

September 22, 2021

To the LAFCo Commission,

Since Dec 2020, I have searched to find the root cause for the recent clamity in EDC LAFCo, for not completing the MSR's on time, which ended in the resignation of the EO in July 2021.

I am the Public Commissioner of EDC LAFCo, who cannot be a paid public official, but only a resident of EDC that volunteered at no cost to accept the appointment, and was unanimously selected by the other six members, in 2018.

In CKH 2000, all Commissioners are required to use their independent judgement on behalf of the interest of residents, property owners and the public in furthering the purposes of LAFCo, per Sec. 56325.1.

Using several past business experiences in engineering and financial management, government contracting and law, my findings, to date, are given in this memorandum, as follows:

I first met the past EO, Jose Enrique, in 2005, after the previous EO, Rosanne Chamberlain, left EDC LAFCo for Amador County.

As a five time member of the EDC Grand Jury, between 2005-15, I invited the EO to give presentations there, regularly, each time.

In 2019, I joined the EO at all the consolidation meetings between Garden Valley and Mosquito FPDs.

In 2019, I met with the EO several times, at the LAFCo office, to have him explain how activating the EDC Fire Authority under CSA 7 would address the Fire Districts funding issue.

In Dec 2020, the EO contract renewal was reduced from two years to one year, with quartely reviews, because the MSR's were not being completed on time.

In the Feb 2020 Commission Meeting, EO stated, in writing, that "a 3 1/2 member staff was needed to complete MSR's on time."

Later, during the Feb 2021 AD HOC Budget Meeting, the EO said that "not all agencies in EDC need to have MSR's done."

This AD HOC Budget Committee consisted of Commissioners Palmer, Hidahl and Powell.

Since 2008, the EO's staff has been only 2 1/2 members, except for 2019 year and possibly in 2012, when 3 1/2 members were present.

The missing staff member was always the Associate Program Analyst, who is solely the EO's assistant and Commission Clerk, per the LAFCo P&P's job description.

The EO's assistant, who was hired in 2019 and left in 2020, had his budget allocation in 2019 spent on a consultant for Fire District adopted SOI update and MSR, instead of replacing him.



In Jan 2021, the EO started the year with a staff of 2 1/2 members, but the 1/2 administration assistant hired in late 2020 left again in early 2021.

At the Feb 2021 AD HOC meeting, the EO presented three options for the hiring his assistant, as follows: a full year in July/2021, half year in Jan/2022, and the last quarter in March/2022.

In order to give the EO the 3 1/2 staff members he required to complete MSR's on time, I recommended the full year option.

But the EO said he could not train in July/2021, due to COVID restrictions, so the AD HOC committee chose the March/2022 option, instead, to keep total budget amount low.

Why question the 2021/22 Proposed Budget Again?

I considered this budget proposal to be non responsive to the EO's expressed need for 3 1/2 member staff, considering the upcoming quarterly scheduled EO performance reviews.

Instead, I recommended Jan/2022, instead, with total budget difference of only \$20K (\$540K v \$560K), but lost by 2 to 1 in the voting.

In June, 2021, when COVID restriction in EDC were lifted, I asked at the Commission Meeting to reconsider adding the \$20K, but was dissed by Commissioners Palmer and Hidahl, as the final budget was being voted for approval by the Commission.

Unfortunately, during this budget discussion, no one then asked the EO for his opinion?

While my being a Commissioner, between 2016 and 2021, the EO had only one year with his recommended 3 1/2 staff members, in order to complete MSR's on time.

Being left to face another whole year without 3 1/2 staff members, while under quarterly reviews for not completing MSR's on time, I can partially appreciate why the EO chose to resign the next month, instead.

Now, again, during the 2021 AD HOC meeting, the EO also said that not all of EDC's 53 out of 56 total agencies need to have MSR's done.

In reading CKH 2000, it states that only agencies which provide public facilities or services for sewer, water and fire protection MUST have their adopted SOI's updated every 5 (or 7) years, per Sec. 56430.

Also, in CKH 2000, a new MSR is only needed, in advance of updating the adopted SOI, per Sec. 56430.

Therefore, agencies, that do not provide public services, but only service the roads within their co-terminous boundary, do not need the required SOI updates and MSR's done, according to CKH 2000, but these agencies must still be efficiently operated within LAFCo oversight.

Also, CKH 2000 says that LAFCo should talk with agencies, first, before any SOI update and MSR work is initiated.

In 2007 (for Streets and Highway Services) and in 2008 (for General Government Services), a consultant, or PMC, was contracted by LAFCo to update the SOI's and MSR's, for all 53 agencies in EDC.

In 2010, with Commissioner Briggs, and in 2013, with Commissioner Humphries, the EO presented a work plan which replicated all past PMC SOI updates and MSRs for 53 agencies, again, over a period of 5 to 8 years.

When did the Commission discover that the EO's work plan for MSRs was not doable on time?

In 2012, the EO completed the adopted SOI update with MSR for EDH CSD with an inhouse LAFCo staff of 3 1/2 members.

However, in 2018, EDH CSD came to the Commission and requested that they hire their own consultant for \$80K, because their adopted SOI update and MSR was not being done on time in LAFCo.

In 2018, the EO's staff was 2 1/2 members and all 53 past PMC agencies, that not already had an SOI update and MSR done, were still on the EO's work plan to do list.

Why question the EO's completed MSRs as presented to the Commission in 2021?

Then, in Jan 2021, the EO presented the SOI update and MSR for Hickok Road CSD, which was four times more lengthy and elaborate than the same PMC SOI update and MSR done in 2007.

The Hickok Road agency provides no public services, but only provides road services within its coterminous boundry, so a SOI update and MSR is not required to be done within 5 to 7 years, per CKH 2000.

In March, 2021, when I asked why the Hickok Road SOI update and MSR was much more elaborate than the earlier PMC one, the EO did not reply that it was not required to be done, per his earlier statement in the Feb 2021 AD HOC meeting?

Also, in March, 2021, two more road services only agencies were presented to the Commission with SOI updates and MSRs that were identical in length and elaboration to that of the Hickok Road CSD above.

Again, I asked the same question, regarding these two similar updated SOI and MSR presentations, as done for Hickok Road CSD, but received no reply?

Finally, in July 2021, the EO highlighted the same 2010 and 2013 work plan to the Commission on his last day at LAFCo, but did not say that all 53 agencies do not require SOI updates and MSRs to be done, per his statement in the 2021 AD HOC meeting?

And, again, I asked the same question, but got no reply?

Why is it considered an abuse to ask the EO the same unanswered question, again?

So, my repeated verbal conduct toward the EO, in the 2021 Commission Meetings, was directed to have the EO tell all Commissioners what he had said about the 2010 and 2013 work plan to the three Commissioners at the AD HOC Budget Meeting.

This above questioning of the EO, who gave no replies, was not abusive, as is being alledged by two members of the Commission tonight, but it was required of any and all Commissioner, instead, by CKH

2000, per Sec, 56325.1.

The undisclosed fact was that the 2010 and 2013 work plan, for 53 EDC agencies, contained MSRs that were not required to be done, by CKH 2000, and caused the work plan not to be completed within 8 years.

Consequently, along with the EDH CSD adopted SOI update and MSR given to a consultant in 2018, the EID, Fire Districts and small water districts adopted SOI updates and MSRs were also given by LAFCo to consultants to be done, in 2018, 2019 and 2020, representing a total cost of more than \$300K for MSRs that were not completed on time, so far.

The EDC LAFCo Commission makes its determinations, using the all of the relative facts and findings which are provided by the EO and staff members.

What was my message given to the LAFCo Commission in these past monthly Meetings?

Without knowing that all 53 agencies in EDC do not need to have SOI updates and MSRs done, how can any Commission determine the optimum mix of a staffing level with a work plan scope, that fits within LAFCo's annual budget expenditure goal, but also delivers the required adopted SOI updates and MSRs to be completed on time, per CKH 2000.

So, what was the root cause of the clamity in EDC LAFCo, by not completing the MSRs on time, in Dec 2020?

--By the Commission not providing an annual budget amount which included the EO's recommended 3 1/2 member staffing level in every year from 2008 to 2022?

-- By the EO not down sizing the work plan through deleting SOI updates and MSRs for agencies which are not required to be done, per CKH 2000?

--Or, by both of the above?

In July, 2021, I gave these above findings to Commissioners Hidahl and Verkamp, separately, per the Brown Act. Commissioner Palmer would not meet me, after three request, due to his family issues.

Today, in Sept 2021, Chairman Hidahl needs to establish an AD HOC work plan committee, which can be followed up by a public workshop at a Commission Meeting, in order to develop a doable workplan with an appropriate number of staff members employed, each and every year, that can complete the MSRs on time.

Unfortunately, due to the Brown Act and the high turn over rate of Commissioners at LAFCo, this task to develop a doable work plan will not be completed any time soon.

Re: My alledged non-support for CALAFCo

In 2018, I attended the Annual Meeting in SD, which was mostly a CALAFCo lobbying update, along with social gatherings and a banquet, in addition to vendor entertainment.

Not all 58 CA LAFCo were in attendance.

Also, I signed up for the 2019 Annual Meeting in SAC, but could not be there due to high wind related power outages in EDC.

In addition, I attended two CALAFCo UNIVERSITY sessions in their SAC office.

In 2020, I requested that Commissioner attendees to the Annual Meeting in Yosemite pay their T&E, but that the Commission would pay the admission fee.

This T&E recommendation followed, in 2020, because the EO's assistant replacement was not funded, in exchange for the consultant cost for doing the Fire Districts adopted SOIs updates and MSRs.

In Feb 2021, I recommended in the AD HOC Budget Meeting that only one person be sent to the Annual Meeting in Newport Beach, and no staff member or Commissioner opted to go this year.

Several times, over the past four years, I requested Pam Miller, the ED at CALAFCo, to have a UNIVERSITY course offered which instructs the CKH 2000 law, along with ethics, for new LAFCo Commissioners, but without success, so far.

This need to educate new commissioners follows, because LAFCo governance today suffers from loss of its commissioners every two years at a potential 30% turn over rate, due to the staggered terms of its six elected officials, when combined with their term in office ending.

Re: My alledged comments on EO's outside teaching

Nothing was said in a Commission Meeting on this subject.

The only time this subject was discussed, if at all, was in a closed session, leading up to the EO's revised contract in Dec 2020.

Whoever is the source of this above alledged claim, in Item #9 of this Commission Meeting, is reporting confidential, or priviledged, information out of a closed session, and the LAFCo Counsel needs to follow-up and deal with its source.

Re: Sec 1.3 of the P&P that a Commissioner's removal for cause (reason) does not apply to Public Commissioner

Sec. 1.3 is entitled MEMBERSHIP and lists all seven members, including the Public Commissioner.

Next, Sec. 1.3 identifies the appointing authorities for all seven members.

Then, Sec.1.3.6 says that the commission can request the various appointing authorities of these six members to removed its member for cause (four reason), but not for without cause, per CKH 2000?

CKH 2000 has no instructive legislation included for removal of a commissioner for cause, but only for removal without cause, which applies to all seven commissioners.

In the alternative, Sec. 1.3.6 does not say that the Public member can also be removed for cause (four

reasons), as listed for the other six commissioners?

In conclusion, the LAFCo P&P do not include removal without cause, in writing, for all seven commissioners.

Also, the LAFCo P&P only includes removal for cause (four reason) for six commissioners, which does not include the Public Commissioner.

Under due process, all LAFCo Commissioners must be treated in the same way, so what ever is determined to be the correct reading of Sec. 1.3 in the P&P is the job of a trial jury.

In conclusion, Commissioners Thomas and Neau could have contacted Commissioner Powell, separately, during the whole month of July, 2021, and asked why? or what? or when? or how? or anything else, first, without violating the Brown Act, in regard to their concerns expressed, so far, tonight.

Instead, they chose to shoot the messenger, which I hope that the whole Commission will not endorse their act in public tonight.

In semiconductor chip manufacturing, we never shot messengers, but encouraged them to speak up, because we could reconcile the problems we knew about, not those problems which were kept secret, due to their having past threats of reprisal.

The GOOD NEWS is that I have an oppurtunaty, in front of the entire Commission, tonight, to give the most probable historical reasons which can explain why the EO resigned in July 2021.

If these findings are true, this will give the Commission a heads-up for not repeating history with our next EO.

The BAD NEWS is that this approach to communications within the Commission, as taken by Commissioners Thomas and Neau, in order to get these facts shared, was a waste of tax payers funds, pursuant to CA Gov. Code Sec. 53232.2.

Commissioners Thomas and Neau are paid public officals and subject to a higher duty of care standard, in regard to their exercise of due dilligence toward fact gathering, before they act out in public.

Looking forward from here, I hope that Commissioners Thomas and Neau will voluntarily exchange their positions on the Commission with their Alternates, so that future messengers to the Commission will not be intimidated against speaking out on issues of concern to them and LAFCo.

Last, I am giving a copy of this memorandum to the Clerk, tonight, for its inclusion into the record of the September 22, 2021 Commission Meeting and for its distribution, as required.

THANK YOU.



Michael W. Powell, PhD, MBA, JD