

FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)
EXECUTIVE OFFICER'S REPORT

AGENDA ITEM NO. 4

DATE: November 18, 2020

TO: Fresno Local Agency Formation Commission

FROM: David E. Fey, Executive Officer 

SUBJECT: Response to Grand Jury Report No. 2 for Fiscal Year 2019-20 Regarding
"Revisiting Special District Audits."

RECOMMENDATION: Authorize Chair to Execute the Attached Response to the Fresno
County Grand Jury.

Executive Summary

The 2019-20 Fresno County Civil Grand Jury reviewed the published reports of previous years' grand juries. The Grand Jury reviewed the status of the recommendations made in the 2017-18 Grand Jury's Report No. 3, "Special Districts Non-Compliance-System Failure."

Grand Jury Report No. 2 ("Report") focuses on inconsistencies in some Fresno County special districts' financial audit reporting to the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office. LAFCo plays a relatively minor but important role in this Report. The Grand Jury understood that LAFCo is not responsible for the behavior of other agencies but strives—through the Municipal Service Review process—to assist special districts to improve their accountability, their fidelity to their principal acts, and their financial reporting requirements as required by statute.

The Grand Jury presented to recommendations for LAFCo's response.

A copy of the Report is attached as **Attachment A**. The draft response letter to the Honorable Alvin L. Harrell, Presiding Judge of the Fresno County Superior Court is attached as **Attachment B** for the Commission's consideration.

Analysis of Recommendations

Recommendation 1. Continue recommendation R4 of the 2017-18 Fresno County's Grand Jury Report No. 3: "Per California Government Code, section 26929 as amended, Fresno County Auditor-Controller/Treasurer-Tax Collector's Office should either perform financial audits on special districts or contract with a certified public accountant to have the missing audits completed."

Response to recommendation R1: We agree with the recommendation but assert that LAFCo has no authority over the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office.

Recommendation 2. Audits not completed in a timely manner by special districts should be referred to Fresno LAFCo as "potentially inactive" in order that Fresno County LAFCo may commence the dissolution process for chronic non-compliance, if needed.

Response to recommendation R2: We agree with the recommendation but assert that any proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 to dissolve a special district must respect all legal rights that are owed to that special district and the residents and/or property owners within that special district.

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Revisiting Special District Audits Fresno County Grand Jury Report No. 2 October 2020

SUMMARY

The 2019-20 Fresno County Civil Grand Jury reviewed the published reports of previous years' grand juries, as is customary, for continuity. In addition, California grand juries are mandated to investigate, review and report on county operations. When the 2019-20 Grand Jury reviewed the status of the recommendations made in the 2017-18 Grand Jury's Report No. 3, "Special Districts Non-Compliance-System Failure," it was noted that several recommendations had to do with the financial audit reporting of some Fresno County special districts.¹

Special districts, by their design, are tax based to benefit citizens of a defined area. This can involve significant taxpayer monies ranging from several thousand to millions of dollars for each special district.

The 2019-20 Grand Jury interviewed a member of the Fresno County Board of Supervisors and representatives from the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office and Fresno County Local Agency Formation Commission to determine whether 2017-18 Grand Jury Report No. 3 recommendations R1, and R4 through R6 had been implemented.

Based upon our investigation and analysis we conclude that the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office and the Fresno County Local Agency Formation Commission have implemented recommendations R1, R5 and R6 of Report No. 3 of the 2017-18 Grand Jury.

With respect to recommendation R4, the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office (Office) has not yet made its presentation to the Fresno County Board of Supervisors to request the necessary budget to have audits of non-compliant special districts performed by certified public accountant (CPA) firms at the direction of the Office. A more proactive approach is indicated herein.

¹ Websites:

- Fresno County Board of Supervisors. <https://www.co.fresno.ca.us/departments/board-of-supervisors>
- Fresno County LAFCo. <http://www.fresnolafco.org/>
- State of California, Government Code Section 26909. <http://leginfo.legislature.ca.gov/faces/selectFromMultiples.xhtml?lawCode=GOV§ionNum=26909>.
- California State Association of Counties, <https://www.counties.org/>

GLOSSARY

Local Agency Formation Commission (LAFCo) - The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act) (Government Code section (§) 56000 et seq.) requires all LAFCOs to conduct municipal service reviews prior to updating sphere of influence or area of responsibility of the various cities and special districts in the county, excluding community facility districts and school districts (Government Code §56430). The fundamental role of a LAFCo is to implement the CKH Act, providing for the logical, efficient, and most-appropriate formation of local municipalities, service areas, and special districts.

Municipal Service Review (MSR) - The MSR and Sphere of Influence (SOI) Update process is a comprehensive assessment prepared by LAFCo to assess the ability of government agencies to effectively and efficiently provide services to residents and users. The form and content of the MSR/SOI Update is governed by requirements of the CKH Act and the State of California LAFCo MSR Guidelines published in August 2003. The MSR is generally updated when an SOI is prepared or updated; however, LAFCo may also prepare an MSR at its discretion.²

Little Hoover Commission³ - This independent bipartisan state oversight agency is composed of five public members appointed by the Governor, four public members appointed by the Legislature, two senators, and two Assembly members. The primary mission is to investigate state government operations and policy. In creating the Commission in 1962, the Legislature declared its purpose “to secure assistance for the Governor and itself in promoting economy, efficiency and improved services in the transaction of the public business in the various departments, agencies and instrumentalities of the executive branch of the state government, and in making the operation of all state departments, agencies and instrumentalities and all expenditure of public funds, more directly responsive to the wishes of the people as expressed by the elected representatives ...”⁴

BACKGROUND

There are many types of special districts (water, sanitation, mosquito, etc.). Fresno County currently has approximately 131 local agencies, including 15 cities and 116 special districts, which deal with funds ranging from a few thousand to millions of dollars. The majority (all but eight) of these districts are currently in compliance with the state financial audit requirements.

² Fresno LAFCo, “Commission Policies, Standard and Procedures Manual”, Section 107.01.
<http://www.fresnolafco.org/Updated%20Policies%20Parra%20Signature%20062620.pdf>

³ California Little Hoover Commission. <https://lhc.ca.gov/about/history>, Select tab at bottom “for creation and membership”

⁴ California Little Hoover Commission. <https://lhc.ca.gov/about/history>, Select tab at bottom “for purpose and duties”

The 2017-18 Fresno County Civil Grand Jury determined that at least 28 special districts were non-compliant with financial auditing requirements.⁵ In the Grand Jury's Report No. 3, dated June 2018, there were nine specific findings, resulting in six recommendations made to improve compliance with the financial auditing requirements. Of the six recommendations, two (R1 and R4) indicated future implementation by the Office; the Office did not respond to R6 and Fresno LAFCo did not directly address the implementation of R5 and R6 in its response.

METHODOLOGY

The 2019-20 Grand Jury began its year by reviewing the 2017-18 Grand Jury Report No. 3 to determine which of the six recommendations were implemented or planned to be implemented. We interviewed representatives from the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office, Fresno County LAFCo and a member of the Fresno County Board of Supervisors; documents were reviewed as appropriate. State and county websites were also utilized for investigative purposes.

DISCUSSION

There were four recommendations made in 2017-18 Grand Jury Report No. 3 that either were planned to be implemented at a future date or that were not directly addressed⁶:

“R1. The Fresno County Auditor-Controller/Treasurer-Tax Collector's Office should review all special districts for audit compliance and work with the non-compliant districts to bring them into compliance. It should prioritize them based on current cash balances, largest to smallest.”

California Government Code Section 26909 (a) enumerates the financial audit requirements placed on all special districts.⁷ The Fresno County Auditor-Controller/Treasurer-Tax Collector's Office (Office) concurred with this recommendation and stated that it would be implemented within six

⁵ The Fresno County Grand Jury 2017-2018 Final Report, Report #3, page 63, findings on page 69. <http://www.fresno.courts.ca.gov/pdfs/Grand%20Jury%20Reports/Grand%20Jury%202017-18%20Consolidated%20Final%20Report.pdf>

⁶ The Fresno County Grand Jury 2017-2018 Final Report, Report #3, page 63, responses pp 87-90. <http://www.fresno.courts.ca.gov/pdfs/Grand%20Jury%20Reports/Grand%20Jury%202017-18%20Consolidated%20Final%20Report.pdf>

⁷ State of California, Government Code Section 26909. <http://leginfo.legislature.ca.gov/faces/selectFromMultiples.xhtml?lawCode=GOV§ionNum=26909>.

months of the publication of the 2017-18 Grand Jury Report⁸. The Office has hired an accountant/auditor who is responsible for monitoring the compliance with the financial auditing requirements of the special districts. There is regular and continued follow-up with the special districts to ensure they are meeting their financial audit requirements. The status is monitored on a regular basis and communicated to Office management. We commend the Office for taking these necessary steps.

The 2019-2020 Grand Jury concludes that the process recommended in recommendation R1 of the 2017-18 Grand Jury Report No. 3 has been implemented.

“R4. Per California Government Code, section 26909 as amended, Fresno County Auditor-Controller/Treasurer-Tax Collector’s Office should either perform financial audits on special districts or contract with a certified public accountant to have the missing audits completed.”

The Fresno County Auditor-Controller/Treasurer-Tax Collector’s Office concurred with this recommendation and stated that it would be implemented within six months of the publication of the 2017-18 Grand Jury Report. Implementation included working with County Counsel to determine if the Office could collect charges for the audit costs directly from the special districts or needed to request sufficient budget from the Board of Supervisors (Board) for performance of the audits.

The Office has been working with County Counsel and the Board to resolve the issue of fees for audit costs being collected directly from the funds of the special districts or, when this approach is not feasible, to request the budget from the Board to have audits of non-compliant special districts performed by CPA firms at the direction of the Office. However, more than one year has passed since the expected implementation outlined in the Office’s response and implementation has not been commenced.

Table 1 summarizes the status of audits for the past 10 special district fiscal years ending in 2018, which were due in 2019. As shown in Table 1 there are eight non-compliant special districts, comprising a total of 46 past due audits. Of the eight non-compliant special districts, there are two special districts without sufficient funds and two special districts that submitted compilation reports in lieu of audits, which are significantly less extensive than an audit and not specifically allowed by Government Code §26909(a), for a total of 14 past due audits. Although good progress has been made in reducing the number of non-compliant districts and the number of past due audits, a more proactive approach is indicated herein.

⁸ The Fresno County Grand Jury 2017-2018 Final Report, Report #3, page 63, responses page 87. <http://www.fresno.courts.ca.gov/pdfs/Grand%20Jury%20Reports/Grand%20Jury%202017-18%20Consolidated%20Final%20Report.pdf>

TABLE 1
Non-Compliant Special Districts-Summary

Years Past Due	Non-Compliant Special Districts	Audits Missing	No Funds Available	Compilation Only Submitted
1	2	2	2	
3	1	3		
4	1	4		1
9	3	27		
10	1	10		1
Total	8	46	2	2

Source: Fresno County Auditor-Controller/Treasurer-Tax Collector's Office as of April 2, 2020.

“R5. The Fresno County Local Agency Formation Commission should continue to utilize and expand the municipal service review process to aid and educate all special districts.”

Fresno County LAFCo concurred with this recommendation; however, no specific timetable was included in its response.

Fresno County LAFCo uses the municipal service reviews (MSR) to evaluate/update the sphere of influence when there is a need to update based on the request of the city or special district. Of the 131 local agencies under Fresno County LAFCo's jurisdiction, 42 MSRs have been completed under the Commission's 2014 policy, 59 have been completed under the 2011 policy, and 29 under the 2007 policy. One other special district had been omitted from the initial MSR process due to a jurisdictional question, which has now been resolved; the MSR will now be performed by Fresno County LAFCo. The goal is for all local agencies to have MSRs completed to Fresno County

LAFCo's 2014 policy, subject to specific requests from the agencies and having a sufficient budget to perform discretionary MSRs.

The 2019-2020 Grand Jury concludes that the process recommended in recommendation R5 of the 2017-18 Grand Jury Report No. 3 has been implemented.

“R6. Fresno County Local Agency Formation Commission and the Fresno County Auditor-Controller/Treasurer-Tax Collector’s Office should encourage and support the recommendations of the California Little Hoover Commission “Special Districts: Improving Oversight & Transparency,” Report #239, August 2017.”

Both Fresno County LAFCo and the Fresno County Auditor-Controller/Treasurer-Tax Collector’s Office (Office) support the recommendations of the Little Hoover Commission; however, it was not addressed by the Office and no specific schedule was furnished by Fresno County LAFCo. Fresno County LAFCo has taken actions to either dissolve or reinstate special districts as well as perform municipal service reviews as required. The Office supports and provides assistance to Fresno County LAFCo to support their actions.

The 2019-2020 Grand Jury concludes that the process recommended in recommendation R6 of the 2017-18 Grand Jury Report No. 3 has been implemented.

FINDINGS

- F1. Report No. 3 from the 2017-18 Grand Jury was taken seriously and the necessary changes have been made to improve the processes as noted above in the “Discussion” section of this Report in both the Fresno County Auditor-Controller/Treasurer-Tax Collector’s Office and Fresno LAFCo. Recommendations R1, R5 and R6 of the 2017-18 Grand Jury’s Report No. 3 have been implemented.
- F2. Good progress has been made in reducing the number of non-compliant districts and the number of past due audits; the Fresno County Auditor-Controller/Treasurer-Tax Collector’s Office has not completed recommendation R4 from the 2017-18 Grand Jury’s Report No. 3 concerning the performance of financial audits for non-compliant special districts.

RECOMMENDATIONS

- R1. Continue recommendation R4 of the 2017-18 Fresno County’s Grand Jury Report No. 3: “Per California Government Code, section 26929 as amended, Fresno County Auditor-Controller/Treasurer-Tax Collector’s Office should either perform financial audits on special

districts or contract with a certified public accountant to have the missing audits completed.”⁹
(F2)

R2. Audits not completed in a timely manner by special districts should be referred to Fresno LAFCo as “potentially inactive” in order that Fresno County LAFCo may commence the dissolution process for chronic non-compliance, if needed. (F2)

REQUEST FOR RESPONSES

Pursuant to California Penal Code, section 933.05, the Fresno County Grand Jury requests responses to each of the specific findings and recommendations. It is required that responses from elected officials are due within 60 days of the receipt of this report and 90 days for others. The Fresno Grand Jury requests responses as follows:

- Fresno County Auditor-Controller/Treasurer-Tax Collector (F2 and R1, R2)
- Fresno County Local Agency Formation Commission Executive Office (R1, R2)

DISCLAIMER

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.

⁹ The Fresno County Grand Jury 2017-2018 Final Report, Report #3, page 70, responses pp 87.
<http://www.fresno.courts.ca.gov/pdfs/Grand%20Jury%20Reports/Grand%20Jury%202017-18%20Consolidated%20Final%20Report.pdf>



ATTACHMENT B

Fresno Local Agency Formation Commission

November 19, 2020

The Honorable Alvin L. Harrell, Presiding Judge
Fresno County superior Court
1100 Van Ness Avenue
Fresno, CA 93724-0002

Dear Judge Harrell:

On behalf of the Fresno Local Agency Formation Commission (LAFCo), we are in receipt of Grand Jury Report No. 2 for Fiscal year 2019-20 regarding "Revisiting Special District Audits." Pursuant to the correspondence we received October 27, 2020, this letter constitutes LAFCo's response pursuant to California Penal Code (PC) section 933.05.

Responses to Recommendations

R1. Continue recommendation R4 of the 2017-18 Fresno County's Grand Jury Report No. 3: "Per California Government Code, section 26929 as amended, Fresno County Auditor-Controller/Treasurer-Tax Collector's Office should either perform financial audits on special districts or contract with a certified public accountant to have the missing audits completed."

Response to recommendation R1: We agree with the recommendation but assert that LAFCo has no authority over the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office.

R2. Audits not completed in a timely manner by special districts should be referred to Fresno LAFCo as "potentially inactive" in order that Fresno County LAFCo may commence the dissolution process for chronic non-compliance, if needed.

Response to recommendation R2: We agree with the recommendation but assert that any proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 to dissolve a special district must respect all legal rights that are owed to that special district and the residents and/or property owners within that special district.

Sincerely,

Daniel Parra
Chair

c: Fresno LAFCo Commissioners and alternates
Ken Price, LAFCo Counsel
Elizabeth Vecchio, County Administrative Office

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