could continue to function. As each Board member resigned, a new member was appointed in his/her place. As of June 1, 2015, the Board has elected officers and has begun the task of governing the District.

## **FINDINGS**

- F9. SVHCD Board members did not have the proper training needed to oversee the operations of the hospital, SNF, Clinic or the ambulance.
- F10. The previous administrations were unable to adequately keep the financial records in order. Audits have not been conducted on a regular basis, and employer taxes were not consistently paid. These factors have contributed to the current fiscal crisis.
- F11. Financial reports have been insufficient for the Board to make informed decisions.
- F12. No audit has been provided since FY 2011. Lack of this critical information regarding the financial status has contributed to the current crisis.
- F13. The cheapest option was selected when investing in the required medical software. Numerous problems have arisen that might have been avoided had the staff had training in its use and the availability of technical support.
- F14. Minutes of the Board meetings are lacking sufficient detail to accurately record actions taken by the Board.
- F15. Parts of the pre-employment drug screening policy adopted October 30, 2014, did not fit SVHCD.

F16. Insufficient time has passed to see if the new Board and administration will be able to institute policies that close the gap on the District's indebtedness and insure its ability to survive.

## **RECOMMENDATIONS**

- R9. SVHCD Board members should attend board training on a regular basis.
- R10. The Board needs to be sure that the administrative positions are filled with competent personnel.
- R11. The administration must provide accurate and timely financial documents at each regular monthly meeting.
- R12. The Board needs to require that the CEO bring the audits up-to-date as soon as possible.
- R13. The Board and administration should provide training and support for the staff members who use the new software.
- R14. The Chairman of the Board needs to assure that the Board meeting minutes reflect motions, votes and whether an action/policy passed or not. In addition, the minutes should be approved by the Board and signed. (Brown Act)
- R15. The Board should adopt a pre-employment drug screening policy that fits the District's situation.
- R16. The Grand Jury recommends that the 2015-2016 Grand Jury continue to investigate whether the new leadership of SVHCD has implemented effective strategies that are leading to financial recovery.

## **REQUEST FOR RESPONSES**

Pursuant to Penal Code section 933.05, the Grand Jury requests responses as follows:

From the following individual:

- The CEO of SVHCD: Respond in writing to F1 and R1, F3 and R3, F4 and R4, F5 and R5, F6 and R6, and F7 and R7.

From the following governing body:

- SVHCD Board of Directors: F1 and R1, F2 and R2, F4 and R4, F5 and R5, F6 and R6, and F7 and R7.

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

# Local Government –

## Adin Community Service District

June 12, 2015

### **SUMMARY**

The Adin Community Service District has an aging sewer system. The 2014-2015 Grand Jury recommends that they meet regularly and make long term plans for infrastructure replacement.

### **GLOSSARY**

ACSD – Adin Community Service District

### **BACKGROUND**

The Grand Jury received a complaint that the ACSD has not been meeting very often, if at all, for months. Furthermore, the complainant claimed that the creeks and ditches were not being maintained. Because the system is old, it will someday need major overhauls, but the Board of Directors is not making provision for its replacement.

### **METHODOLOGY**

The Grand Jury attended one of their meetings. They also interviewed some community members.

### **DISCUSSION**

The Grand Jury found that the ACSD Board has quarterly meetings and is aware of the issues facing them.

The sewer system was constructed in the mid-1970s. The equipment is approaching the end of its serviceable lifespan. The Board has money set aside for routine maintenance, but not enough for complete infrastructure upgrade and/or replacement. They are also seeking sources of funding, including grants.

The Board stated that creek and ditch maintenance is not its responsibility. However, in the past, the ACSD requested assistance from the Intermountain Conservation Camp.

## **FINDINGS**

- F17. The ACSD board has money set aside to work on the short term tasks needed, and they are actively maintaining the equipment that they have to accomplish those tasks.
- F18. As with every district, the infrastructure will deteriorate. The Board needs to make plans for future replacements.
- F19. The Grand Jury is aware of resources that are available through the Department of Water Resources, the State Water Resources Control, and the Upper Pit River Watershed Alliance.

## **RECOMMENDATIONS**

- R1. The ACSD Board should meet regularly to discuss and shape the issues facing them.
- R2. The ACSD Board and community should be aware of the long term needs of the district, and prepare for them.
- R3. The ACSD Board should seek alliances with the resources listed in F3 to facilitate the planning for future upgrades.

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