

LAKE LOCAL AGENCY FORMATION COMMISSION  
MINUTES OF MEETING  
November 19, 2014

PRESENT:

Ed Robey, Public Member  
Frank Gillespie, Special Districts  
Denise Rushing, County  
Stacey Mattina, Chair, City  
Denise Loustalot, City  
Jim Comstock, Vice-Chair County Member  
Gerry Mills, Special Districts Member

ALSO PRESENT:

Suzanne Lyons, Public Alternate  
Jim Abell, Spec. Dist Alt  
Martin Scheel, City Member Alternate  
John Benoit, Executive Officer Member  
Scott Browne, Legal Counsel

**1. Call to Order/Roll Call**

The meeting was called to order at 9:30 a.m. There was a quorum present.

**2. Approval of Minutes – July 16, 2014**

Commissioner E. Robey had a correction regarding Commissioner Robey being the Chair and Commissioner Mattina being the Vice-Chair. Commissioner Mattina being the Chair. With the correction, Commissioner Robey made the motion to approve the September 17, 2014 minutes, second by Commissioner J. Comstock; motion carried unanimously.

**3. Public Comment – No public comment received.**

**4. Consent Agenda**

Commissioner Ed Robey moved to authorize payment of the September and October 2014 expenses in the amount of \$16,803.97, second by Commissioner J. Comstock; motion carried unanimously.

**5. Continued Public Hearing regarding the Service Review for the Watershed Protection District.**

Executive Officer John Benoit began with a review of the minutes prepared for the September 17, 2014 LAFCo meeting and thanked Betsy Cawn for helping edit the minutes to ensure the minutes accurately portrayed the discussion. (The minutes were reviewed and approved prior to the beginning of this discussion of the agenda item.) The “2<sup>nd</sup> Draft” (Revision 1) provided for today’s public hearing incorporated changes reflected in the September 17 hearing minutes.

During the last few days staff received correspondence regarding this item namely a ~~the~~ letter from County Administration, requesting continuance of the Commission hearing and a meeting with staff (John and Jennifer) to go over their comments on the revised draft. In addition, Mike Dunlap and Maurice Taylor provided comments

recommending adoption of the 2<sup>nd</sup> hearing draft. The MSR Committee's report for today's hearing was received the previous evening (as presented by Betsy Cawn after completion of the Executive Director's report on the MSR process):

John is very concerned about LAFCo's budget that may be inadequate to complete ongoing projects (City of Clearlake and Fire Protection District MSRs, Resource Conservation District SOI update) because of overruns caused by the Watershed Protection District MSR overruns. John also wants to make sure that in the process, Committee members, the public and the County are all treated fairly.

The recommendation is that the Commission should make a determination on what it wishes to do with the hearing draft and which process it wants to follow to bring this to a completion.

Commissioner Matina asked what the budget for the MSR was imagined to be and how much has been spent so far.

John explained that the carryover from last year was less because of the time utilized on this project (referring to our expense sheet); it's been going on for a couple of years and it has been a very expensive MSR because of the public process.

Commissioner Rushing requested that the Commission address the County's request. Commissioner Matina invited comments from the MSR Committee first.

Betsy Cawn urged the Commission to approve the resolution (adopting the MSR 2<sup>nd</sup> Draft) and move the agenda to the [District] Board of Directors, avoiding further LAFCo expense, and have County Administration address their concerns to that Board.

The Committee's report for this hearing lists the Committee's conclusions, which are directed toward helping the County to address the findings of the California Department of Water Resources' 1957 "Lake County Investigation" (CA DWR Bulletin No. 14). In 1963 the County requested help from CA DWR to deal with the algae problems; in 1990 multiple agencies and County organizations formed a group called the Coordinated Resource Management Committee which produced the first Clear Lake Basin Management Plan in 2000. Referring to the one-page excerpt from the 1994 report by UC Davis scientists, the Committee recommends that the Watershed Protection District be identified as the "single central agency" (recommended in Section 10.6 of the 1994 report), recommended in the 1994 report.

A final attachment to the Committee's report describes excerpts from the County's final budget referring to the budget units in the MSR, for which no correspondence between dollar figures could be identified.

Commissioner Rushing stated that she has been waiting for the County's comments on this draft, and those are not available yet.

Commissioner Matina explained that the Commission spent a substantial amount of time going through the entire draft line by line at the September meeting (Commissioner

Rushing was absent), and the County staff was present and had their chance to make their comments at that hearing, so now they are asking to do it again and she is not sure why.

Commissioner Lyons questioned whether the member of the Commission who are County Supervisors have the ability to take ask their Board what it wants to do about LAFCo actions as they unfold. She also commented that the budget tables are confusing, and asked LAFCo attorney Scott Browne about the statement in the MSR that says (2<sup>nd</sup> Draft Pages 29 and 32) that the implementation of SB 1136 was never approved by LAFCo even though LAFCo has the authority to determine the powers exercised and the sphere of influence of the District, and whether LAFCo should be looking at the sphere of influence because one of the problems is that the Watershed Protection District has the responsibility for a lot of things over which we have no control. Could LAFCo require as part of the approvals the re-organization of the district?

Attorney Scott Browne stated that he has not looked at the original documents for the creation of this district to determine what powers it was originally given versus the powers it's now exercising. That is probably something that is in the MSR.

John says that there is no chart describing the difference between what they were given and what they are doing, but that the district was unable to do what was authorized by SB 1136. There is confusion between services provided by the Lake County Department of Water Resources and the Watershed Protection District. It appears there could be overlap, but nevertheless the District does provide the stuff that they were enabled to do by SB 1136 -- but perhaps the Department does some of this, too. So there's no clear line and that leads to the budget. He also was confused by reading the budgets and where the flow of money is indicated in the MSR. Maybe a chart needs to be done to show what the District is doing according to SB 1136 and what it is not doing. He is not sure that the District is empowered to do anything else other than what is defined in SB 1136.

Comments received from Special Districts Administrator Mark Dellinger state that the Watershed Protection District is going to do the groundwater management for the County, but the delegation [of that authority] was given to the County government. The County government will decide who's going to do that. That's the correct thing, and if the Watershed Protection District takes it on, are they allowed to under SB 1136. Those are the questions he doesn't have answers to. They would probably be best addressed by County Counsel.

Betsy explained the impact of SB 1136, which amended the California Water Code (Chapter 62) authority to do everything that is necessary to conserve, develop, capture and use water (as the former Lake County Flood Control & Water Conservation District) to add the ability for implementing the Stormwater permit under state law, and provide the public financing tools needed to do that.

Commissioner Rushing responded to Item 16 in the Committee report, which states that she previously commented that the Commission does not have the authority to address the lack of adequate financial information, and she must have been misunderstood because that's not what she meant.

Mike Dunlap, MSR Committee member explained that the involvement of the public has not contributed to driving up the cost of the MSR, because the Committee has done virtually all the footwork and investigation at zero cost to the Commission. He became involved in this process because it was his understanding that LAFCo has an independent agency view of reviewing municipalities and districts in the County, that [LAFCo's] responsibility is to have some oversight and make suggestions or findings for them to include or expand their services for the public that pays for the municipality or district.

Mike believes the Committee's report has put together its findings of facts and that nothing in the report is controvertible, and that it is this Commission's responsibility to make a finding that a Municipal Service Review has been done, and send it off to the Board of Directors of the District.

Suzanne Lyons stated that when the process was begun, there was not a lot of knowledge about the WPD, even among its Board of Directors. The MSR is well prepared and informative, and the Commission has done something really important here. We're looking at an entity that we made the populous aware of, we have looked at its responsibilities and its jurisdiction, and we have an opportunity to create a fully functioning entity.

Nobody understands how the district works and how the funding works in the district. We have tried three times now to pass an ordinance to try to manage our lake. A great majority [of the voters] really want to see this done. The problem is nobody understands how the money works. She stated she had reviewed the Ventura WPD (website) and that district was specific in its 5-year plan in terms of dollars to be budgeted for given items including mapping and environmental review status. People should be able to view what the WPD is doing and at what cost and they ought to be able to find that. We found that it's very difficult to get this information and it shouldn't be. It's a mess and we need to clean it up, let's fix it now so that we can take care of our watershed and take care of our lake.

~~Denise~~ Commissioner Rushing asked for a point of process on how to do through this i.e. to look at the determinations (Sec 4) or wait for the County Comments. John explained he has not received any comments with respect to Section 4 (the determinations). Denise just wanted to know what the process should be.

Commissioner Robey suggested to continue this item to January since he has received a copy of a letter from the County Administrator and we received several documents from Betsy. Jim Comstock stated he agrees with Ed on this and referenced the Lower Lake MSR, which was prepared years ago and the commission afforded opportunity to review and testify and questioned why we wouldn't afford the same opportunity to allow the County to comment.

Commissioner Lyons suggested that it could be problematic if the Commission changes in January ~~did~~ because new Commissioners will not understand what we have been working on for the last two years.

Commissioner Rushing suggested the Commission could meet in December.

~~Jim~~ Commissioner Comstock agreed to meet in December.

Commissioner Mills commented that there are two representatives of the County [present] and he does not understand why the County Administrator is ignoring this Commission.

Commissioner Rushing stated that Commissioner Comstock and she do not have the authority to direct the County Chief Administrative Officer to get this done faster. The reality is this item came before the Board of Supervisors in the past and as a Board voted that they didn't think LAFCo has jurisdiction over this.

So as individual Board members we can ask the County Administrative Office to focus on this as a priority and get this done before the next LAFCo meeting, but the Board has already said that they don't think LAFCo has the jurisdiction.

Attorney Scott Browne questioned if this interpretation came from County Counsel, [because] it's illegal.

Commissioner Rushing said no, it's not from County Counsel. Basically, the Board realizes this is happening and the County Administrative staff realizes it's happening. Their point wasn't that they didn't comment or have a chance to comment in the past, their recent point apparently is that they wanted a chance to comment on the final public draft and they've been gone this week and haven't had a chance to comment.

Commissioner Matina said she thinks the disappointment here is that we spent a lot of time last time and we had Alan [Flora] here and we had Scott [DeLeon] here and we went line by line and we came up with the verbiage. The only thing that's new is that it's all together in a draft.

Commissioner Rushing stated that there are things they [the County Administration] wanted to have included and we don't know what those are. Let's go back and say what the County's issue is. It's not that they have never seen any drafts in the past, the County's issue is they want a chance to say what's in and not in the final draft, because apparently there are some things in there that they still disagree with and we don't know what those are. I don't know what they're seeing that isn't still there. We could go through this draft line by line ourselves or wait until the County has a chance to comment to make sure that what was discussed in the September meeting is included in the draft. Commissioner Matina stated that we've already done that, we're done. The only last thing is the potential that the County thinks that something is left out.

Commissioner Comstock recommended holding a December meeting to give the County Administration time to respond.

Commissioner Scheel expressed concern that new inputs to the draft by County Adminis-

tration might delay adoption past the end of the year.

Commissioner Rushing suggested targeting getting it done.

Commissioner Robey stated that getting it done is important, but getting it done well, getting it done right, is more important. He referred to Matt Perry's letter expresses concern about several misleading or inaccurate statements. It doesn't say what those are. If they really truly are misleading or inaccurate then we need to straighten that out.

Attorney Scott Browne suggested LAFCo set a date certain at least a week before the meeting for them to get their comments in so that we as staff have the ability to address them. If there is a misspelling, for example, we can correct that in the draft before the meeting. Or we could make the changes for the Commission to adopt in the December meeting. But we have to be very clear to them on a deadline to get their comments in, and hopefully then they would comply. I also think we should send them Betsy's comments we received today so that they are aware of the entire context of what we are considering.

Jim Comstock made a motion to hold a special meeting to be in December. Discussion occurred regarding setting a meeting day and time. The meeting was set for 2:00 PM December 18<sup>th</sup> at the City of Lakeport City Council Chambers and that is made known to the County of Lake that this is their last opportunity, that their comments must be made to LAFCo by December 11<sup>th</sup>, 2014. The motion was seconded by Commissioner Robey and passed by unanimous vote.

## **6. Discussion of the Calafco Conference October 2014**

John Benoit began by stating Scott Browne and himself attended the Calafco Conference and was hoping to receive more information on the new groundwater legislation. LAFCo now has a diminished role in the legislation in favor of the Counties having a more enhanced role. Also some of the conference dealt with an overview of LAFCo and stated there was a Southern California bent towards groundwater legislation. The state is defining where the critical water basins are and there is a difference between how rural and urban counties deal with groundwater legislation.

## **7. Executive Officer's report**

City of Clearlake Service Review – Wishes to bring that before the Commission in January and is close to completion at this point. The City General Plan is nearing completion at this point.

Hidden Valley Lake Service Review and Sphere of Influence. Met with the HVLCSO and gave them a questionnaire. The District received a Curtailment Order from the SWRCB. The district manager stated he has viable solutions to addressing the curtailment order. In essence, the junior water rights holders were given curtailment

orders. Mike Dunlap stated an important point that the water pumped by the HVLCSO near Putah Creek is considered surface water and therefore subject to a curtailment order.

Fire Service Review to be brought after the Clearlake Service Review. This includes all the fire districts.

Minnie Cannon Annex to the CCWD will be recorded after the LAFCo meeting.

The RCD consolidation will most likely come up in January 2015.

LAFCo Clerk to take minutes is desperately needed.

## **8. Commissioner Reports**

Commissioner Jim Comstock expressed concern about the State Water Resources Control Board (SWRCB) could be curtailing Senior Water Rights holders and not only those with Junior Water Rights.

Attorney Scott Browne expressed that this could occur in Critical Watersheds and the need for water for environmental purposes. It is an important issue for LAFCo whenever there is a change of organization to determine whether there is a timely availability of adequate water supply, not just whether the well can pump enough water for the subdivision, but whether there's enough water in the ground over the long term to sustain the kind of pumping that the city is proposing to do. This is an issue that all of the LAFCo's are going to have to address far more seriously given the drought. I think it's already an issue that this LAFCo is well aware of. There is a question as to whether or not the SWRCB has the legal right.

Commissioner Rushing commented on the BOS asked county staff and interested community members over a year ago to come back to the BOS with an approach to handle land use and open space regarding paper lots around the Lake. The committee developed a report on paper lot subdivisions addressing the problems and barriers to unwinding these old paper subdivisions and associated problems. There may be a role for LAFCo's to help unwind these subdivisions.

Commissioner- Lyons commented she does not know when the Commission changes seats. Benoit stated the Mayor's select committee makes the appointments and until the committee meets, there are no changes.

## **9. Correspondence – Letter sent to the County re: Valley Oaks Subdivision**

## **10. Adjourn to Lafco's special meeting: Thursday December 18, 2014 at 2:00 PM at Lakeport City Hall**

The meeting was adjourned at 10:37 a.m.

