

MENDOCINO

Local Agency Formation Commission

Ukiah Valley Conference Center | 200 South School Street | Ukiah, California 95482
Telephone: (707) 463-4470 | E-mail: eo@mendolaftco.org | Web: www.mendolaftco.org

COMMISSIONERS

Maureen Mulheren, Chair
County Member

Gerald Ward,
Vice Chair/Treasurer
Public Member

Katharine Cole
Special District Member

Gerardo Gonzalez
City Member

Candace Horsley
Special District Member

Glenn McGourty
County Member

Mari Rodin
City Member

Francois Christen, Alternate
Special District Member

Douglas Crane, Alternate
City Member

John Haschak, Alternate
County Member

Vacant, Alternate
Public Member

STAFF

Executive Officer
Uma Hinman

Clerk/Analyst
Larkyn Feiler

Counsel
Marsha Burch

REGULAR MEETINGS

First Monday of each month
at 9:00 AM in the
Mendocino County
Board of Supervisors
Chambers
501 Low Gap Road, Ukiah

A G E N D A

Policies & Procedures Committee Meeting

Monday, March 11, 2024 at 10:30 a.m.

Location

Ukiah Valley Conference Center, Zinfandel Room
200 S School Street, Ukiah, California

Hybrid Meeting

The Mendocino LAFCo will conduct this meeting in a **hybrid** format to accommodate both in-person and remote (video or telephone) participation by the public and staff pursuant to GOV 54953. Unless approved under the provisions of AB 2449, Commissioners will attend in-person at the meeting location identified above. The **hybrid** meeting can be accessed by the public in person, or remotely as described in the Instructions for Remote Participation Option, below.

Instructions for Remote Participation Option

Join Meeting Live: Please click the following Zoom link below to join the meeting or utilize the telephone option for audio only.

1. Zoom meeting link: <https://mendocinocounty.zoom.us/j/85877010710>
2. Telephone option (audio only):
Dial: **(669) 900-9128** (*Please note that this is not a toll-free number*)
Meeting ID: **858 7701 0710**

Public Participation is encouraged and public comments are accepted:

1. Live: via the Zoom meeting link or telephone option above
2. Via Email: eo@mendolaftco.org by 8:30 a.m. the day of the meeting
3. Via Mail: Mendocino LAFCo, 200 S School Street, Ukiah, CA 95482

Meeting Participation

To provide comments, please use the raise hand function in Zoom.

- a) For those accessing from a computer, tablet, or smartphone, the raise hand function may be selected by clicking or tapping it from the reactions options. When joining the Zoom meeting, please enter your name so that you can be identified to speak.
- b) For those utilizing the telephone option (audio only), please use the raise hand feature by pressing ***9** on your keypad to raise your hand, and ***6** to unmute yourself. When it is your turn to speak, you will be called on by the last four digits of your phone number, if available, and asked to identify yourself for the record.

All comments received will be conveyed to the Committee for consideration during the meeting.

1. CALL TO ORDER & ROLL CALL

Commissioners Gerardo Gonzalez, Maureen Mulheren, Mari Rodin

2. AB 2449 COMMISSIONER REQUEST

2a) Commissioner Teleconference Request for “Just Cause”

Committee will consider Commissioner Rodin’s request to participate via videoconference under the “just cause” circumstance per AB 2449 and Mendocino LAFCo Policy 3.8.1.1.

3. PUBLIC EXPRESSION

4. MATTERS FOR DISCUSSION & POSSIBLE ACTION

4a) Approval of the November 6, 2023 Policies & Procedures Committee Meeting Minutes

5. WORKSHOPS

5a) Workshop on a Draft Policy Amendment for Outside Agency Services

The Committee will hold a workshop and provide direction to staff on changes to the Outside Agency Services Draft Policy Amendment for consideration of the Policies & Procedures Committee at a later date..

6. INFORMATION AND REPORT ITEMS

6a) Executive Officer Report

ADJOURNMENT

The next Regular Commission Meeting is scheduled for
Monday, April 1, 2024
in the County Board of Supervisors Chambers

Notice: This agenda has been posted at least 72 hours prior to the meeting and in accordance with the Brown Act Guidelines and teleconferencing rules under AB 2449.

Participation on LAFCo Matters: All persons are invited to testify and submit written comments to the Commission on public hearing items. Any challenge to a LAFCo action in Court may be limited to issues raised at a public hearing or submitted as written comments prior to the close of the public hearing.

Americans with Disabilities Act (ADA) Compliance: Commission meetings are held via a hybrid model – the in-person option held in a wheelchair accessible facility and also by teleconference. Individuals requiring special accommodations to participate in this meeting are requested to contact the LAFCo office at (707) 463-4470 or by e-mail to eo@mendolafco.org. Notification 48 hours prior to the meeting will enable the Commission to make reasonable arrangements to ensure accessibility to this meeting. If attending by teleconference, if you are hearing impaired or otherwise would have difficulty participating, please contact the LAFCo office as soon as possible so that special arrangements can be made for participation, if reasonably feasible.

Fair Political Practice Commission (FPPC) Notice: State Law requires that a participant in LAFCo proceedings who has a financial interest in a Commission decision and who has made a campaign contribution to any Commissioner in the past year must disclose the contribution. If you are affected, please notify the Commission before the hearing.

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Agenda Item 4a

Policies and Procedures Committee

DRAFT Meeting Minutes

November 6, 2023, 10:00 a.m.

Hybrid Meeting held in-person at Mendocino County Conference Room B
and remotely via Zoom.

COMMISSIONERS

Maureen Mulheren, Chair
County Member

Gerald Ward,
Vice Chair/Treasurer
Public Member

Katharine Cole
Special District Member

Gerardo Gonzalez
City Member

Candace Horsley
Special District Member

Glenn McGourty
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Mari Rodin
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Francois Christen, Alternate
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Douglas Crane, Alternate
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John Haschak, Alternate
County Member

Richard Weinkle, Alternate
Public Member

STAFF

Executive Officer
Uma Hinman

Clerk/Analyst
Larkyn Feiler

Counsel
Marsha Burch

REGULAR MEETINGS

First Monday of each month
at 9:00 AM in the
Mendocino County
Board of Supervisors
Chambers
501 Low Gap Road, Ukiah

1. CALL TO ORDER & ROLL CALL

The meeting was called to order by Chair Gonzalez at 11:06 a.m.

Commissioners Present: Gerardo Gonzalez, Maureen Mulheren, and Mari Rodin

Staff Present: Executive Officer Uma Hinman and Clerk/Analyst Larkyn Feiler

2. PUBLIC EXPRESSION

None

3. MATTERS FOR DISCUSSION & POSSIBLE ACTION

3a) Approval of the February 16, 2023 Policies & Procedures Committee Meeting Minutes

Upon motion by Commissioner Mulheren and second by Commissioner Rodin, the minutes of the February 16, 2023 Policies & Procedures Committee Meeting were approved. Ayes: Gonzalez, Rodin, and Mulheren.

3b) Procedures for Implementing Requests for Proposals

EO Hinman introduced the item regarding a draft policy regarding the review process for requests for proposals (RFP). The following are discussion points:

1. The RPF policy should be flexible enough to address a variety of contract services.
2. Legal Counsel services, MSR/SOI report services, and financial audit services are very different and likely would warrant different vetting processes.
3. The process for Legal Counsel services was unnecessarily duplicative by having a Personnel Committee, comprised of the Commission Chair and Vice-Chair, and the Executive Committee review and make a recommendation to the Commission.
4. The Orange County LAFCo Evaluation Process for a Request for Proposal policy is a good example except for the part involving the Executive Officer assigning at least two reviewers to participate in the review of the prospective vendor/consultant.
5. The Chair and Vice-Chair are good reviewers to assign in general, but sometimes a specialized reviewer is needed, such as the Treasurer for financial audit services.
6. Two reviewers, or an ad hoc committee, should be assigned at a public meeting.
7. LAFCo is publicly funded, so an RPF review policy is important for transparency.

Upon motion by Commissioner Mulheren and second by Commissioner Rodin, the draft Evaluation Process for a Request for Proposal policy was approved for Commission consideration with the modification that the two reviewers be appointed at a public meeting. Ayes: Gonzalez, Rodin, and Mulheren.

3c) Refinement of Out of Agency Service Procedures

Craig Schlatter, Community Development Director for the City of Ukiah, requested that an additional two weeks be provided for public comment on Items 3c and 3d because the LAFCo website was down. The Committee agreed to proceed with initial discussion and bring the item back for further discussion.

Analyst Feiler introduced the item regarding requested revisions to the out of agency services policy.

The following are discussion points:

1. It would be helpful to review staff proposed policy language changes (redline).
2. The name/terminology is lengthy and unclear; maybe change it to Outside Service Area or Out of Area.
3. Outreach to other agencies would be beneficial, in addition to the City of Ukiah and Ukiah Valley Sanitation District, since there are different types of scenarios addressed by this policy.
4. Staff will work with Counsel to update the standard Annexation Consent Agreement and Covenant.
5. Staff will return with revised policy language and incorporate agency comments where possible.
6. Open communication and collaboration lead to successful outcomes.

3d) Streamlined MSR/SOI Review

EO Hinman introduced the item regarding development of a streamlined MSR/SOI review process. The following are discussion points:

1. LAFCo staff would prepare the MSR/SOI checklist in coordination with the agency.
2. It would be helpful to have a signature block at the end of the form confirming agency involvement (i.e., XXX from XXX agency met with LAFCo staff on XXX and agree that the information provided to LAFCo in preparation of the checklist is accurate and reliable to the best of my knowledge).
3. In addition to the checklist, LAFCo could request the agency provide the three prior years' audits to be attached.
4. The list of questions is very comprehensive but could take a lot of work to complete.
5. Completing the checklist would be based on an interview with the agency, not analysis of information. LAFCo staff would also discuss any changes from the prior MSR/SOI determinations.
6. The checklist could provide a good administrative record and a check-in opportunity to help keep agencies on track in the years in between comprehensive studies.
7. The checklist makes a lot of sense, especially for small agencies that experience little change over the years.
8. LAFCo-initiated MSR/SOI studies are paid for through the annual Work Plan budget. Agency-initiated MSR/SOI studies are paid for through by the applicant.
9. The checklist could offer helpful guidance to agencies regarding LAFCo expectations and reduce apprehension about the MSR/SOI process.
10. The checklist could be posted on the LAFCo website for transparency and for agency self-assessment.
11. The checklist may need to change or be refined over time and could potentially be updated annually.
12. The Commission can review other things beyond the standard six MSR determinations (GOV 56430(a)(7)), and some other LAFCos are opting to review disaster planning and preparedness, housing, and homelessness.

The Committee was supportive of the Streamlined MSR Rough Draft Questionnaire for Independent Special Districts and agreed that it could offer helpful guidance to agencies regarding LAFCo expectations, in addition to meeting the MSR/SOI requirements.

3e) Commissioner Handbook/Guide

EO Hinman introduced the item regarding a staff-drafted Commissioner procedural guide. The following are discussion points:

1. A Commissioner Handbook would be a very helpful orientation resource for new members.
2. It would be helpful to provide a digital version of the handbook, in addition to a hard copy.
3. It would be helpful to include information about the reimbursement forms and process, and background on how LAFCo is funded, the annual budget development process, and different types of activities (Work Program versus applications).
4. The Handbook is being prepared by the Administrative Assistant, so is not a strain on staff resources.

3f) Draft Logo for LAFCo

EO Hinman introduced the item regarding staff-drafted logos for Mendocino LAFCo. The following are discussion points:

1. The darker color logo is better because light colors wash out easier in reproduction.
2. Spelling out LAFCo in smaller font and adding a ring around the name would be better (see below).
3. Add more/larger waves to the side, or both sides. The rip curl wave is better than the block wave.
4. Maybe add grapes to the grapevine.
5. The sun is a nice feature.
6. The county boundary needs to be darker/more prominent and remove the block square behind it.
7. Change out the pine trees for redwood trees.
8. Use the letterhead with less colorful ink (cost savings and dark blocks turn to black in reproduction).



4. INFORMATION AND REPORT ITEMS

4a) Executive Officer Report

EO Hinman had no items to report.

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:20 p.m. by Chair Gonzalez.

MENDOCINO Local Agency Formation Commission

Staff Report

MEETING March 11, 2024
TO Mendocino Local Agency Formation Commission Policies & Procedures Committee
FROM Uma Hinman, Executive Officer
SUBJECT **Workshop on a Draft Policy Amendment for Outside Agency Services**

RECOMMENDATION

Hold a Workshop and provide direction to staff regarding changes to the Outside Agency Services Draft Policy Amendment for consideration of the Policies & Procedures Committee at a later date.

BACKGROUND

The Commission may authorize a city or district to provide new or extended services by contract or agreement outside its jurisdictional boundary but within its sphere of influence in anticipation of a later change of organization (e.g., annexation), or in response to an existing or impending threat to health or safety pursuant to Government Code (GOV) Section (§) [56133](#).

This State law is further refined by local policy in the existing Mendocino LAFCo Policy 12.2 Extension of Services by Contract (Attachment 2). The Mendocino LAFCo local policies were comprehensively updated in early 2016 under the prior contract staff and warrant updates to modernize and address opportunities for improvement. The Fiscal Year 2023-24 Budget includes an allocation for policy amendment, development, and overhaul. This is the first proposed policy section ready for Committee review.

In preparing the draft policy amendment, LAFCo staff reviewed example policy language from other LAFCos and addressed statewide issues related to this provision of LAFCo law. It is noteworthy that LAFCo staff changed the terminology from out-of-agency service agreements (OASA) to outside agency services (OAS) based on feedback received at the November 6, 2023 Policies & Procedures Committee meeting. Also at this meeting, the Committee directed staff to conduct agency outreach related to this policy amendment, which is the purpose of this Workshop.

Statewide Issues

The objectives of LAFCo are most effectively accomplished through boundary changes resulting in jurisdictional boundaries that are the same as an agency's service area. However, LAFCo law allows for outside agency services to address unique circumstances while ensuring that the services provided outside of agency boundaries are logical and consistent with supporting orderly growth and development.

In recent years, a statewide issue has emerged with outside agency services related to local agencies self-exempting and circumventing the LAFCo process by providing services by contract instead of through the annexation of territory. This prevents LAFCo from fulfilling its mandates and conducting meaningful studies of agencies to guide future applications and can lead to a difficult and costly process to unwind unauthorized services when LAFCo discovers them. CALAFCO and member LAFCos continue to pursue legislation to clarify LAFCo's important role in determining an agency's exemption eligibility.

The CALAFCO White Paper on *Clarifying LAFCo Authority to Determine GOV § 56133(e) Exemption Eligibility* provides more comprehensive information on this statewide issue (Attachment 3).

Focus Group Feedback

In conducting agency outreach since November 2023 with a small focus group, multiple changes, suggestions, and questions have been received, some of which are discussed below by topic.

Automatic Self-Exemption List

It was suggested to create a list of automatic exemptions that are clear and objective and not subject to LAFCo approval. Since there is a wide variety of local agencies and municipal services subject to this policy, there are many different types of scenarios to be addressed, which is likely why the Legislature identified exempt outside agency services by category.

In general, agency self-exemption is not recommended due to the nature of complexity involved and the statewide issues that have resulted. The underlying goal of the proposed policy language is to ensure coordination occurs with the LAFCo Executive Officer to prevent a breakdown in communication and lengthy clean-up efforts down the road.

In anticipation of a later change of organization

It was suggested to maintain the current definition of “in anticipation of a later change of organization” as “the inclusion of the area to be served within the sphere of influence of the serving agency”.

LAFCo law authorizes the Commission to approve outside agency services “in anticipation of a later change of organization”. Merely including land within an agency’s SOI is not sufficient to satisfy this requirement because the SOI boundary can change over time, and placing territory within a sphere does not guarantee that annexation will occur (Policy 10.1.8).

Mendocino LAFCo Policy 10.1.8 (Annexations are Not Mandatory) states that “Before territory can be annexed to a city or district, it must be within the agency’s sphere of influence (G.G. §56375.5). However, territory within an agency’s sphere will not necessarily be annexed. A sphere is only one of several factors that are considered by LAFCo when evaluating changes of organization or reorganization.”

Requiring landowners to sign the annexation consent agreement is the bare minimum to ensure a future annexation proposal cannot be protested by those benefiting from agency services. Further, while including land receiving outside agency services within the SOI is important, it does not ensure annexation on its own. The most realistic way to ensure future annexation is to require an application within a specified timeframe. Therefore, the following language has been included in the proposed policy to address this requirement.

“The Commission may include a condition to address this component of the CKH Act, such as requiring that an annexation application be submitted prior to, or within a specified timeframe (i.e., 1-2 years) of, the outside agency services approval.”

Language has also been added to the proposed policy amendment to clarify that outside agency services approved by the Commission prior to the date this policy is approved shall be subject to the policy in effect at the time said application was approved by the Commission.

EO Report Guidance

The purpose of the seven items included under Section 12.2.4 for review of outside agency services applications in the Executive Officer’s report was requested. In reviewing requests for outside agency services, it is important for LAFCo to apply the same general substantive policies as for annexation proposals because approval of outside agency services is partly based upon anticipated annexation of the property or area. Therefore, if the general substantive annexation policies cannot be met, then approval of outside agency services may not be feasible.

Drought Emergency Response and Water Hauling

The purpose of Policy Section 12.2.7 (Temporary Water Hauling During a Local Emergency) was requested. This proposed policy is overdue and based on discussion at the September 23, 2021 Executive Committee meeting regarding drought emergency response and water hauling.

LAFCo staff is very appreciative of all the time and effort of the focus group in meeting, reviewing, and providing feedback on the draft policy amendment language.

Attached for review and workshop discussion is the Outside Agency Services Draft Policy Amendment, the existing Mendocino LAFCo Policy 12.2 Extension of Services by Contract, and the CALAFCO White Paper on *Clarifying LAFCo Authority to Determine GOV § 56133(e) Exemption Eligibility*.

- Attachment(s):
- (1) Outside Agency Services Draft Policy Amendment
 - (2) Existing Mendocino LAFCo Policy 12.2 Extension of Services by Contract
 - (3) CALAFCO White Paper - Clarifying LAFCo Authority to Determine GOV § 56133(e) Exemption Eligibility

Attachment 1

Mendocino LAFCo Draft Policy Amendment

12.2 OUTSIDE AGENCY SERVICES

12.2.1 COMMISSION APPROVAL REQUIRED

A city or district, individually or as a member agency of a joint powers authority (JPA), shall not provide new or extended services to any party or property outside its jurisdictional boundaries unless it has obtained written approval from LAFCo, consistent with the CKH Act (G.C. §56133) and the policies described herein.

LAFCo prefers that this type of application be made by the local agency; however, if the city or district has declined to serve as the applicant, the affected landowner(s) may submit the application based on current (i.e., within 3 months) written proof from the local agency confirming both willingness and capacity to serve (i.e., will serve letter) the affected territory.

12.2.2 REQUIREMENT FOR EXEMPTIONS TO COMMISSION APPROVAL

Commission approval may not be required for cities or special districts to provide new or extended services outside their jurisdictional boundaries in accordance with the provisions of G.C. §56133(e).

However, LAFCo is the sole authority in determining whether specific situations are exempted by G.C. §56133(e). A city or district, individually or as a JPA member agency, is required to receive written authorization from the LAFCo Executive Officer confirming that the proposed service to be provided outside the agency's jurisdictional boundary is subject to exemption. If an agency provides outside agency services based on a self-determination of exemption from LAFCo approval, the agency-landowner contract or agreement for services shall be null and void.

For outside agency services that a city or district was providing on or before January 1, 2001 under G.C. §56133(e)(4), LAFCo encourages the city or district to request an Annexation Consent Agreement from each landowner to continue service, unless it is not logical and orderly for the city or district to ever annex the subject area.

12.2.3 DEFINITIONS

Services – any municipal services provided by a city or special district.

Outside Agency Services – municipal services provided outside the jurisdictional boundary of a local government agency (city or special district) by contract or agreement.

New – the provision of municipal services to a previously unserved property or use.

Extended – the expansion or intensification of municipal services currently provided to a property or use.

In anticipation of a later change of organization – a reliable commitment from the serving agency and/or landowner(s) that outside agency services will become inside agency services within a near-term timeframe or based on a foreseeable event or change in circumstance.

An existing threat to health or safety – the non-functioning or failure of existing private utilities (i.e., on-site septic system or well), which cannot be readily remedied, and have resulted in a health hazard from

inadequately treated wastewater or the loss of access to safe and reliable drinking water. The lack of fire protection and/or emergency medical services to existing development may also qualify as an existing safety threat.

An impending threat to health or safety – the stage before an existing threat to health or safety in which there is a known and measurable high risk for non-functioning or failure of private utilities to occur soon (i.e., within 3 months) with the potential to result in a health hazard from inadequately treated wastewater or the loss of access to safe and reliable drinking water.

12.2.4 NEW OR EXTENDED SERVICES

Annexation to cities and special districts involving territory located within the affected agency's sphere of influence (SOI) is preferred to providing outside agency services by contract or agreement, in support of logical and orderly growth and development. The Commission recognizes, however, that there may be special circumstances that justify approval of outside agency services by contract or agreement prior to annexation.

Such special circumstances most frequently involve the need for municipal services to address an existing threat to health or safety. A properly documented threat to health or safety for consideration in those cases is strongly encouraged, regardless of whether within or outside the agency's SOI.

In reviewing requests for outside agency services, LAFCo will apply the same general substantive policies as for annexation proposals. The following will be addressed in the Executive Officer's written report:

- 1) The ability of the agency to provide the subject service(s) to the affected territory, without detracting from current service levels.
- 2) Any documentation with substantial evidence to support a finding by the Commission of an existing or impending threat to the health or safety of the public or the affected residents.
- 3) The application's consistency with the policies and general plans of all affected local agencies.
- 4) The application's effect on growth and development within and adjacent to the affected territory.
- 5) The application's potential impacts on prime agricultural or open space lands.
- 6) The application's consistency with the Commission's adopted municipal service review determinations and recommendations.
- 7) The applicant's statement, with specificity, of the nature and timing of the anticipated later change of organization for the affected territory.

12.2.3.1 Within SOI

The Commission strongly discourages the use of outside agency services for the purpose of providing municipal services to new development, which can result in unintended consequences, such as inducing growth or resulting in the premature conversion of agricultural or open space lands to urban use. The Commission will approve such requests only under extraordinary circumstances and will apply strict limitations on such services.

G.C. §56133(b) authorizes the Commission to approve outside agency services “in anticipation of a later change of organization”. The Commission does not consider the standard condition for landowners to record a LAFCo Annexation Consent Agreement as satisfying the qualification for an anticipated later change of organization. Further, the inclusion of the land to be served within the SOI of the serving agency is also not sufficient because the SOI boundary can change over time, and placing territory within a sphere does not guarantee that annexation will occur (Policy 10.1.8). The Commission may include a condition to address this component of the CKH Act, such as requiring that an annexation application be submitted prior to, or within a specified timeframe (i.e., 1-2 years) of, the outside agency services approval.

Any outside agency services approved by the Commission prior to the date this policy is approved by the Commission shall not be subject to this policy, but the policy in effect at the time said application is approved by the Commission.

12.2.3.2 Outside SOI

The Commission recognizes the importance of promptly addressing threats to public health and safety, especially in considering outside agency services related to water and sewer services.

The Commission shall authorize a city or special district’s request to provide new or extended services outside their jurisdictional boundary and outside their SOI only in response to an existing or impending threat to the health or safety of the public or affected residents in accordance with G.C. §56133(c).

For water and sewer services, the affected agency and/or landowner(s) shall provide the Commission with documentation consistent with the public health and safety criteria for water and sewer services below.

An existing on-site sewage disposal system may be deemed a threat to the health and safety of the public or the affected residents if it meets one or more of the following criteria, as determined by Mendocino County Environmental Health or another qualified professional:

- i. There is ponding or accumulation of wastewater or septic tank effluent at or above the surface of the ground.
- ii. There is a lack of an unsaturated vertical soil separation between the bottom of a disposal field and seasonal high groundwater.
- iii. There is a failure of the disposal field or septic tank to accept, treat, and dispose of wastewater in quantities discharged by the structure served, and additional capacity cannot adequately or reasonably be developed.
- iv. Any other condition associated with the operation or use of an on-site sewage system that could permit the exposure, either directly or indirectly, of individuals or domestic animals to inadequately treated wastewater.

An existing water source used for domestic purposes may be deemed a threat to the health and safety of the public or the affected residents if it meets one or more of the following criteria, as determined by Mendocino County Environmental Health or another qualified professional:

- i. The water supply is impacted by biological, chemical, or radiological constituents that cannot be adequately or reasonably treated or removed to levels deemed safe for human consumption or contact.

- ii. The quantity of the water supply is constantly or periodically inadequate (less than one gallon per minute) to meet the domestic needs for which its use is intended, and additional quantities cannot adequately or reasonably be developed.
- iii. Any other condition in which the continued use of an existing water supply could result in negative impacts to human health.

12.2.5 ADMINISTRATIVE APPROVAL UNDER URGENT CIRCUMSTANCES

The Commission authorizes the Executive Officer, in accordance with G.C. §56133(d), to administratively approve a city or special district's request for new or extended outside agency services by contract or agreement if there is an existing and urgent public health or safety emergency as identified in writing from the local public health officer and/or environmental health director, or in the case of fire services, the applicable Fire Chief. The Commission shall ratify the Executive Officer's determination at the next regularly scheduled meeting.

12.2.6 CONDITIONS OF APPROVAL

12.2.6.1 Annexation Consent Agreement

The Commission will condition the approval of all outside agency services upon a requirement that the landowner(s) sign a LAFCo agreement consenting to annexation of the territory to the public service provider, which agreement shall bind current and future owners and registered voters of the property. The standard agreement shall be prepared by LAFCo legal counsel and provided to all landowners for execution and recording. Proof of recordation of the Annexation Consent Agreement will be required before the LAFCo outside agency services approval becomes final and effective.

12.2.6.2 Expiration of LAFCo Approval

Unless specified otherwise in the Commission's resolution approving a particular outside agency services application, the Commission's approval of outside agency services shall expire within one year of approval unless the agency-landowner contract has been executed and the construction of any needed infrastructure improvements has commenced. A one-time extension may be requested by the applicant, prior to the one-year expiration date, for a period of time that is necessary to complete the Commission's conditions. If the provision of outside agency services has not commenced within three years of the Commission's approval, the approval is terminated and a new application is required.

12.2.6.3 Further LAFCo Review - Expansion or Intensification of Services

The Commission's approval of outside agency services shall be limited to the existing structures and uses on the subject property, and not to any other properties. Any expansion or intensification of the approved services shall be considered a new request, subject to LAFCo review.

12.2.7 Temporary Water Hauling During a Local Emergency

During a Mendocino County issued emergency proclamation affecting potable water supply, a city or special district may provide potable water outside its jurisdictional boundaries on a temporary basis to address impacts to health and safety arising from dry wells. LAFCo approval shall not be required pursuant to G. C. §56133 due to the temporary and emergency nature of the service. Either the city/district providing potable water or the County Office of Emergency Services shall notify LAFCo within 10 days of commencing service. Notification shall include the address and assessor's parcel number (APN) for each

property receiving water service. The city or special district shall cease providing temporary water service outside jurisdictional boundaries within 30 days of Mendocino County's termination of the emergency proclamation. Within 90 days of the end of the emergency, either the city/district providing potable water or the County Office of Emergency Services shall provide LAFCo a detailed summary of how much water was provided to each property per month during the emergency water hauling.

Absent a Mendocino County issued emergency proclamation, G. C. §56133 specifies that a city or special district must apply for and obtain LAFCo approval before providing new or extended services outside its jurisdictional boundaries.

DRAFT

Attachment 2

Mendocino LAFCo Policy 12.2 Extension of Services by Contract

12.2 EXTENSION OF SERVICES BY CONTRACT

12.2.1 COMMISSION APPROVAL REQUIRED

Except for the specific situations exempted by G.C. §56133(e), a city or district shall not provide new or extended services to any party or property outside its jurisdictional boundaries unless it has obtained written approval from LAFCo, consistent with the CKH Act and the policies described herein.

12.2.2 EXTENSION OF SERVICES WITHIN SPHERE

Annexation to cities and special districts involving territory located within the affected agency's sphere of influence is generally preferred to extending services by contract or agreement. The Commission recognizes, however, there may be local circumstances that justify approval of extended services by contract or agreement within the affected agency's sphere of influence.

Such local circumstances most frequently involve extension of service to meet an existing health and safety need, where annexation is not practical or deemed undesirable for other policy reasons. The Commission will give great weight to properly documented existing health and safety needs when considering justification of such extensions. The Commission discourages use of contract service extensions for the purpose of extending services to new development. The Commission will approve such extensions only under extraordinary circumstance and may apply strict limitations on such services

12.2.3 EXTENSION OF SERVICES OUTSIDE SPHERE

The Commission shall authorize a city or special district's request to provide new or extended services outside their jurisdictional boundary and sphere of influence only in response to an existing or future threat to public health or safety in accordance with G.C. §56133(c).

12.2.4 ADMINISTRATIVE APPROVAL UNDER URGENT CIRCUMSTANCES

The Commission authorizes the Executive Officer, in accordance with G.C. §56133(d), to administratively approve a city or special district's request for extended services by contract or agreement if there is an existing and urgent public health or safety emergency as identified in writing from the local public health officer. The Commission shall ratify the Executive Officer's determination at the next regularly scheduled meeting.

12.2.5 EXEMPTIONS TO LAFCO APPROVAL REQUIREMENT

Commission approval may not be required for cities or special districts to provide new or extended services outside their jurisdictional boundaries in accordance with the provisions of G.C. §56133(e). The Executive Officer shall consult with cities and districts to determine whether extended services agreements are subject to Commission review.

12.2.6 ANTICIPATION OF LATER ANNEXATION.

G.C. §56133(b) authorizes the Commission to approve contracts for extension of services "in anticipation of a later change of organization". The Commission defines the term "anticipation of a later change of organization" as follows:

- a) The inclusion of the area to be served within the sphere of influence of the serving agency shall be sufficient to comply with this provision.

12.2.7 AGREEMENTS CONSENTING TO ANNEX

Whenever the Commission determines to condition the approval upon a later annexation of the affected property, the condition shall normally include a requirement that the owner record an agreement consenting to annex the territory, which agreement shall bind future owners of the property. The agreement shall be prepared by LAFCo legal counsel and provided to the landowners for execution and recording. Proof of recordation will be require before the LAFCo contract approval becomes final and effective.

PLANNING FOR A SUSTAINABLE AND PREDICTABLE FUTURE

Clarifying LAFCo Authority to Determine Government
Code Section 56133(e) Exemption Eligibility

2022



California Association of Local Agency Formation Commissions (CALAFCO)
San Diego County LAFCo - Butte LAFCo - Ventura County LAFCo





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INTRODUCTION

Good Planning Requires Oversight

The State of California has a history of prolific and, at times, unplanned growth but none more pronounced than in the years following World War II. Between 1940 and 1960 the population doubled and by the early 1960's California became the most populous state in the nation.¹ This rapid rise in population after the war led to rapid conversion of open space and agricultural land into suburbs. However, without oversight or a planning strategy, the resulting infrastructure was often haphazard or duplicative, which led to inefficiencies in service delivery while consuming valuable agricultural land.² The California legislature recognized the need for a separate yet local entity to provide oversight in the planning and provision of services, and enacted legislation creating Local Agency Formation Commissions (LAFCoS). The year was 1963, long before the words climate change or sustainability crept into the lexicon, yet the action was nonetheless prescient as strategic planning today is considered a core principle in sustainable infrastructure.³

In fact, a 2016 Brookings Institute report titled *Delivering on Sustainable Infrastructure for Better Development and Better Climate* found that sustainable infrastructure not only is key to avoiding extreme climate change but does so without deterring economic growth.

However, beyond that, sustainable infrastructure is also:

...the key to poverty reduction and societal well-being in part because it enhances access to basic services and facilitates access to and knowledge about work opportunities, thus boosting human capital and quality of life. Sustainable infrastructure helps reduce poverty and extreme hunger, improve health and education levels, assist in attainment of gender equality, allows for the provision of clean water and sanitation, and provides access to affordable energy for all.⁴

Additionally:

...badly designed infrastructure can have significant adverse distributional, environmental and health impacts that can worsen poverty levels. Literature is abundant with examples of large-scale infrastructure investments that exacerbated income inequality, resulted in increased mortality and morbidity rates, and wrought irreversible ecosystem damage.⁵

¹ James N. Gregory. "The Shaping of California History." Encyclopedia of American Social History (New York: Scribners, 1993).

² CALAFCO. "What is LAFCo's History?" <https://calafco.org/lafco-law/faq/what-lafcos-history>

³ Shirin Malekpour, Rebekah R. Brown, Fjalar J. de Haan. "Strategic planning of urban infrastructure for environmental sustainability: Understanding the past to intervene for the future." *Cities*, Volume 46, 2015, Pages 67-75.

⁴ Amar Bhattacharya, Joshua P. Meltzer, Jeremy Oppenheim, Zia Qureshi, Nicholas Stern. "Delivering on Sustainable Infrastructure for Better Development and Better Climate." Global Economy and Development at Brookings Institution. *The New Climate Economy*, Global Commission on the Economy and Climate. December 2016. p 2.

⁵ *Ibid.* p 5.

Fortunately, the state legislature gave LAFCoS the regulatory oversight to provide this exact type of strategic land use and service planning through service reviews that they conduct when determining the spheres of influence (or the probable service boundaries) of an agency. Clearly, the stakes to ensure good planning of infrastructure and services could not be higher. That is why it is problematic when local entities avoid or ignore the LAFCo process.

This paper considers the lack of coordination and communication between agencies that ensues when cities and special districts inappropriately determine to go it alone and exempt themselves from notifying LAFCo – the defined regulatory agency for agency boundary changes and service provision – of extending services beyond their boundaries. Due to a lack of clarity, some agencies incorrectly assume they are exempt from LAFCo review under Government Code Section 56133(e) – a section that provides only limited conditions for such exemptions. This paper also considers the ramifications of this lack of clarity, including who determines whether a condition for exemption has been met and whether the proposed service provider is the most efficient and appropriate.

This paper is a collaboration of the California Association of Local Agency Formation Commissions (CALAFCO), and staff from Butte LAFCo, San Diego LAFCo, and Ventura LAFCo and is based on the experiences of a number of LAFCos.



BACKGROUND



In 1963 when LAFCOs were created, the Legislature had three main policy objectives:

1. Discouraging urban sprawl;
2. Preserving open-space and prime agricultural lands; and,
3. Encouraging the efficient provision of government services and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances.⁶

⁶ California Government Code Sections 56001, 56300, 56301, 56375.

Those objectives, and all LAFCo authorities, are codified under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000⁷ which delegates the Legislature’s power to coordinate and oversee the boundaries of cities and special districts to LAFCOs, as well as to provide regional growth management services.

Known as the Legislature’s “watchdog” for local governance issues⁸, each LAFCo is governed by a board of locally elected officials, including city council members, county supervisors, representatives from special districts (in 32 of the 58 LAFCOs), and at least one member of the public appointed by the other members.

For LAFCOs to achieve their objectives, the Legislature empowered them with the exclusive authority to determine the jurisdictional boundaries and service areas for each city and special district in the state. Indeed, a city or district must seek LAFCo approval to expand its jurisdictional boundaries or provide a service outside its jurisdictional boundaries. Coordinating and overseeing city and special district boundaries and service areas means LAFCOs in each of the 58 counties have direct oversight on who can most efficiently provide services, the timing and location of development, and the type of services that are and are not available to support the development.

It is the Legislature’s preference that municipal services should only be provided to territory that is within a service provider’s jurisdictional boundaries and, to this end, it has placed limitations on the ability of a city or district to provide services outside those boundaries. State law provides that LAFCOs shall have the power “To authorize a city or district to provide new or extended services outside its jurisdictional boundaries pursuant to Section 56133.”⁹ Government Code Section 56133 requires that a city or district obtain LAFCo approval in order to provide a new or extended service by contract or agreement outside its boundaries.¹⁰

However, the Legislature has limited LAFCo authority to approve such a service to two narrow circumstances:

1. The service is in anticipation of a later change of organization to be approved by LAFCo, usually annexation.¹¹ This ensures that the territory to be served will eventually be brought within the jurisdictional boundaries of the service provider in the future.
2. The service is to respond to an existing or impending threat to public health and safety,¹² as determined by LAFCo. This ensures that the service will not induce development but is limited to addressing public health and safety.

⁷ California Government Code Sections 56000-57550.

⁸ Fifth District: 274 Cal.App.2d 545. 1 July 1969

⁹ Government Code Section 56375(p)

¹⁰ Government Code Section 56133(a) – “A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundary only if it first requests and receives written approval from the [local agency formation] commission of the county in which the affected territory is located.”

¹¹ Government Code Section 56133(b) – “The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary but within its sphere of influence in anticipation of a later change of organization.

¹² Government Code Section 56133(c) – “The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary and outside its sphere of influence to respond to an existing or impending threat to the health or safety of the public or the residents of the affected territory...”

Absent LAFCo's determination that either of these two circumstances exist, LAFCo has no authority to approve the service and, as a result, the city or district has no authority to provide the service. It is this limitation on the authority of cities and special districts that prevents them from bypassing LAFCo review when proposing to extend services outside their boundaries.

However, state law identifies certain service scenarios under which a city or district may provide services outside its boundaries without obtaining LAFCo approval. The Legislature took care to limit these "exemptions" to services that will not induce or promote development, again ensuring that LAFCo review is necessary for services that would promote development.

California Government Code Section 56133(e) outlines these exemptions as follows:

1. Two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.
2. The transfer of nonpotable or nontreated water.
3. The provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county.
4. An extended service that a city or district was providing on or before January 1, 2001.
5. A local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundary.
6. A fire protection contract, as defined in subdivision (a) of Section 56134.

While the language seems relatively clear cut at first reading, the lack of clarity has led to problems in the field that undermine the Legislature's intent for planning oversight by LAFCo. These exemptions have sometimes been utilized improperly as a "loophole" by local agencies to bypass LAFCo altogether; from executing contracts to sell water during a drought and utilizing a self-determined definition of "surplus water," to providing new and extended services which should be subject to thorough and transparent consideration by LAFCo on behalf of the general public. When confronted with the erroneous interpretation, some local entities have withdrawn their service contracts and initiated a LAFCo application; however, others, have been recalcitrant and uninterested in coordination with all affected local agencies.

Additionally, these self-exempted services lack the transparency and public process offered by LAFCo that is demanded by the taxpayers of the cities and districts who ultimately are responsible for funding the service. In addition, bypassing LAFCo review removes LAFCo as the external check to ensure that agricultural and open space lands are not being converted prematurely – as is the codified desire of the State of California.

In recent years, local LAFCOs have unearthed an increasing number of service contracts that have gone unreported and unevaluated by LAFCo because the parties to the contract, despite the clear intent of the law, self-determined that LAFCo notification was not necessary. Such contracts are not only the antithesis of strategic regional planning, which is the core of sustainable infrastructure, but they also are occurring in a fashion that is not transparent to district users, offer no oversight regarding the provision of services to disadvantaged unincorporated communities, and hold no guarantees of efficiency or that agricultural and open space land will be protected.



Discovery of these contracts after the fact requires significant local agency staff time to research, coordinate, and interface with local entities. Additionally, while the threat of litigation can and has been utilized by a number of LAFCOs to force compliance, not every county has the resources to fund their LAFCOs sufficiently to cover extraneous legal expenses. This last point is of significant importance as it allows those persons or entities with ample financial resources to sidestep the law because the affected LAFCo may be unable to defend itself or the law. Unfortunately, having to address these contracts after the fact consumes taxpayer dollars in the form of additional staff time to address it – with varying amounts of success – or costly litigation which many small counties simply cannot afford.

KEY ISSUES

Some local agencies have entered into contracts to provide new or extended services outside their boundaries, without benefit of LAFCo consideration, using the exemptions under Government Code Section 56133(e).

This practice creates numerous problems including:

1. Conflict Among Agencies

Unintentionally creating conflict between local agencies when a service encroaches into the jurisdiction of another agency and competing for grant money, customers, etc.

2. Disorderly Boundaries

In some instances, the extension of services outside of an agency's jurisdictional boundary in lieu of annexing the territory to the agency – including island areas – can create disorderly service areas. This can lead to jurisdictions with overlapping service areas causing duplicative services and conflict between agencies. In addition, an extension of services outside an agency's boundaries may exacerbate urban sprawl which is under LAFCo's authority to manage.

3. Conflicts with existing Government Code Section 56133(b)

Government Code Section 56133 (b) provides that a city or district may extend a service outside its boundaries only with LAFCo approval and only if the service is in anticipation of a later change of organization, usually annexation, as determined by LAFCo. When agencies fail to check-in with their local LAFCo on an extension of service, they undermine LAFCo's authority in determining whether this extension is in anticipation of a future annexation. Pertinently, this results in: (a) inhibiting LAFCo's ability to exercise its current authority to manage the orderly growth of an agency, and (b) allows agencies to extend their service areas without oversight or consideration of the current and future needs of the community.

4. Undermining the Legislature's Intent and LAFCo Authority

LAFCOs are empowered by the Legislature to coordinate the orderly delivery of municipal services in concert with community needs and in step with regional growth management objectives. Together these are the main principle of strategic planning and, by extension, the core of sustainable infrastructure which alleviates a host of societal problems. Self-exempted service contracts create unnecessary costs and liabilities that are otherwise completely avoidable and significantly reduce a LAFCo's ability to plan sustainable infrastructure.

5. Creates Unpredictably in the Development Process

Private landowners make significant decisions about property based on established norms and laws and when these laws are not implemented equally throughout the community, county or state, the resulting uncertainty is troubling.

Development interests are also denied the predictability and certainty of the consistent implementation of local land use laws and the carefully planned and financed local infrastructure plans.

KEY EXAMPLES

EXAMPLE 1

Mission Resource Conservation District (San Diego County)

In July 2018, San Diego LAFCo received a formal written complaint from the Resource Conservation District of Greater San Diego County alleging that the Mission Resource Conservation District was providing new and extended services by contract beyond its jurisdictional boundary. The complaint alleged that Mission RCD actively solicits, receives, and acts on grant awards to provide services (vegetation control, irrigation audits, etc.) outside of its boundary and within the boundary of the RCD of Greater San Diego County.

Upon review of the complaint the San Diego LAFCo found the claims to be substantiated and in March 2019 issued a Cease and Desist order directing Mission RCD to immediately stop specified outside service activities due to failure to comply with Government Code Section 56133. Mission RCD responded to the cease and desist order by formally self-exempting themselves at a public Board meeting and in doing so citing eligibility to do so under Government Code Section 56133(e) despite the objections from San Diego LAFCo. The issue remains an open dispute with litigation on multiple fronts remaining a distinct possibility.

EXAMPLE 2

City of American Canyon/County of Napa (Napa County)

During the preparation of an inaugural Municipal Service Review (MSR) (2003-2004) on the City of American Canyon, Napa LAFCo became aware that the City was providing new and extended water services - outside its jurisdictional boundary - and predominantly within the County Airport Industrial Area located north of the City.

The enactment of Government Code Section 56133 was flagged in the MSR and proceeded to become the subject of a stand-alone analysis performed in 2007 by Napa LAFCo. Attorneys for both American Canyon and the County of Napa asserted that the City was exempt from needing LAFCo approval under Government Code Section 56133(e) so long as the outside services were within an extended "service area." Napa LAFCo proceeded – as a compromise championed by the County – to retroactively and prospectively approve all outside water service extensions within a geographically defined area (Napa County Airport and Industrial zoned lands) while directing the City to comply with Government Code Section 56133 for any future new and/or extended outside services. This latter directive remains in dispute with American Canyon as illuminated in the most recent MSR prepared by Napa LAFCo in 2018-2019.

KEY EXAMPLES

EXAMPLE 3

City of Chico Sewer Connections (Butte County)

In 2013, Butte LAFCo became aware that the City of Chico had connected 62 unincorporated parcels to its sewer system without first obtaining the approval of Butte LAFCo. The City operated under the belief that these sewer connections were somehow exempt from LAFCo review under Government Code Section 56133(e). Once discovered by Butte LAFCo, the City was required to submit a LAFCo extension of sewer services application and pay all associated fees. This issue was on the verge of litigation before the City conceded LAFCo was correct. This misstep by the City seriously delayed the annexation of many unincorporated islands that would have otherwise been annexed in order to receive sewer services and remain consistent with state law to ensure orderly development, logical city boundaries, and the effective delivery of services. The delay in annexation cost some residents the ability to further develop their parcels which ultimately affected housing production and increased development pressure on fringe lands on the edge of the City Sphere of Influence.

EXAMPLE 4

Rock Creek Reclamation District Flood Prevention Projects (Butte County)

The Rock Creek Reclamation District desired to conduct flood control maintenance outside of its jurisdictional boundaries and believed that such efforts were exempt from LAFCo review under Government Code Section 56133(e). While the District may have been well intentioned, it is vitally important that local agency services and functions related to regional public works projects be coordinated with all affected local agencies - which is exactly what the LAFCo process is intended to accomplish.

Butte LAFCo informed the District that theirs was an incorrect reading of the law and requested they submit the proposal to Butte LAFCo. The District finally agreed, but only just before more aggressive steps were undertaken by Butte LAFCo.

LAFCo's role is to ensure that all local agency services provided are consistent with state law to ensure orderly development and the effective delivery of services.



KEY EXAMPLES

EXAMPLE 5

City of Hollister/County of San Benito County (San Benito County)

In 2004, the County of San Benito, the City of Hollister, and the countywide San Benito County Water District entered into a Memorandum of Understanding (MOU) establishing the Hollister Urban Area (HUA). Under the MOU, the City of Hollister agreed to upgrade its wastewater treatment plant to serve approximately 90% of the area identified within the HUA boundary, which was to be developed in the future. However, the agreement was silent on LAFCo's role and ignored the fact that City sewer extensions into the County required LAFCo review and approval.

In November 2012, after the approval of the MOU by all parties, county staff prepared a brief report and Resolution for LAFCo to adopt the HUA boundary at a LAFCo Commission meeting. The report and resolution failed to reference a sphere of influence or formation of an entity that would have been under the purview of LAFCo to establish. Additionally, the report and resolution failed to state that the purpose of having LAFCo adopt the HUA was to satisfy provisions of Government Code (GC) Section 56133. Unfortunately, after Commission approval the City discontinued seeking LAFCo approval of sewer extensions outside the city limits from November 2012 to January 2015. One large project during this post-LAFCo period involved over 1,200 dwelling units.

On January 22, 2015, after both a thorough review of the prior actions to establish the HUA and an introduction of GC Section 56133 to the LAFCo Commission, the Commission adopted a resolution, confirming "...that the City must first request and receive written approval from the Commission" before extending sewer service outside the City limits.

On August 15, 2016, the City of Hollister, despite having been previously advised of LAFCo processes, entered into another agreement - this time with regional potable water service provider Sunnyslope County Water District (CWD). In this agreement, the jurisdictions self-determined that they were exempt, under GC section 56133(e)(1), from LAFCo approval authority. To justify this self-determination, Section 1.02 of that agreement references a 2007 "Billing and Collection Agreement" in which Sunnyslope CWD agreed to collect the monthly sewer bills for the City for any property where the District would collect a water bill. Since the Billing and Collection Agreement was not in accordance with the provisions or intent of GC Section 56133, the City and District were non-compliant with state law. However, Sunnyslope CWD continues to maintain that the City sewer extensions are exempt.

KEY EXAMPLES

EXAMPLE 6

Coachella Valley Water District/City of Coachella (Riverside County)

Riverside LAFCo became aware of the City of Coachella and the Coachella Valley Water District (CVWD) providing new and extended services beyond its jurisdictional boundary in 2021 as part of its Comprehensive Countywide City Municipal Service Review process. The City of Coachella confirmed that it and CVWD are actively providing water and wastewater services outside their boundaries. CVWD boundaries overlaps the City of Coachella's boundaries and SOI boundaries. The City provides wastewater within their Sanitary District which extends outside its boundary, however never requested nor received approval from Riverside LAFCo. Separately, the City provides water outside of its boundary by contract - executed in 2007-2008 - and similarly did not request or receive approval from Riverside LAFCo.

Since the services were extended without benefit of any public process, a conflict has now arisen with the City of Indio who is arguing that they are better suited to service the area with both water and wastewater. Riverside LAFCo is currently reviewing the claims and seeking resolution.

EXAMPLE 7

Lake Sherwood Community Service District (Ventura County)

Ventura LAFCo became aware that the Lake Sherwood Community Services District had since 2001 approved dozens of new potable water service connections to properties located outside its boundaries without LAFCo approval. The CSD, which when formed absorbed most of a private mutual water company, believed that it could provide new water service to any of the properties that were within the now defunct mutual water company, even though they were outside the CSD's boundaries. The CSD never consulted with LAFCo, but instead self-exempted these service extensions from LAFCo review believing that since the mutual water company's existence predated January 1, 2001, serving these properties was exempt from LAFCo review under Government Code Section 56133(e)(4). It was only after multiple meetings and legal opinions that the CSD accepted that these services were not, in fact, exempt from LAFCo review, because the exemption applies only to services that were actually being provided prior to 2001. The resolution to the unlawful connections involved many months of LAFCo staff time, tens of thousands of dollars of taxpayer money, and the formation of new waterworks district, all of which could have been avoided had the CSD been required to consult with LAFCo before providing the services.

PROPOSED SOLUTIONS

Government Code Section 56133(e) should be amended to explicitly confirm that LAFCOs - not local agencies - are the authorized entity to determine whether a contracted service requires LAFCo approval pursuant to Section 56133(b) and (c) or is exempt from the LAFCo process under 56133(e).

This can be accomplished by either:

1. Amending the preface of Government Code Section 56133(e) to add "as determined by the commission", or
2. By adding a new subparagraph (f), which states: "Final determination regarding the applicability of exemptions under subparagraph (e) above shall rest solely with the commission."

CONCLUSION

The Legislature clearly and significantly delegated its authority to LAFCoS to regulate, examine and plan for the establishment, expansion, and reorganization (consolidations, mergers, etc.) of cities and most special districts and their municipal services against current and anticipated community needs. This regional planning is a cornerstone of consistent, predictable, and sustainable infrastructure. The intent behind Government Code Section 56133 is to limit new and/or extended municipal services outside of an agency's jurisdictional boundary to ensure that those services do not conflict with the objectives of the LAFCo and the Legislature. Due to this lack of specificity, some contracting public agencies are interpreting Section 56133(e) as not requiring any notification to LAFCo and are, in effect, exempting themselves from any notification to

LAFCo. However, LAFCos maintain that the legislative intent behind

the Cortese-Knox-Hertzberg Act makes it clear that the final determination of whether a service contract is exempt from

a LAFCo process is a function for the LAFCo – not the contracting entities. The latter is further reinforced

by the fact that a LAFCo's lack of knowledge of

a service that has been exempted, even when

rightfully exempted, impacts later service review

determinations and can introduce situations that

LAFCos were specifically created to prevent:

inefficient and duplicative services.

Consequently, an amendment to Government

Code Section 56133(e) is needed to clarify and

make explicit that it is the LAFCo, and not the

contracting service providers, which determines

when a proposed new or extended service requires

LAFCo approval or whether that service qualifies for

an exemption from a LAFCo process under Government

Code Section 56133(e).

