

AGENDA

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

**NORTON REGIONAL EVENT CENTER
1601 EAST THIRD STREET #1000, SAN BERNARDINO**

REGULAR MEETING OF FEBRUARY 21, 2018

9:00 A.M. – CALL TO ORDER – FLAG SALUTE

1. Public Comments on Closed Session
2. **CONVENE CLOSED SESSION** – Conference with Legal Counsel - Existing Litigation (Government Code Section 54956.9(d)(1)) --_San Antonio Heights Association v. County of San Bernardino et al, San Bernardino County Superior Court Case No CIVDS1712771 and San Antonio Heights Association v. Local Agency Formation Commission for San Bernardino County et al Superior Court Case No. CIVDS1715504

ANNOUNCEMENT: Anyone present at the hearing who is involved with any of the changes of organization to be considered and who has made a contribution of more than \$250 in the past twelve (12) months to any member of the Commission will be asked to state for the record the Commission member to whom the contribution has been made and the matter of consideration with which they are involved.

CONSENT ITEMS:

The following consent items are expected to be routine and non-controversial and will be acted upon by the Commission at one time without discussion, unless a request has been received prior to the hearing to discuss the matter

3. Approval of Minutes for Regular Meeting of January 17, 2018
4. Approval of Executive Officer's Expense Report
5. Ratify Payments as Reconciled and Note Cash Receipts for Month of December 2017
6. Consent Items Deferred for Discussion

DISCUSSION ITEMS:

7. Review and Consideration of Policy Related to Retention of Electronic Communications (***Continued from the January 17, 2018 Hearing***)
8. Mid-Year Budget Review for Fiscal Year 2017-18 (***Continued from the January 17, 2018 Hearing***):
 - Financial Report for Period July 1 through December 31, 2017

- Authorization of Fund Transfer to Address Expenditures due to Increased Activity Related to Litigation
9. Update on LAFCO 3187 -- Countywide Water Service Review Required Continued Monitoring for:
- a. County Service Area 70 Zone CG (Cedar Glen)
 - b. County Service Area 70 Zone J (Oak Hills)
 - c. Daggett Community Services District
 - d. County Service Area 70 Zone W-4 (Pioneertown)

INFORMATION ITEMS:

10. Legislative Report
11. Executive Officer's Oral Report
- a. New Proposals Received
 - b. Update on Proposals Filed with LAFCO
 - c. Update on Executive Officer Recruitment
12. Commissioner Comments
(This is an opportunity for Commissioners to comment on issues not listed on the agenda, provided that the subject matter is within the jurisdiction of the Commission and that no action may be taken on off-agenda items unless authorized by law.)
13. Comments from the Public
(By Commission policy, the public comment period is limited to five minutes per person for comments related to other items under the jurisdiction of LAFCO not on the agenda.)

The Commission may adjourn for lunch from 12:00 to 1:30 p.m. The Commission may take action on any item listed in this Agenda whether or not it is listed For Action. In its deliberations, the Commission may make appropriate changes incidental to the above-listed proposals.

Materials related to an item on this Agenda submitted to the Commission or prepared after distribution of the agenda packet will be available for public inspection in the LAFCO office at 1170 West Third Street, Unit 150, San Bernardino, during normal business hours, on the LAFCO website at www.sbclafco.org, and at the hearing.

Current law and Commission policy require the publishing of staff reports prior to the public hearing. These reports contain technical findings, comments, and recommendations of staff. The staff recommendation may be accepted or rejected by the Commission after its own analysis and consideration of public testimony.

IF YOU CHALLENGE ANY DECISION REGARDING ANY OF THE ABOVE PROPOSALS IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED DURING THE PUBLIC TESTIMONY PERIOD REGARDING THAT PROPOSAL OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE LOCAL AGENCY FORMATION COMMISSION AT, OR PRIOR TO, THE PUBLIC HEARING.

The Political Reform Act requires the disclosure of expenditures for political purposes related to a change of organization or reorganization proposal which has been submitted to the Commission, and contributions in support of or in opposition to such measures, shall be disclosed and reported to the same extent and subject to the same requirements as provided for local initiative measures presented to the electorate (Government Code Section 56700.1). Questions regarding this should be directed to the Fair Political Practices Commission at www.fppc.ca.gov or at 1-866-ASK-FPPC (1-866-275-3772).

A person with a disability may contact the LAFCO office at (909) 388-0480 at least 72-hours before the scheduled meeting to request receipt of an agenda in an alternative format or to request disability-related accommodations, including auxiliary aids or services, in order to participate in the public meeting. Later requests will be accommodated to the extent feasible.

**ACTION MINUTES OF THE
LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 17, 2018**

REGULAR MEETING

9:00 A.M.

JANUARY 17, 2018

PRESENT:

COMMISSIONERS:

Jim Bagley	Larry McCallon
Kimberly Cox, Chair	Janice Rutherford, Alternate
Jim Curatalo	Diane Williams
Steve Farrell, Alternate	Acquanetta Warren, Alternate
Robert Lovingood	

STAFF:

Kathleen Rollings-McDonald, Executive Officer
Samuel Martinez, Assistant Executive Officer
Michael Tuerpe, Project Manager
Jeffrey Lum, LAFCO Analyst
La Trici Jones, Commission Clerk
Bob Aldrich, LAFCO Consultant

ABSENT:

James Ramos, Vice-Chair
Clark Alsop, LAFCO Legal Counsel

**CONVENE REGULAR SESSION OF THE LOCAL AGENCY FORMATION COMMISSION
– CALL TO ORDER – 9:03 A.M. – NORTON REGIONAL EVENT CENTER**

Chair Cox calls the regular session of the Local Agency Formation Commission to order and leads the flag salute.

ANNOUNCEMENT OF CONTRIBUTIONS

Chair Cox requests those present who are involved with any of the changes of organization to be considered today by the Commission and have made a contribution of more than \$250 within the past 12 months to any member of the Commission to come forward and state for the record their name, the member to whom the contribution was made, and the matter of consideration with which they are involved. There were none.

CONSENT ITEMS:

The following consent items are expected to be routine and non-controversial and will be acted upon by the Commission at one time without discussion, unless a request has been received prior to the hearing to discuss the matter.

ITEM 1. Approval of Minutes for Regular Meeting of November 15, 2017

- ITEM 2.** Approval of Executive Officer's Expense Report
- ITEM 3.** Ratify Payments as Reconciled for Month of November and December 2017 and Note Cash Receipts
- ITEM 4.** Consideration of Fee Reduction Request by the Proponents for the creation of a Citrus Pest Control District
- ITEM 5.** Adoption of LAFCO Resolution No. 3257 Continuing Workers' Compensation Coverage for Commission Members with Special District Risk Management Authority (SDRMA)

Executive Officer Rollings-McDonald states that the Ratification of Payments for the month of December will be continued to the February hearing. She states that Item #4 has been withdrawn, and the Commission should omit this item from consideration.

Commissioner Lovingood moves approval of the Consent Calendar with the noted modification, Second by Commissioner Farrell. There being no opposition, the motion passes with the following roll call vote: Ayes: Cox, Farrell, Lovingood, McCallon, Williams and Rutherford. Noes: None. Abstain: None. Absent: Bagley, Curatalo, Ramos

ITEM 6. CONSENT ITEMS DEFERRED FOR DISCUSSION:

None

Commissioners Bagley and Curatalo arrive at the dais at 9:15am.

PUBLIC HEARING ITEMS:

ITEM 7. CONSIDERATION OF: (1) REVIEW OF MITIGATED NEGATIVE DECLARATION PREPARED BY THE COUNTY OF SAN BERNARDINO FOR TENTATIVE TRACT MAP NO. 19991 TO CREATE SIXTY-TWO SINGLE-FAMILY RESIDENTIAL LOTS AND TWO LETTERED LOTS FOR AN INFILTRATION BASIN AND WATER WELL ON 16.88 ACRES, AS CEQA RESPONSIBLE AGENCY FOR LAFCO SC#421; AND (2) LAFCO SC#421 – CITY OF REDLANDS PRE-ANNEXATION AGREEMENT (PAA) 17-01 FOR WATER AND SEWER SERVICE PARCEL NUMBER (0298-261-46)

Assistant Executive Officer Samuel Martinez presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. The item has been advertised through publication in a newspaper of general circulation within the service area, the *San Bernardino County Sun*. Individual notice was provided to landowners and registered voters within 750 feet surrounding the area as required by Commission policy and State law.

Mr. Martinez states that the City of Redlands has submitted an application for Commission review requesting authorization to extend both water and sewer service outside its boundaries as required by Government Code Section 56133.

He states that the agreement relates to a proposed development on Assessor Parcel Number 0298-261-46 which is located at the northeast corner of Nice Avenue and Sapphire Street, which is within the sphere of influence assigned the City of Redlands and also located in the unincorporated Mentone Community.

Mr. Martinez states that the County processed and approved the Tentative Tract Map 19991 to create 62 single-family residential lots and two lettered lots on a 16.88 acre parcel.

He states that the conditions of approval placed on the project require that it receive both water and sewer service from the City of Redlands.

Mr. Martinez states that with regard to the services that are to be extended; the water service will be extended from the existing eight-inch water main in Nice Avenue into the interior of the proposed project. The sewer service will be extended from the existing eight-inch sewer main in Nice Avenue approximately 670 feet from Daffodil Lane to the intersection of Sapphire Street. He states that the sewer main in Strawberry Lane will also be extended 80 feet to the intersection of Sapphire Street. Sewer mains will then be extended along the parcel frontage and into the interior of the proposed project.

Mr. Martinez states that the City of Redlands has identified an estimated cost of \$1,061,798.24 in sums equivalent in development impact fees as well as water and sewer fees for the extension of water and sewer service to the tentative tract. In addition, Mr. Martinez states that the City of Redlands has stated the property owner/developer will bear all costs for the improvements on-site and off-site to extend water and sewer into the project.

He states that the Commission's Environmental Consultant, Tom Dodson of Dodson and Associates has indicated that the County's initial study and mitigated negative declaration are adequate for the Commission's use as a CEQA responsible agency.

Mr. Martinez reviews the criteria established by Commission Policy and State Law for the out-of-agency service agreement, and summarizes the determinations included in the staff report. He recommends Commission approval of LAFCO SC#421 by taking the actions detailed in the staff report.

Chair Cox asks if there are any comments or questions from the Commissioners. There are none.

Chair Cox opens the public hearing and asks for those wishing to speak. There are none.

Chair Cox closes the public hearing.

Commissioner Rutherford moves approval of the staff recommendation, Second by Commissioner Lovingood. There being no opposition, the motion passes with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Lovingood, McCallon, Williams and Rutherford. Noes: None. Abstain: None. Absent: Ramos (Rutherford voting in his stead)

ITEM 8. CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3222; AND (2) LAFCO 3222 – SPHERE OF INFLUENCE ESTABLISHMENT FOR THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (TERRITORY WITHIN SAN BERNARDINO COUNTY – COTERMINOUS WITH IEUS SPHERE OF INFLUENCE)

Project Manager, Michael Tuerpe presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. The item has been advertised through publication in a newspaper of general circulation within the service area, the *Inland Valley Daily Bulletin*. Individual notice was provided to landowners and registered voters within 750 feet surrounding the area as required by Commission policy and State law.

Executive Officer McDonald states that this is an out-growth of the service review that was conducted for water service in San Bernardino County. She states that one of the Commission's recommendations was to establish a sphere of influence for the Metropolitan Water District within San Bernardino County .

Mr. Tuerpe states that during the service review, Metropolitan voiced no objection to a sphere establishment.

Mr. Tuerpe states that the Commission will:

1. Consider a sphere of influence establishment for Metropolitan within San Bernardino County; and,
2. Evaluate and make determinations on the factors required by Government Code Section 56425 for LAFCO 3222.

Mr. Tuerpe states that this is a non-controversial item, and the Commission will be required to make determinations as required by law on the sphere of influence. He presents the sphere of influence factor determinations required by Government Code Section 56425(e). Mr. Tuerpe states that in October 2017, San Bernardino LAFCO expressed its intention to Los Angeles LAFCO to utilize the provisions of the November 2011 MOU to address the proposed establishment of the Metropolitan sphere in San Bernardino County. Therefore, Mr. Tuerpe states that this is the proper forum to establish the sphere of influence.

Mr. Tuerpe identifies the additional requirements for the establishment of a sphere of influence including the determination that the sphere of influence adoption is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061(b), He also notes that legal notice was provided through publication of 1/8th page legal advertisement and that individual notices were provided to all affected and interested agencies, County departments and those individuals and agencies requesting special notice.

He states that approval of LAFCO 3222 will rectify the lack of a sphere of influence for the Metropolitan Water District for its territory within San Bernardino County.

Chair Cox states that this seems like a clean-up item and thanks Mr. Tuerpe for the presentation.

Chair Cox asks for comments from the Commission.

Commissioner Farrell asks if this sphere establishment changes LAFCO's relationship with the Metropolitan Water District; to which Executive Officer McDonald states that Metropolitan has always been included in the distribution of Information and has sometimes responded to our call for comment. She states that this makes no change in the underlying process, but clarifies that we have fulfilled our obligation to establish spheres for all independent special districts.

Chair Cox opens the public hearing and requests those wishing to speak to come to the podium. There are none.

Chair Cox closes the public hearing

Commissioner Bagley moves approval of the staff recommendation, Second by Commissioner McCallon. There being no opposition, the motion passes with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Lovingood, McCallon, Williams and Rutherford. Noes: None. Abstain: None. Absent: Ramos (Rutherford voting in his stead)

DISCUSSION ITEMS:

ITEM 9 REVIEW AND ACCEPT AUDIT REPORT FOR FISCAL YEAR ENDED JUNE 30, 2017

LAFCO Project Manager, Michael Tuerpe presents the Audit Report for Fiscal Year 2016-17 to the Commission. Mr. Tuerpe states that the audit was recently completed and the independent auditor, Davis Farr LLP, has reviewed and verified the financial statements prepared by LAFCO staff. He states that the auditor did not identify any significant deficiencies in internal controls or material weaknesses in the financial statements.

Mr. Tuerpe states that on January 8 and 10 the independent auditor held a conference call meeting with the Ad Hoc Commission Administrative Committee and LAFCO staff. He states that the independent auditor expressed that there were no issues with the engagement process.

He identifies that the auditing standards state that those charged with governance be responsible for the financial statements. In regards to LAFCO, the responsible parties are the Commission and LAFCO management. Mr. Tuerpe proceeds to provide an overview of the audit.

Commissioner McCallon states that because of the Commission's fiduciary responsibilities, the Auditor should present the audit overview and be available for questions by the whole Commission. Chair Cox questions, in response to Commissioner McCallon's concern, why the Auditor is unavailable to present the audit results today. Mr. Tuerpe responds that the Auditor had scheduling conflicts. He states that there were two phone meetings with the independent Auditor and the Administrative Committee.

Chair Cox states that she feels confident with the audit. She states that she was on both of the conference calls, and Mr. Tuerpe's presentation addresses questions that were brought up by the Commissioners.

Chair Cox states that due to the sensitivity of this matter, next year staff should make sure that the Auditor is in attendance. Executive Officer McDonald states that next year staff will make sure that the presentation of the Audit will be made to the Commission only when the Auditors are present.

Commissioner McCallon asks if the Auditors contract includes a requirement that they be in attendance during the audit presentation; to which Executive Officer McDonald responds she is unsure but will review to be sure it is included. Commissioner McCallon states that if it is not in the contract, then it needs to be amended to include the requirement.

Commissioner Bagley states that he concurs with Commissioner McCallon.

Commissioner McCallon moves approval of the staff recommendation to accept the audit report, Second by Commissioner Curatalo. There being no opposition, the motion passes with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Lovingood, McCallon, Rutherford and Williams. Noes: None. Abstain: None. Absent: Ramos (Rutherford voting in his stead)

ITEM 10 MID-YEAR BUDGET REVIEW FOR FISCAL YEAR 2017-18:

- **FINANCIAL REPORT FOR PERIOD JULY 1 THROUGH DECEMBER 31, 2017**
- **AUTHORIZATION TO FUND TRANSFER TO ADDRESS INCREASED REVENUES AND EXPENDITURES DUE TO INCREASED ACTIVITY RELATED TO LITIGATION AND PROPOSAL PROCESSING**

Project Manager Michael Tuerpe states that the Staff's recommendation is that this item be deferred to the February Commission Hearing. Chair Cox calls for consensus on that request, which is granted.

ITEM 11 REVIEW AND CONSIDERATION OF POLICY RELATED TO RETENTION OF ELECTRONIC COMMUNICATIONS

Executive Officer Kathleen Rollings-McDonald states that Legal Counsel Clark Alsop is absent from the hearing due to illness; therefore, staff is recommending that this matter be continued to the February Commission Hearing. Chair Cox calls for consensus on that request, which is granted.

INFORMATION ITEMS:

ITEM 12 LEGISLATIVE ORAL REPORT

Executive Officer McDonald states that the CALAFCO Legislative Committee will be meeting in San Diego on January 19, 2018. She states that there will be an omnibus bill

that has seven items that will be non-controversial. She states that the Eastern Municipal Water District is proposing new legislation that will require the formation of new water systems. Ms. McDonald states that she will come back to the Commission with a report in February.

ITEM 13 EXECUTIVE OFFICER'S ORAL REPORT

Executive Officer McDonald states that the agenda for the January 29 meeting of the CALAFCO Southern Region has been provided to the Commission. She states that this meeting is open to all Commissioners if they would like to attend.

Ms. McDonald states that on December 7, 2017, we had a successful governance training for technology and public records. She states that additional training will occur on January 29, 2018 with a session on Transparency Strategies and on March 28, 2018 a session on Fraud Detection, both at Mojave Water Agency.

ITEM 14 COMMISSIONER COMMENTS

Commissioner Lovingood states that he would like to congratulate Executive Officer McDonald for receiving the Lifetime Achievement Award from CALAFCO.

Commissioner McCallon states that he was able to go to the website and download the agenda and attachments for the staff report and will no longer need the CD.

ITEM 12 COMMENTS FROM THE PUBLIC

There are none.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS ADJOURNED AT 9:51 A.M

ATTEST:


LA TRICI JONES
Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

KIMBERLY COX, Chair

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West 3rd Street, Unit 150 San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
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DATE : FEBRUARY 13, 2018 
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #4 – APPROVAL OF EXECUTIVE OFFICER’S EXPENSE REPORT

RECOMMENDATION:

Approve the Executive Officer’s Expense Report for Procurement Card Purchases from December 22, 2017 through January 22, 2018 and Executive Officers expense claim as presented.

BACKGROUND INFORMATION:

The Commission participates in the County of San Bernardino’s Procurement Card Program to supply the Executive Officer a credit card to provide for payment of routine official costs of Commission activities as authorized by LAFCO Policy and Procedure Manual Section II – Accounting and Financial Policies #3(H). Staff has prepared an itemized report of purchases that covers the billing period of December 22, 2017 through January 22, 2018.

A copy of the Executive Officer’s Travel Claim is also provided for the Commission’s approval.

Staff recommends that the Commission approve the Executive Officer’s expense report as shown on the attachment.

KRM/lij

Attachment



PROCUREMENT CARD PROGRAM

ATTACHMENT G

MONTHLY PROCUREMENT CARD PURCHASE REPORT

Card Number		Cardholder						Travel	Billing Period	
		Kathleen Rollings-McDonlad							12/22 - 1/22/18	
DATE	VENDOR NAME	#	DESCRIPTION	PURPOSE	COST CENTER	G/L ACCOUNT	\$ AMT	TRIP NUMBER	*R/D	SALES TAX
12/22/18	Thomson West	1	Publication	Law Library Update	8900005012	52002080	203.82		R	
12/22/18	Frontier	2	Service	Internet	8900005012	52002041	672.96		R	
12/27/18	Daisy IT	3	Office Supplies	Office Supplies	8900005012	52002305	132.47		R	
01/04/18	CALAFCO -U	4	Training	CALAFCO Training	8900005012	52942941	173.02		R	
01/04/18	SouthWest Airlines	5	Airline	CALAFCO Class	8900005012	52942945	137.98		R	
01/04/18	SouthWest Airlines	6	Airline	CALAFCO Class	8900005012	52942945	137.98		R	
01/18/18	Daisy IT	7	Office Supplies	Office Supplies	8900005012	52002305	187.34		R	
01/19/18	Sofia Hotel	8	Hotel	Hotel	8900005012	52942942	171.71		R	


The undersigned, under penalty of perjury, states the above information to be true and correct. If an unauthorized purchase has been made, the undersigned authorizes the County Auditor/Controller-Recorder to withhold the appropriate amount from their payroll check after 15 days from the receipt of the cardholder's Statement of Account.

Cardholder (Print & Sign)	Date
Kathleen Rollings-McDonald <i>[Signature]</i>	02/12/18

Approving Official (Print & Sign)	Date
Kimberly Cox	02/21/18

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE : FEBRUARY 13, 2018 
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

**SUBJECT: AGENDA ITEM #5 - RATIFY PAYMENTS AS RECONCILED FOR
MONTH OF DECEMBER 2017 AND NOTE REVENUE RECEIPTS**

RECOMMENDATION:

Ratify payments as reconciled for the month of December 2017 and note revenue receipts for the same period.

BACKGROUND INFORMATION:

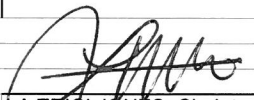
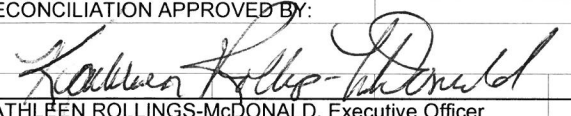
Staff has prepared a reconciliation of warrants issued for payments to various vendors, internal transfers for payments to County Departments, cash receipts and internal transfers for payments of deposits or other charges that cover the period of December 1, 2017 through December 31, 2017

Staff is recommending that the Commission ratify the payments for December as outlined on the attached listings and note the revenues received.

KRM/lj


Attachment

MONTH OF DECEMBER 2017 PAYMENTS PROCESSED						
Document Number	Account	Posting Date	Activity	Reference	Vendor	Amount
1900044404	40809970	12/6/2017	Reimbursement for Cancelled Service Contract	SC #418	Merrell-Johnson Engineering	\$500.00
1900052939	52002182	12/14/2017	Edison Bill	2-39-945-2309	Edison	\$294.10
1900052958	52002182	12/14/2017	Edison Bill	2-39-945-2309	Edison	\$306.88
1900059567	52002308	12/8/2017	Credit Card Clearing Account	LAFCO 11/22/2017		\$3,664.04
1900045698	52002400	12/7/2017	Best Best & Krieger General Invoice	Invoice 811360	Best Best & Krieger	\$1,931.26
1900045700	52002400	12/7/2017	Best Best & Krieger San Antonio Heights	Invoice 811361	Best Best & Krieger	\$2,911.90
1900045701	52002400	12/7/2017	Best Best & Krieger Cty of San Bdn v. EVWD	Invoice 811362	Best Best & Krieger	\$673.80
1900045702	52002400	12/7/2017	Best Best & Krieger San Antonio Heights COVDS1715504	Invoice 811363	Best Best & Krieger	\$595.02
1900045703	52002400	12/7/2017	Best Best & Krieger Employee Benefits - Hesperia	Invoice 811364	Best Best & Krieger	\$254.10
1900048461	52002424	12/11/2017	Environmental Consultant	Invoice 17-10	Tom Dodson & Associates	\$1,020.00
1900060207	52002424	12/21/2017	Environmental Consultant	Invoice 17-11R	Tom Dodson & Associates	\$850.00
1900044387	52002445	12/6/2017	Aldrich & Associates	Invoice #52	Aldrich & Associates	\$3,000.00
1900052935	52002445	12/14/2017	IEMG video of Commission Brd Mtg 10/18/2017	Invoice 2034	City of San Bernardino	\$180.00
1900055931	52002445	12/18/2017	Jan Pro Cleaning 10/23/2017	Invoice 58682	Jan Pro	\$158.33
1900055933	52002445	12/18/2017	Jan Pro Cleaning 11/1/2017	Invoice 58683	Jan Pro	\$475.00
1900055936	52002445	12/18/2017	Jan Pro Cleaning 12/1/2017	Invoice 58906	Jan Pro	\$475.00
1900057233	52002445	12/19/2017	Aldrich & Associates	Invoice #54	Aldrich & Associates	\$3,600.00
1900059435	52942940	12/20/2017	Private Mileage CALAFCO Conference	LAFCO	Samuel Martinez	\$115.56
1900057168	52942940	12/18/2017	Private Mileage Office Errands	LAFCO	La Trici Jones	\$36.40
1900057152	52942940	12/18/2017	Private Mileage Calif. Water Boards Workshop	LAFCO	Samuel Martinez	\$22.47
1900057152	52942943	12/18/2017	Meal Reimbursement Calif Water Boards Workshop	LAFCO	Samuel Martinez	\$27.62
1900057163	52942943	12/18/2017	Meal Reimbursement Calif Water Boards Workshop	LAFCO	Michael Tuerpe	\$46.98
1900057152	52942946	12/18/2017	Other Travel - Parking and Taxi Service	LAFCO	Samuel Martinez	\$87.75
TOTAL						\$21,226.21
MONTH OF DECEMBER 2017 INTERNAL TRANSFERS PROCESSED						
4200002424	52002310	12/5/2017	Mail Services	County Mail	County Mail	\$178.60
4200002425	52002310	12/5/2017	Mail Services	County Mail	County Mail	\$453.73
4200002426	52002310	12/5/2017	Mail Services	County Mail	County Mail	\$115.17
4200002377	52002445	12/6/2017	Certification of Voters Service Contract #421	ROV	ROV	\$49.56
	52002037	12/1/2017	ISD Comnet Charges	ISD	ISD	\$295.56
	52002420	12/1/2017	ISD Other Services	ISD	ISD	\$17.47
	52002421	12/1/2017	ISD Desktop Support	ISD	ISD	\$1,443.53
TOTAL						\$2,553.62
MONTH OF DECEMBER 2017 CASH RECEIPTS						
4100100799	40709555	12/7/2017	LAFCO 3216 Legal - City of Upland	Legal		\$2,743.51
4100098247	40709655	12/4/2017	LAFCO 3220	GIMS Fees		\$485.00
4100098247	40709655	12/4/2017	LAFCO 3221	GIMS Fees		\$400.00
410016306	40709655	12/19/2017	LAFCO 3207 GIMS FEES	GIMS Fees		\$570.00
4100116306	40709800	12/19/2017	LAFCO Service Contract #422	LAFCO Fees		\$500.00
4100098247	40759930	12/4/2017	Refund for CALAFCO registration - McEachron	LAFCO		\$470.00
4100100799	40759930	12/7/2017	Frontier Phone Service Refund	LAFCO		\$246.76
4100116306	40759930	12/19/2017	Misc. - K. McDonald Reimbursement for Room Service Overage	LAFCO		\$20.00
TOTAL						\$5,435.27
MONTH OF DECEMBER 2017 INTERNAL TRANSFERRED RECEIVED						

TOTAL							\$0.00
							
LA TRICI JONES, Clerk to the Commission					DATE	2/13/2018	
RECONCILIATION APPROVED BY:							
							
KATHLEEN ROLLINGS-McDONALD, Executive Officer					DATE	2/13/2018	

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DATE: FEBRUARY 14, 2018 
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
MICHAEL TUERPE, Project Manager
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #7: Review and Consideration of Policy Related to Retention of Electronic Communications (Continued from January 17, 2018)

RECOMMENDATION:

Staff recommends that the Commission:

1. Approve the proposed Electronic Communications Policy as outlined in the January 17, 2018 Staff Report for Agenda Item 11, Attachment #2;
2. Approve the proposed amendment to the Records Retention Policy as outlined in the January 17, 2018 Staff Report for Agenda Item 11, Attachment #3;
3. Authorize the Executive Officer to establish and remove Email addresses for Commissioners, when applicable, with the County Information Services Department utilizing the Microsoft 365 Platform and the existing County retention schedule; and,
4. Adopt LAFCO Resolution No. 3258 reflecting the changes to the Policy and Procedure Manual, and direct the Executive Officer to distribute to affected and interested parties and to update the Commission Website.

SUMMARY:

At the January 2018 hearing, the Commission continued review and consideration of adopting a policy related to retention of electronic communications. The January staff report and its attachments are included as an attachment to this report. The only

changes to the January report are outlined below and do not affect the Policy changes proposed.

Since that time, County Information Services Department (ISD) has notified LAFCO staff that utilizing the LAFCO staff email extension (@lafco.sbcounty.gov) is not an option for Commissioners. This is because Commissioners would not be accessing the email system from a County-approved terminal.

Therefore, the County has recommended utilizing its license for Microsoft 365, a platform similar to Gmail Business which allows the option to customize an email extension. Additionally, with Microsoft 365, as with Gmail Business, the user has the option to access the emails on a mobile device. The Microsoft 365 accounts would still fall under the County's retention schedule as identified in the proposed policy as presented for the January hearing.

Staff's recommendation is that the Commission have emails subject the County's retention schedule. Therefore, staff is recommending that the Commission choose Microsoft 365 as its email platform via County ISD.

CONCLUSION:

At this time, staff is requesting that the Commission provide any additional changes, corrections or amendments to the proposed policies. Finally, staff recommends that the Commission take the actions outlined on page one which are to:

- Adopt the Electronic Communications Policy as proposed.
- Amend the Records Retention Policy as proposed.
- Authorize the Executive Officer to establish and remove Email addresses for Commissioners, when applicable, with the County Information Services Department using the County as its Email platform.
- Adopt the resolution reflecting these changes to the Policy and Procedure Manual.


KRM/MT

Attachments:

Staff Report dated January 10, 2018 for -- Review and Consideration of Policy Related to Retention of Electronic Communications with Attachments.

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: JANUARY 10, 2018 
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
MICHAEL TUERPE, Project Manager
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #11: Review and Consideration of Policy Related to
Retention of Electronic Communications

RECOMMENDATION:

Staff recommends that the Commission:

1. Approve the proposed Electronic Communications Policy as included in Attachment #1;
2. Approve the proposed amendment to the Records Retention Policy as included in Attachment #2;
3. Authorize the Executive Officer to establish and remove Email addresses for Commissioners, when applicable, with the County Information Services Department; and,
4. Adopt LAFCO Resolution No. 3258 reflecting the changes to the Policy and Procedure Manual, and direct the Executive Officer to distribute to affected and interested parties and to update the Commission Website.

SUMMARY:

In March 2017, the California Supreme Court ruled in *City of San Jose v. Superior Court*¹ (*City of San Jose*) that electronic messages sent or received on public officials' private devices or in private accounts are subject to disclosure under the California

¹ *City of San Jose v. Superior Court*, Cal. 4th, 214 Cal.Rptr.3d 274. Decided March 2, 2017.

Public Records Act (“PRA”), which had originally been designed to cover paper documents (copy of decision included as Attachment #1 to this report). LAFCO staff recommends that the Commission consider and adopt the proposed Electronic Communications Policy as well as amend its Records Retention Policy. Pursuant to the proposed Electronic Communications Policy, each Commissioner would be assigned a LAFCO Email address.

BACKGROUND:

The PRA requires disclosure of public records, which “includes any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained” by an agency. This is regardless of physical form or characteristics. Earlier cases determined that voicemails, Emails, and text messages are “writings” under the PRA. *City of San Jose* extended the definition of a “writing” to include “other electronic platforms,” which likely encompasses electronic communication via Email, text, and social media, which must relate in some substantive way to the conduct of the public’s business. Of note, communications that are primarily personal, containing no more than incidental mentions of agency business, generally will not constitute public records.

However, *City of San Jose* does not mention social media or text messages. LAFCO does not have or maintain any social media accounts or participate on any social media platforms. However, personal social media accounts, as with personal Email accounts and texts, could be subject to the PRA if LAFCO business is conducted on such accounts.

The court did acknowledge the inherent balance that must be struck between the public’s rights of access and an individual employee’s or official’s right of privacy, and sought to offer some limited guidance for how searches should be conducted for records sent or received on nongovernmental accounts that pertain to the public’s business.

DISCUSSION:

In light of the *City of San Jose* case, LAFCO’s legal counsel (Best, Best, & Krieger) prepared a sample electronics message policy. This sample policy was shared among several dozen of BB&K’s public agency clients, keeping the cost to the Commission at a minimum. LAFCO staff has modified the sample policy to meet the circumstances of this Commission and its staff. Attachment #2 to this staff report is the draft Electronic Communications Policy.

Public agencies may reasonably rely on officials and employees to search their own personal files, accounts, and devices for responsive material when a records request is received. The Court emphasized that employees/officials do not lose all privacy rights. The proposed policy identifies that when a records request is received, the LAFCO

Clerk will communicate the request to the “LAFCO official” which is defined by the policy to be any commissioner, employee of LAFCO, or a person assigned an Email account through LAFCO. The policy will be to rely on the LAFCO official to search their own personal files – LAFCO will neither seize nor search a LAFCO official’s personal device to comply with a public records request.

The California Supreme Court also discussed an employee or official submitting an affidavit that would give the local agency, requester, and ultimately the trial court reassurance that responsive records were appropriately searched on nongovernmental accounts. Such an approach must also strike “an appropriate balance” with the individual’s right of privacy in their personal affairs. The policy as presented includes the requirement for such a statement and a sample template for signature (included as a part of Attachment #2)

Email Platform for Commissioners

The draft Electronic Communications Policy identifies that all LAFCO Commissioners and staff shall be assigned a LAFCO electronic messaging account (Email account). This would promote the isolation of LAFCO business onto a single platform, and reduce the risk of LAFCO business on personal or other public Email. Staff’s analysis identifies two viable options for Commissioner Email accounts. The first option would be obtaining Email addresses from the County; currently LAFCO contracts with County Information Services Department (ISD) for LAFCO staff Email access and retention. The second option would be to obtain Commissioner Email addresses from Google’s Gmail Business platform. The similarities of both platforms are as follows:

- Ample storage
- Outbound footer (legal statement) can be placed on the Email. This would be in line with the proposed policy.
- Allows for syncing of appointments to Outlook calendar.
- When a PRA Request is received, LAFCO official searches Emails and provides the documents.

The chart below identifies the differences between County and Gmail Business Email platforms:

	County ISD	Gmail Business
Email on mobile device	Is available as a separate charge to LAFCO	Yes
Chat capable	No	Yes
Retention of permanently deleted items	Accessible for 6 months then automatically purged per County Policy schedule	Gmail automatically purges based upon LAFCO setting (i.e. 2 years)

Cost, per user, per month	\$15	\$10
Email address extension	That of staff: @lafco.sbcounty.gov	customizable
When a Commissioner leaves LAFCO service	County ISD will place contents onto storage device and delete account	Clerk would need to access account and place contents onto storage device for retention, then inactivate account

Staff is recommending that the Commission select the County as its Email platform without the added cost for access directly on a mobile device. As identified above, the County has an adopted policy for electronic communications retention and permanent deletion based upon its retention schedule. Second, there would be consistency throughout the agency for all LAFCO officials - same Email extensions, retention schedules, and Email server. Third, when a Commissioner leaves LAFCO, County ISD can provide LAFCO staff with the Email contents on an electronic medium, rather than the Email administrator directly accessing the former Commissioner's account to copy the Email contents. Lastly, if this is the platform chosen by the Commission, then the three Commissioners from the County Board of Supervisors would not necessarily require an additional Email that pertains specifically to LAFCO.

As a part of this process, it is the expectation of the policy that Commissioners and staff use or copy (cc) their LAFCO Email account for all communications related to LAFCO business. Further, LAFCO staff is recommending that a footer message be placed at the bottom of personal or other public agency Email addresses that directs LAFCO business to the LAFCO Email addresses. Staff is recommending that the language of the footer be:

CONFIDENTIALITY NOTICE:

***This Email address is intended for LAFCO business.** This Email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply Email and immediately delete the Email you received.*

Records Retention Policy

Attachment #3 to this staff report is the draft amendment to the Commission's Records Retention Policy. The basis of the amendment is to adopt the records retention policy for electronic communications of the County of San Bernardino as the Commission's official retention schedule for electronic communications.

Upon leave of service from LAFCO, the LAFCO Email administrator will request that County ISD close the LAFCO official's Email account and for the County ISD to copy the contents from the Email account onto an electronic medium (CD, DVD, USB flash drive) provided to LAFCO to be retained in accordance with the Commission's Record Retention Policy.

CONCLUSION:

Communications related to the conduct of public business are not excluded from being public records under the California Public Records Act simply because they were sent or received using a personal account or personal device. The California Supreme Court stated it is the local agency itself that is in the best position to adopt policies that will reduce the likelihood of public records being held in the private accounts of employees or officials that pertain to the public's business.

Staff has reviewed this new court directive and provided its analysis of the new policy to be adopted for the Commission. At this time, staff is requesting that the Commission provide any additional changes, corrections or amendments to the proposed policies. Finally, staff recommends that the Commission:

- Adopt the Electronic Communications Policy as proposed.
- Amend the Records Retention Policy as proposed.
- Authorize the Executive Officer to establish and remove Email addresses for Commissioners, when applicable, with the County Information Services Department using the County as its Email platform.
- Adopt the resolution reflecting the changes to the Policy and Procedure Manual.

KRM/MT

Attachments:

1. California Supreme Court Ruling in *City of San Jose v. Superior Court* Cal. 4th, 214 Cal.Rptr.3d 274, Decided March 2, 2017
2. Draft Electronic Communications Policy
3. Draft Records Retention Policy (with track changes)
4. Draft LAFCO Resolution No. 3258

**California Supreme Court
Ruling in City of San Jose v.
Superior Court Cal. 4th, 214
Cal.Rptr.3rd 274, Decided
March 2, 2017**

Attachment 1

IN THE SUPREME COURT OF CALIFORNIA

CITY OF SAN JOSE et al.,)	
)	
Petitioners,)	
)	S218066
v.)	
)	Ct.App. 6 H039498
THE SUPERIOR COURT OF SANTA,)	Santa Clara County
CLARA COUNTY,)	Super. Ct. No. 109CV150427
Respondent;)	
)	
TED SMITH,)	
)	
Real Party in Interest.)	
)	
_____)	

Here, we hold that when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act (CPRA or Act).¹ We overturn the contrary judgment of the Court of Appeal.

I. BACKGROUND

In June 2009, petitioner Ted Smith requested disclosure of 32 categories of public records from the City of San Jose, its redevelopment agency and the agency’s executive director, along with certain other elected officials and their

¹ Government Code section 6250 et seq. All statutory references are to the Government Code unless otherwise specified.

staffs.² The targeted documents concerned redevelopment efforts in downtown San Jose and included emails and text messages “sent or received on private electronic devices used by” the mayor, two city council members, and their staffs. The City disclosed communications made using City telephone numbers and email accounts but did not disclose communications made using the individuals’ personal accounts.

Smith sued for declaratory relief, arguing CPRA’s definition of “public records” encompasses all communications about official business, regardless of how they are created, communicated, or stored. The City responded that messages communicated through personal accounts are not public records because they are not within the public entity’s custody or control. The trial court granted summary judgment for Smith and ordered disclosure, but the Court of Appeal issued a writ of mandate. At present, no documents from employees’ personal accounts have been collected or disclosed.

II. DISCUSSION

This case concerns how laws, originally designed to cover paper documents, apply to evolving methods of electronic communication. It requires recognition that, in today’s environment, not all employment-related activity occurs during a conventional workday, or in an employer-maintained workplace.

Enacted in 1968, CPRA declares that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” (§ 6250.) In 2004, voters made this principle part of our Constitution. A provision added by Proposition 59 states: “The people have the right of access to information concerning the conduct of the people’s business, and, therefore, . . . the writings of public officials and agencies shall be open to public scrutiny.” (Cal. Const., art. I, § 3, subd. (b)(1).) Public access laws serve a

² These parties, sued as defendants below and the petitioners here, are collectively referred to as the “City.”

crucial function. “Openness in government is essential to the functioning of a democracy. ‘Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process.’ ”
(International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court (2007) 42 Cal.4th 319, 328-329 (International Federation).)

However, public access to information must sometimes yield to personal privacy interests. When enacting CPRA, the Legislature was mindful of the right to privacy (§ 6250), and set out multiple exemptions designed to protect that right. *(Commission on Peace Officer Standards & Training v. Superior Court (2007) 42 Cal.4th 278, 288 (Commission on Peace Officer Standards); see § 6254.)* Similarly, while the Constitution provides for public access, it does not supersede or modify existing privacy rights. (Cal. Const., art. I, § 3, subd. (b)(3).)

CPRA and the Constitution strike a careful balance between public access and personal privacy. This case concerns how that balance is served when documents concerning official business are created or stored outside the workplace. The issue is a narrow one: Are writings concerning the conduct of public business beyond CPRA’s reach merely because they were sent or received using a nongovernmental account? Considering the statute’s language and the important policy interests it serves, the answer is no. Employees’ communications about official agency business may be subject to CPRA regardless of the type of account used in their preparation or transmission.

A. *Statutory Language, Broadly Construed, Supports Public Access*

CPRA establishes a basic rule requiring disclosure of public records upon request. (§ 6253.)³ In general, it creates “a presumptive right of access to any record *created or maintained* by a public agency that relates in any way to the business of the public agency.” (*Sander v. State Bar of California* (2013) 58 Cal.4th 300, 323, italics added.) Every such record “must be disclosed unless a statutory exception is shown.” (*Ibid.*) Section 6254 sets out a variety of exemptions, “many of which are designed to protect individual privacy.” (*International Federation, supra*, 42 Cal.4th at p. 329.) The Act also includes a catchall provision exempting disclosure if “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure.” (§ 6255, subd. (a).)

“When we interpret a statute, ‘[o]ur fundamental task . . . is to determine the Legislature’s intent so as to effectuate the law’s purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute’s purpose, legislative history, and public policy.’ [Citation.] ‘Furthermore, we consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.’ ” (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 165-166.)

³ CPRA was modeled on the federal Freedom of Information Act (FOIA) (5 U.S.C. § 552). (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 772.)

In CPRA cases, this standard approach to statutory interpretation is augmented by a constitutional imperative. (See *Sierra Club v. Superior Court*, *supra*, 57 Cal.4th at p. 166.) Proposition 59 amended the Constitution to provide: “A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be *broadly* construed if it furthers the people’s right of access, and *narrowly* construed if it limits the right of access.” (Cal. Const., art. I, § 3, subd. (b)(2), italics added.) “ ‘Given the strong public policy of the people’s right to information concerning the people’s business (Gov. Code, § 6250), and the constitutional mandate to construe statutes limiting the right of access narrowly (Cal. Const., art. I, § 3, subd. (b)(2)), “all public records are subject to disclosure unless the Legislature has *expressly* provided to the contrary.” ’ ’ ” (*Sierra Club*, at p. 166.)

We begin with the term “public record,” which CPRA defines to include “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” (§ 6252, subd. (e); hereafter “public records” definition.) Under this definition, a public record has four aspects. It is (1) a writing, (2) with content relating to the conduct of the public’s business, which is (3) prepared by, *or* (4) owned, used, or retained by any state or local agency.

1. *Writing*

CPRA defines a “writing” as “any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.” (§ 6252, subd. (g).) It is undisputed that the items at issue here constitute writings.

In 1968, creating a “writing” could be a fairly involved process. Typically, a person would use an implement to type, or record words longhand, or would

dictate to someone else who would write or type a document. Writings were generally made on paper or some other tangible medium. These writings were physically identifiable and could be retrieved by examining the physical repositories where they were stored. Writings exchanged with people outside the agency were generally sent, on paper, through the mail or by courier. In part because of the time required for their preparation, such writings were fairly formal and focused on the business at hand.

Today, these tangible, if laborious, writing methods have been enhanced by electronic communication. Email, text messaging, and other electronic platforms, permit writings to be prepared, exchanged, and stored more quickly and easily. However, the ease and immediacy of electronic communication has encouraged a commonplace tendency to share fleeting thoughts and random bits of information, with varying degrees of import, often to broad audiences. As a result, the line between an official communication and an electronic aside is now sometimes blurred. The second aspect of CPRA's "public records" definition establishes a framework to distinguish between work-related and purely private communications.

2. *Relating to the Conduct of the Public's Business*

The overall structure of CPRA, with its many exemptions, makes clear that not everything written by a public employee is subject to review and disclosure. To qualify as a public record, a writing must "contain[] information relating to the conduct of the public's business." (§ 6252, subd. (e).) Generally, any "record . . . kept by an officer because it is necessary or convenient to the discharge of his official duty . . . is a public record." (*Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 340; see *People v. Purcell* (1937) 22 Cal.App.2d 126, 130.)

Whether a writing is sufficiently related to public business will not always be clear. For example, depending on the context, an email to a spouse complaining "my coworker is an idiot" would likely not be a public record. Conversely, an email to a superior reporting the coworker's mismanagement of an

agency project might well be. Resolution of the question, particularly when writings are kept in personal accounts, will often involve an examination of several factors, including the content itself; the context in, or purpose for which, it was written; the audience to whom it was directed; and whether the writing was prepared by an employee acting or purporting to act within the scope of his or her employment. Here, the City claimed all communications in personal accounts are beyond the reach of CPRA. As a result, the content of specific records is not before us. Any disputes over this aspect of the “public records” definition await resolution in future proceedings.

We clarify, however, that to qualify as a public record under CPRA, at a minimum, a writing must relate in some substantive way to the conduct of the public’s business. This standard, though broad, is not so elastic as to include every piece of information the public may find interesting. Communications that are primarily personal, containing no more than incidental mentions of agency business, generally will not constitute public records. For example, the public might be titillated to learn that not all agency workers enjoy the company of their colleagues, or hold them in high regard. However, an employee’s electronic musings about a colleague’s personal shortcomings will often fall far short of being a “writing containing information relating to the conduct of the public’s business.” (§ 6252, subd. (e).)⁴

Coronado Police Officers Assn. v. Carroll (2003) 106 Cal.App.4th 1001 demonstrates the intricacy of determining whether a writing is related to public

⁴ We recognize that this test departs from the notion that “[o]nly purely personal” communications “totally void of reference to governmental activities” are excluded from CPRA’s definition of public records. (Assem. Statewide Information Policy Com., Final Rep. (Mar. 1970) 1 Assem. J. (1970 Reg. Sess.) appen. p. 9; see *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p. 774.) While this conception may yield correct results in some circumstances, it may sweep too broadly in others, particularly when applied to electronic communications sent through personal accounts.

business. There, police officers sought access to a database of impeachment material compiled by public defenders. The attorneys contributed to the database and used its contents in their work. (*Id.* at p. 1005.) However, their representation of individual clients, though paid for by a public entity, was considered under case law to be essentially a private function. (*Id.* at pp. 1007-1009; see *Polk County v. Dodson* (1981) 454 U.S. 312, 321-322.) Accordingly, the *Coronado* court concluded the database did not relate to public business and thus was not a public record. (*Id.* at pp. 1007-1009.) The court was careful to note that not all documents related to the database were private, however. Documents reflecting policy decisions about whether and how to maintain the database might well relate to public business, rather than the representation of individual clients. (*Id.* at p. 1009.) Content of that kind would constitute public records. (*Ibid.*)

3. *Prepared by Any State or Local Agency*

The City focuses its challenge on the final portion of the “public records” definition, which requires that writings be “prepared, owned, used, or retained by any state or local agency.” (§ 6252, section (e).) The City argues this language does not encompass communications agency employees make through their personal accounts. However, the broad construction mandated by the Constitution supports disclosure.

A writing is commonly understood to have been prepared by the person who wrote it. If an agency employee prepares a writing that substantively relates to the conduct of public business, that writing would appear to satisfy the Act’s definition of a public record. The City urges a contrary conclusion when the writing is transmitted through a personal account. In focusing its attention on the “owned, used, or retained by” aspect of the “public records” definition, however, it ignores the “prepared by” aspect. (§ 6252, subd. (e).) This approach fails to give “ ‘significance to every word, phrase, sentence, and part’ ” of the Act. (*Sierra Club v. Superior Court, supra*, 57 Cal.4th at p. 166.)

The City draws its conclusion by comparing the Act’s definitions of “local” and “state” agency. Under CPRA, “ ‘*Local agency*’ includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.” (§ 6252, subd. (a), italics added.) The City points out that this definition does not specifically include individual government officials or staff members, whereas individuals *are* specifically mentioned in CPRA’s definition of “*state agency*.” According to that definition, “ ‘State agency’ means every state office, *officer*, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.”⁵ (§ 6252, subd. (f)(1), italics added.) The City contends this difference shows the Legislature intended to exclude individuals from the local agency definition. If a local agency does not encompass individual officers and employees, it argues, only writings accessible to the agency as a whole are public records. This interpretation is flawed for a number of reasons.

The City’s narrow reading of CPRA’s local agency definition is inconsistent with the constitutional directive of broad interpretation. (Cal. Const., art. I, § 3, subd. (b)(2); see *Sierra Club v. Superior Court*, *supra*, 57 Cal.4th at p. 175.) Broadly construed, the term “local agency” logically includes not just the discrete governmental entities listed in section 6252, subdivision (a) but also the individual officials and staff members who conduct the agencies’ affairs. It is well established that a governmental entity, like a corporation, can act only through its

⁵ Article IV establishes the Legislature, and article VI establishes the state’s judiciary. (Cal. Const., arts. IV, VI.) These branches of government are thus generally exempt from CPRA. (See *Sander v. State Bar of California*, *supra*, 58 Cal.4th at p. 318; *Copley Press, Inc. v. Superior Court* (1992) 6 Cal.App.4th 106, 111.)

individual officers and employees. (*Suezaki v. Superior Court* (1962) 58 Cal.2d 166, 174; *Alvarez v. Felker Mfg. Co.* (1964) 230 Cal.App.2d 987, 998; see *United States v. Dotterweich* (1943) 320 U.S. 277, 281; *Reno v. Baird* (1998) 18 Cal.4th 640, 656.) A disembodied governmental agency cannot prepare, own, use, or retain any record. Only the human beings who serve in agencies can do these things. When employees are conducting agency business, they are working for the agency and on its behalf. (See, e.g., *Cal. Assn. of Health Facilities v. Dept. of Health Services* (1997) 16 Cal.4th 284, 296-297; cf. *Competitive Enterprise Institute v. Office of Science & Technology Policy* (D.C. Cir. 2016) 827 F.3d 145, 149 [reaching the same conclusion for federal FOIA requests].) We presume the Legislature was aware of these settled principles. (See *People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 199.) A writing prepared by a public employee conducting agency business has been “prepared by” the agency within the meaning of section 6252, subdivision (e), even if the writing is prepared using the employee’s personal account.

The City also fails to explain how its proposed requirement that a public record be “accessible to the agency as a whole” could be practically interpreted. Even when documents were stored in filing cabinets or ledgers, many writings would not have been considered accessible to all agency employees, regardless of their level of responsibility or involvement in a particular project.

Moreover, although employees are not specifically mentioned in the local agency definition, nothing in the statutory language indicates the Legislature meant to *exclude* these individuals from CPRA obligations. The City argues the omission of the word “officer” from the local agency definition reflects a legislative intent that CPRA apply to individuals who work in *state* agencies but *not* employees in local government. The City offers no reason why the Legislature would draw such an arbitrary distinction. If it intended to impose different disclosure obligations on state and local agencies, one would expect to find this difference highlighted throughout the statutory scheme, particularly when the

obligations relate to a “fundamental and necessary right of every person in this state.” (§ 6250.) Yet there is no mention of such an intent anywhere in the Act. Indeed, under the City’s logic, CPRA obligations would potentially extend only to state *officers*, not necessarily state *employees*. The distinction between tenured public officers and those who hold public employment has long been recognized. (See *In re M.M.* (2012) 54 Cal.4th 530, 542-544.) Considering CPRA’s goal of promoting public access, it would have been odd for the Legislature to establish different rules for different levels of state employment. Contrary to the City’s view, it seems more plausible that the reference to “every state . . . officer” in the state agency definition (§ 6252, subd. (f)) was meant to extend CPRA obligations to elected state officers, such as the Governor, Treasurer, or Secretary of State, who are not part of a collective governmental body nor generally considered *employees* of a state agency.⁶

The City’s position is further undermined by another CPRA provision, which indicates that public records can be held by individual officials and need not belong to an agency as a whole. When it is alleged that public records have been improperly withheld, section 6259, subdivision (a) directs that “the court shall order the officer or person charged with withholding the records” to disclose the records or show cause why they should not be produced. If the court concludes “the public official’s decision to refuse disclosure is not justified,” it can order “the public official to make the record public.” (§ 6259, subd. (b).) If the court

⁶ In one respect the local agency definition is worded more broadly than the state agency definition. Section 6252, subdivision (a) states that the term local agency “includes” a county, city, or one of several other listed entities. In statutory drafting, the term “includes” is ordinarily one “of enlargement rather than limitation.” (*Ornelas v. Randolph* (1993) 4 Cal.4th 1095, 1101.) “The ‘statutory definition of a thing as “including” certain things does not necessarily place thereon a meaning limited to the inclusions.’ ” (*Flanagan v. Flanagan* (2002) 27 Cal.4th 766, 774.) By contrast, the definition of “state agency” is couched in more restrictive language: “ ‘State agency’ *means* every state office, officer . . .,” and other listed entities. (§ 6252, subd. (f), italics added.)

finds “that the public official was justified in refusing” disclosure, it must “return the item to the public official without disclosing its content.” (*Ibid.*) The Legislature’s repeated use of the singular word “official” in section 6259 indicates an awareness that an individual may possess materials that qualify as public records. Moreover, the broad term “public official” encompasses officials in state *and* local agencies, signifying that CPRA disclosure obligations apply to individuals working in both levels of government.

4. *Owned, Used, or Retained by Any State or Local Agency*

CPRA encompasses writings prepared *by* an agency but also writings it owns, uses, or retains, regardless of authorship. Obviously, an agency engaged in the conduct of public business will use and retain a variety of writings related to that business, including those prepared by people outside the agency. These final two factors of the “public records” definition, use and retention, thus reflect the variety of ways an agency can possess writings used to conduct public business.

As to retention, the City argues “public records” include only materials in an agency’s possession or directly accessible to the agency. Citing statutory arguments and cases limiting the duty to obtain and disclose documents possessed by others, the City contends writings held in an employee’s personal account are beyond an agency’s reach and fall outside CPRA. The argument fails.

Appellate courts have generally concluded records related to public business are subject to disclosure if they are in an agency’s actual *or constructive* possession. (See, e.g., *Board of Pilot Comrs. for the Bays of San Francisco, San Pablo and Suisun v. Superior Court* (2013) 218 Cal.App.4th 577, 598; *Consolidated Irrigation Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 710 (*Consolidated Irrigation*)). “[A]n agency has constructive possession of records if it has the right to control the records, either directly or through another person.” (*Consolidated Irrigation*, at p. 710.) For example, in *Consolidated Irrigation*, a city did not have constructive possession of documents in files maintained by subconsultants who prepared portions of an environmental impact report because

the city had no contractual right to control the subconsultants or their files. (*Id.* at pp. 703, 710-711.) By contrast, a city had a CPRA duty to disclose a consultant’s field survey records because the city had a contractual ownership interest and right to possess this material. (See *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1426, 1428-1429 (*Community Youth*.)

An agency’s actual or constructive possession of records is relevant in determining whether it has an obligation to search for, collect, and disclose the material requested. (See § 6253, subd. (c).) It is a separate and more fundamental question whether a document located outside an agency’s walls, or servers, is sufficiently “owned, used, or retained” by the agency so as to constitute a public record. (See § 6252, subd. (e).) In construing FOIA, federal courts have remarked that an agency’s public records “do not lose their agency character just because the official who possesses them takes them out the door.” (*Competitive Enterprise Institute v. Office of Science and Technology Policy*, *supra*, 827 F.3d at p. 149.) We likewise hold that documents otherwise meeting CPRA’s definition of “public records” do not lose this status because they are located in an employee’s personal account. A writing retained by a public employee conducting agency business has been “retained by” the agency within the meaning of section 6252, subdivision (e), even if the writing is retained in the employee’s personal account.

The City argues various CPRA provisions run counter to this conclusion. First, the City cites section 6270, which provides that a state or local agency may not transfer a public record to a private entity in a manner that prevents the agency “*from providing the record directly* pursuant to this chapter.” (Italics added.) Taking the italicized language out of context, the City argues that public records are only those an agency is able to access “directly.” But this strained interpretation sets legislative intent on its head. The statute’s clear purpose is to prevent an agency from evading its disclosure duty by transferring custody of a record to a private holder and then arguing the record falls outside CPRA because it is no longer in the agency’s possession. Furthermore, section 6270 does not

purport to excuse agencies from obtaining public records in the possession of *their own employees*. It simply prohibits agencies from attempting to evade CPRA by transferring public records to an intermediary not bound by the Act's disclosure requirements.

Next, the City relies on section 6253.9, subdivision (a)(1), which states that an agency must make a public record available "in any electronic format in which *it holds* the information" (italics added), and on section 6253, subdivision (a), which requires that public records be available for inspection "during . . . office hours." These provisions do not assist the City. They merely address the mechanics of how public records must be disclosed. They do not purport to define or limit what constitutes a public record in the first place. Moreover, to say that only public records "in the possession of the agency" (§ 6253, subd. (c)) must be disclosed begs the question of whether the term "agency" includes individual officers and employees. We have concluded it does.

Under the City's interpretation of CPRA, a document concerning official business is only a public record if it is located on a government agency's computer servers or in its offices. Indirect access, through the agency's employees, is not sufficient in the City's view. However, we have previously stressed that a document's status as public or confidential does not turn on the arbitrary circumstance of where the document is located.

In *Commission on Peace Officer Standards, supra*, 42 Cal.4th at pages 289 to 290, a state agency argued certain employment information was exempt from disclosure under CPRA because it had been placed in confidential personnel files. In considering a Penal Code provision that deems peace officer personnel records confidential, we rejected an interpretation that made confidentiality turn on the type of file in which records are located, finding it "unlikely the Legislature intended to render documents confidential based on their location, rather than their content." (*Commission*, at p. 291.) Although we made this observation in analyzing the scope of a CPRA exemption, the same logic applies to the Act's

definition of what constitutes a public record in the first place. We found it unlikely “the Legislature intended that a public agency be able to shield information from public disclosure simply by placing it in” a certain type of file. (*Commission*, at p. 291.) Likewise, there is no indication the Legislature meant to allow public officials to shield communications about official business simply by directing them through personal accounts. Such an expedient would gut the public’s presumptive right of access (*Sander v. State Bar of California*, *supra*, 58 Cal.4th at p. 323), and the constitutional imperative to broadly construe this right (Cal. Const., art. I, § 3, subd. (b)(2)).

In light of these principles, and considering section 6252, subdivision (e) in the context of the Act as a whole (see *Smith v. Superior Court* (2006) 39 Cal.4th 77, 83), we conclude a city employee’s communications related to the conduct of public business do not cease to be public records just because they were sent or received using a personal account. Sound public policy supports this result.

B. *Policy Considerations*

Both sides cite policy considerations to support their interpretation of the “public records” definition. The City argues the definition reflects a legislative balance between the public’s right of access and individual employees’ privacy rights, and should be interpreted categorically. Smith counters that privacy concerns are properly addressed in the case-specific application of CPRA’s exemptions, not in defining the overall scope of a public record. Smith also contends any privacy intrusion resulting from a search for records in personal accounts can be minimized through procedural safeguards. Smith has the better of these arguments.

The City’s interpretation would allow evasion of CPRA simply by the use of a personal account. We are aware of no California law requiring that public officials or employees use only government accounts to conduct public business. If communications sent through personal accounts were categorically excluded from CPRA, government officials could hide their most sensitive, and potentially

damning, discussions in such accounts. The City's interpretation "would not only put an increasing amount of information beyond the public's grasp but also encourage government officials to conduct the public's business in private." (Senat, *Whose Business Is It: Is Public Business Conducted on Officials' Personal Electronic Devices Subject to State Open Records Laws?* (2014) 19 Comm. L. & Pol'y 293, 322.)

It is no answer to say, as did the Court of Appeal, that we must presume public officials conduct official business in the public's best interest. The Constitution neither creates nor requires such an optimistic presumption. Indeed, the rationale behind the Act is that it is for the *public* to make that determination, based on information to which it is entitled under the law. Open access to government records is essential to *verify* that government officials are acting responsibly and held accountable to the public they serve. (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651.) "Such access permits checks against the arbitrary exercise of official power and secrecy in the political process." (*Ibid.*) The whole purpose of CPRA is to ensure transparency in government activities. If public officials could evade the law simply by clicking into a different email account, or communicating through a personal device, sensitive information could routinely evade public scrutiny.

The City counters that the privacy interests of government employees weigh against interpreting "public records" to include material in personal accounts. Of course, public employees do not forfeit all rights to privacy by working for the government. (*Long Beach City Employees Assn. v. City of Long Beach* (1986) 41 Cal.3d 937, 951.) Even so, the City essentially argues that the contents of personal email and other messaging accounts should be categorically excluded from public review because these materials have traditionally been considered private. However, compliance with CPRA is not necessarily inconsistent with the privacy rights of public employees. Any personal information not related to the conduct of public business, or material falling under

a statutory exemption, can be redacted from public records that are produced or presented for review. (See § 6253, subd. (a).)

Furthermore, a crabbed and categorical interpretation of the “public records” definition is unnecessary to protect employee privacy. Privacy concerns can and should be addressed on a case-by-case basis. (See *International Federation, supra*, 42 Cal.4th at p. 329.) Beyond the definition of a public record, the Act itself limits or exempts disclosure of various kinds of information, including certain types of preliminary drafts, notes, or memoranda (§ 6254, subd. (a)), personal financial data (§ 6254, subd. (n)), personnel and medical files (§ 6254, subd. (c)), and material protected by evidentiary privileges (§ 6254, subd. (k)). Finally, a catchall exemption allows agencies to withhold any record if the public interest served by withholding it “clearly outweighs” the public interest in disclosure. (§ 6255, subd. (a).) This exemption permits a balance between the public’s interest in disclosure and the individual’s privacy interest. (*International Federation*, at pp. 329-330; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 755-756.) The analysis here, as with other exemptions, appropriately focuses on the *content* of specific records rather than their location or medium of communication. (See *Commission on Peace Officer Standards, supra*, 42 Cal.4th at p. 291.)⁷

⁷ While admitting it invoked no CPRA exemptions in the proceedings below, the City nevertheless asks us to decide that messages in employees’ personal accounts are universally exempt from disclosure under section 6255. This issue has not been preserved and is beyond the scope of our grant of review. It also appears impossible to decide on this record. Answering threshold questions about whether employees have a reasonable expectation of privacy (see *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35), or whether their messages are covered by the “deliberative process” privilege (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1339-1344) would require a fact-intensive review of the City’s policies and practices regarding electronic communications, if not the contents of the challenged documents themselves. The record here is insufficient.

The City also contends the search for public records in employees' accounts would itself raise privacy concerns. In order to search for responsive documents, the City claims agencies would have to demand the surrender of employees' electronic devices and passwords to their personal accounts. Such a search would be tantamount to invading employees' homes and rifling through their filing cabinets, the City argues. It urges no case has extended CPRA so far.

Arguments that privacy interests outweigh the need for disclosure in CPRA cases have typically focused on the sensitive content of the documents involved, rather than the intrusiveness involved in searching for them. (See, e.g., *International Federation, supra*, 42 Cal.4th 319; *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272.) Assuming the search for responsive documents can also constitute an unwarranted invasion of privacy, however, this concern alone does not tip the policy balance in the City's favor. Searches can be conducted in a manner that respects individual privacy.

C. *Guidance for Conducting Searches*

The City has not attempted to search for documents located in personal accounts, so the legality of a specific kind of search is not before us. However, the City and some amici curiae do highlight concerns about employee privacy. Some guidance about how to strike the balance between privacy and disclosure may be of assistance.

CPRA requests invariably impose some burden on public agencies. Unless a records request is overbroad or unduly burdensome, agencies are obliged to disclose all records they can locate "with reasonable effort." (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166.) Reasonable efforts do not require that agencies undertake extraordinarily extensive or intrusive searches, however. (See *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 453; *Bertoli v. City of Sebastopol* (2015) 233 Cal.App.4th 353, 371-372.) In general, the scope of an agency's search for public records "need only be reasonably calculated to locate responsive documents."

(American Civil Liberties Union of Northern Cal. v. Superior Court (2011) 202 Cal.App.4th 55, 85; see *Community Youth, supra*, 220 Cal.App.4th at p. 1420.)

CPRA does not prescribe specific methods of searching for those documents. Agencies may develop their own internal policies for conducting searches. Some general principles have emerged, however. Once an agency receives a CPRA request, it must “communicate the scope of the information requested to the custodians of its records,” although it need not use the precise language of the request. (*Community Youth, supra*, 220 Cal.App.4th at p. 1417.) As to requests seeking public records held in employees’ nongovernmental accounts, an agency’s first step should be to communicate the request to the employees in question. The agency may then reasonably rely on these employees to search *their own* personal files, accounts, and devices for responsive material.

Federal courts applying FOIA have approved of individual employees conducting their own searches and segregating public records from personal records, so long as the employees have been properly trained in how to distinguish between the two. (See *Ethyl Corp. v. U.S. Environmental Protection Agency* (4th Cir. 1994) 25 F.3d 1241, 1247.) A federal employee who withholds a document identified as potentially responsive may submit an affidavit providing the agency, and a reviewing court, “with a sufficient factual basis upon which to determine whether contested items were ‘agency records’ or personal materials.” (*Grand Cent. Partnership, Inc. v. Cuomo* (2d Cir. 1999) 166 F.3d 473, 481.) The Washington Supreme Court recently adopted this procedure under its state public records law, holding that employees who withhold personal records from their employer “must submit an affidavit with facts sufficient to show the information is not a ‘public record’ under the PRA. So long as the affidavits give the requester and the trial court a sufficient factual basis to determine that withheld material is indeed nonresponsive, the agency has performed an adequate search under the PRA.” (*Nissen v. Pierce County* (Wn. 2015) 183 Wn.2d 863 [357 P.3d 45, 57].) We agree with Washington’s high court that this procedure, when followed in

good faith, strikes an appropriate balance, allowing a public agency “to fulfill its responsibility to search for and disclose public records without unnecessarily treading on the constitutional rights of its employees.” (*Id.*, 357 P.3d at p. 58.)

Further, agencies can adopt policies that will reduce the likelihood of public records being held in employees’ private accounts. “Agencies are in the best position to implement policies that fulfill their obligations” under public records laws “yet also preserve the privacy rights of their employees.” (*Nissen v. Pierce County*, *supra*, 357 P.3d at p. 58.) For example, agencies might require that employees use or copy their government accounts for all communications touching on public business. Federal agency employees must follow such procedures to ensure compliance with analogous FOIA requests. (See 44 U.S.C. § 2911(a) [prohibiting use of personal electronic accounts for official business unless messages are copied or forwarded to an official account]; 36 C.F.R. § 1236.22(b) (2016) [requiring that agencies ensure official email messages in employees’ personal accounts are preserved in the agency’s recordkeeping system]; *Landmark Legal Foundation v. Environmental Protection Agency* (D.D.C. 2015) 82 F.Supp.3d 211, 225-226 [encouraging a policy that official emails be preserved in employees’ personal accounts as well].)

We do not hold that any particular search method is required or necessarily adequate. We mention these alternatives to offer guidance on remand and to explain why privacy concerns do not require categorical exclusion of documents in personal accounts from CPRA’s “public records” definition. If the City maintains the burden of obtaining records from personal accounts is too onerous, it will have an opportunity to so establish in future proceedings. (See *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 615-616; *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1188.)

D. Conclusion

Consistent with the Legislature’s purpose in enacting CPRA, and our constitutional mandate to interpret the Act broadly in favor of public access (Cal.

Const., art. I, § 3, subd. (b)(2)), we hold that a city employee's writings about public business are not excluded from CPRA simply because they have been sent, received, or stored in a personal account.

DISPOSITION

The judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

CORRIGAN, J.

WE CONCUR:

CANTIL-SAKAUYE, C. J.

WERDEGAR, J.

CHIN, J.

LIU, J.

CUÉLLAR, J.

KRUGER, J.

See last page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion City of San Jose v. Superior Court

Unpublished Opinion
Original Appeal
Original Proceeding
Review Granted XXX 225 Cal.App.4th 75
Rehearing Granted

Opinion No. S218066
Date Filed: March 2, 2017

Court: Superior
County: Santa Clara
Judge: James P. Kleinberg

Counsel:

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Jennifer B. Henning for California State Association of Counties as Amicus Curiae on behalf of Petitioners.

Best, Best & Krieger, Shawn D. Hagerty and Hong Dao Nguyen for League of California Cities, California Association of Sanitation Agencies and California Special Districts Association Amici Curiae on behalf of Petitioners.

No appearance for Respondent.

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Page 2 – S208181 – counsel continued

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Michael T. Risher, Matthew T. Cagle, Christopher J. Conley; Peter Bibring, Peter Eliasberg; David Loy; and Jennifer Lynch for American Civil Liberties Union Foundation of Northern California, Inc., American Civil Liberties Union of Southern California, Inc., American Civil Liberties Union of San Diego & Imperial County, Inc., and Electronic Frontier Foundation as Amici Curiae on behalf of Real Party in Interest.

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Draft Electronic Communications Policy

Attachment 2

CHAPTER 4: ELECTRONIC COMMUNICATION, SECURITY, SAFETY, AND EQUIPMENT

...

2. ELECTRONIC COMMUNICATIONS POLICY (Adopted January 17, 2018)

Background and Purpose

The Commission as the legislative body of the Local Agency Formation Commission for San Bernardino County ("LAFCO") hereby adopts the following policy regarding the conduct of LAFCO business via electronic communications by commissioners and employees. Specifically, this policy is adopted in light of the *City of San Jose* case, which held that a city employee's communications related to the conduct of public business do not cease to be public records under sent or received using a personal account or personal device.

Existing and emerging electronic communications technologies have become an integral part of the ability of Commission officials and staff members to efficiently and effectively conduct Commission business. Such technology has the potential to enhance communications with the public and provide a higher level of service to the citizens of the Commission. However, with such technology in the work environment, the Commission must ensure it continues to meet its legal obligations with respect to transparency in the conduct of the people's business, including in the area of public records disclosure and retention requirements. To that end, the following policy and procedures will be followed.

Definitions

For purposes of this policy, the following definitions apply:

"LAFCO" means the Local Agency Formation Commission for San Bernardino County.

"LAFCO official" for this policy shall mean any commissioner, employee of LAFCO, or person assigned an LAFCO electronic messaging account.

"LAFCO business" shall be construed broadly to mean information relating to the conduct of the public's business or communications concerning matters within the subject matter of LAFCO's jurisdiction, including, but not limited to, pending or potential LAFCO projects, past or prospective LAFCO agenda items, or LAFCO budgets or expenditures involving LAFCO funds. Resolution of the question will involve an examination of several factors, including: (a) the content itself; (b) the context in, or purpose for which, it was written; (c) the audience to whom it was directed; (d) the purpose of the communication; and (e) whether the writing was

prepared by an LAFCO official acting or purporting to act within the scope of his or her employment.

"Electronic communications" includes any and all electronic transmission, and every other means of recording upon any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. Without limiting the nature of the foregoing, "electronic communications" include e-mails, texts, voicemails, and also include communications on or within commercial applications (apps) such as Facebook Messenger, Twitter, WhatsApp, etc.

"Electronic messaging account" means any account that creates, sends, receives or stores electronic communications.

Policy

1. All LAFCO officials shall be assigned a LAFCO electronic messaging account.
2. LAFCO accounts shall be used to conduct LAFCO business. LAFCO officials shall not use personal accounts for the creation, transmission or storage of electronic communications regarding LAFCO business.
3. All LAFCO officials shall, within 30 days following the adoption of this policy, search all private, nongovernmental electronic messaging accounts to which they have user access and locate any electronic communications that might constitute a "public record", because it involved "LAFCO business", as set forth above. All such communications shall be forwarded to the LAFCO official's LAFCO-provided account. To the extent the LAFCO official believes that any part of such communications contain personal matter not related to the conduct of the public's business, the LAFCO official shall provide a declaration, as set forth in paragraphs 10 and 11, below.
4. The LAFCO account, along with the attendant access to LAFCO's account server, are solely for LAFCO and LAFCO official's use to conduct LAFCO business and shall not be used for personal business or political activities. Incidental use of LAFCO electronic messaging accounts for personal use by LAFCO officials is permissible, though not encouraged.
5. If an LAFCO official receives an electronic message regarding LAFCO business on his/her non-LAFCO electronic messaging account, or circumstances require such person to conduct LAFCO business on a non-LAFCO account, the LAFCO official shall either: (a) copy ("cc") any communication from a LAFCO official's personal electronic messaging account to his/her LAFCO electronic messaging account; or (b) forward the

associated electronic communication to his/her LAFCO account no later than 10 days after the original creation or transmission of the electronic communication.

6. LAFCO officials shall endeavor to ask persons sending electronic communications regarding LAFCO business to a personal account to instead utilize the LAFCO official's account, and likewise shall endeavor to ask a person sending an electronic communication regarding non-LAFCO business to use the LAFCO official's personal or non-LAFCO electronic messaging account.
7. LAFCO officials understand they have no expectation of privacy in the content of any electronic communication sent or received on an LAFCO account or communication utilizing LAFCO servers. LAFCO provided electronic devices, including devices for which LAFCO pays a stipend or reimburses the LAFCO official, are subject to LAFCO review and disclosure of electronic communications regarding LAFCO business. LAFCO officials understand that electronic communications regarding LAFCO business that are created, sent, received or stored on an electronic messaging account, may be subject to the Public Records Act, even if created, sent, received, or stored on a personal account or personal device.
8. In the event a Public Records Act request is received by LAFCO seeking electronic communications of LAFCO officials, the LAFCO Clerk shall promptly transmit the request to the applicable LAFCO official(s) whose electronic communications are sought. The LAFCO Clerk shall communicate the scope of the information requested to the applicable LAFCO official, and an estimate of the time within which the LAFCO Clerk intends to provide any responsive electronic communications to the requesting party.
9. It shall be the duty of each LAFCO official receiving such a request from the LAFCO Clerk to promptly conduct a good faith and diligent search of his/her personal electronic messaging accounts and devices for responsive electronic communications. The LAFCO official shall then promptly transmit any responsive electronic communications to the LAFCO Clerk. Such transmission shall be provided in sufficient time to enable the LAFCO Clerk to adequately review and provide the disclosable electronic communications to the requesting party.
10. In the event a LAFCO official does not possess, or cannot with reasonable diligence recover, responsive electronic communications from the LAFCO official's electronic messaging account, the LAFCO official shall so notify the LAFCO Clerk, by way of a written declaration, signed under penalty of perjury. In addition, an LAFCO official who withholds any electronic communication identified as potentially responsive must submit a declaration under penalty of perjury with facts sufficient to show the information is

"personal business" and not "public business" under the Public Records Act. The form of the declaration is attached hereto as Attachment A.

11. It shall be the duty of the LAFCO Clerk, in consultation with LAFCO's Legal Counsel, to determine whether a particular electronic communication, or any portion of that electronic communication, is exempt from disclosure. To that end, the responding LAFCO official shall provide the LAFCO Clerk with all responsive electronic communications, and, if in doubt, shall err on the side of caution and should "over produce". If an electronic communication involved both public business and a personal communication, the responding LAFCO official may redact the personal communication portion of the electronic communication prior to transmitting the electronic communication to the LAFCO Clerk. The responding LAFCO official shall provide facts sufficient to show that the information is "personal business" and not "public business" by declaration. In the event a question arises as to whether or not a particular communication, or any portion of it, is a public record or purely a personal communication, the LAFCO official should consult with the LAFCO Clerk or the Legal Counsel. The responding LAFCO official shall be required to sign a declaration, in a form acceptable to the Legal Counsel, attesting under penalty of perjury, that a good faith and diligent search was conducted and that any electronic communication, or portion thereof, not provided in response to the Public Records Act request is not LAFCO business.
12. AB 1234 (ethics) training should include a discussion of the impacts of the *City of San Jose* case and this policy. Such training should include information on how to distinguish between public records and personal records. LAFCO officials who receive AB 1234 training from other providers should actively solicit training from the alternative provider on the impacts of the *City of San Jose* case.
13. LAFCO officials understand that electronic communications regarding LAFCO business are subject to LAFCO's Records Retention Policy (Section II, Chapter 1, Policy 7), even if those electronic communications are or were created, sent, received or stored on an LAFCO official's personal electronic messaging account. It is a felony offense to destroy, alter or falsify a "public record". As such, unless the LAFCO official has cc'd/transmitted electronic communications in accordance with Paragraph 5 above, that LAFCO official must retain all electronic communications regarding LAFCO business, in accordance with LAFCO's adopted records retention policy, regardless of whether such electronic communication is originally sent or received on a personal electronic messaging account.
14. Failure of an LAFCO official to abide by this policy, following its adoption, may result in one or more of the following:
 - Disciplinary action, up to and including termination (for employees);

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- Removal from office (for commissioners);
- Censure (for commissioners);
- Revocation of electronic device privileges (including revocation of stipend or reimbursement);
- Judicial enforcement against the LAFCO official directly, by the requesting party; and

15. This policy does not waive any exemption to disclosure that may apply under the California Public Records Act.

16. Upon leave of service from LAFCO, the Email administrator will request that County ISD close the LAFCO official's Email account and copy the contents from the Email account onto an electronic medium (CD, DVD, USB flash drive) and to be retained in accordance with the Commission's Record Retention Policy.

ATTACHMENT A

DECLARATION

(attached on following page)

...

California Public Records Act Request
Pursuant to Gov. Code § 6250 *et seq.*

Declaration of:

Re: _____

Print or type name of official

Insert shorthand name of record request, including
request number, if applicable

**Regarding Search of Personal Electronic
Messaging Account**

Requester: _____
Print or type name of requester

STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

I, _____ declare:
Print name

1. I received notice of a California Public Records Act ("CPRA") request regarding a search of my personal electronic messaging account(s).
2. I understand that the CPRA request seeks:

Insert text of CPRA request.

3. I am the owner or authorized user of the following personal electronic messaging account and have the authority to certify the records:

Insert description of personal electronic messaging account(s).

4. I have made a good faith, diligent, thorough, and complete search of the above mentioned personal electronic messaging account(s) for all electronic communications potentially responsive to the above mentioned CPRA request.
5. Any responsive electronic communications discovered, and referenced below, were prepared or used by me in the ordinary course of business at or near the time of the act, condition or event.
6. Any responsive electronic communications discovered, and referenced below, are true copies of all records described in the above mentioned CPRA request.

Check the applicable box:

- I certify that I do not possess responsive electronic communications.
- I certify that I cannot reasonably recover responsive electronic communications.

Explain efforts to retrieve responsive electronic communications and why you were unable to recover responsive electronic communications.

- I certify that I discovered potentially responsive electronic communications from my personal electronic messaging account, but I am withholding that information because the information is "personal" business. This is for the following reasons:

Describe with sufficient facts why the contested information is personal business and not subject to the CPRA. Attach additional pages, if necessary.

- I certify that I discovered potentially responsive electronic communications from my personal electronic messaging account. I am providing all responsive information. However, some information is nonresponsive and I am withholding that information, because the information is personal business. This is for the following reasons:

Describe with sufficient facts why the contested information is personal business and not subject to the CPRA. Attach additional pages, if necessary.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I have personal knowledge of the facts set forth above.

Executed this ___ day of _____, 20___, in _____, California.

By: _____
Print Name: _____

**Draft Records Retention
Policy (with track changes)**

Attachment 3

7. RECORDS RETENTION POLICY (Adopted October 21, 2009, Amended January 17, 2018)

It is the policy of this Commission to retain San Bernardino LAFCO’s records of proceedings, **electronic communications**, and financial documents and records in accordance with the Records Retention Schedule outlined below.

<u>TYPE OF RECORD</u>	<u>RETENTION PERIOD</u>
Records of Proceedings	Government Code § 56382
Electronic Communications	County of San Bernardino Records Retention Policy
Financial:	
Expense Reports	7 years
Budgets	7 years
Billings/Accounting Reports	7 years
Budget Change Proposals	7 years
Budget Change Concepts	7 years
Audits	7 years
Invoices	7 years
Fees/Receipts	7 years
Checks/Ledgers/Registers	7 years
Cal Stars Reports	7 years
Cost Recovery – Federal	7 years
Cost Recovery – State	7 years
Grants	7 years
Resource: California Secretary of State. “Local Government Records Management Guidelines”, Feb 2006. Under the authority established by Senate Bill 742 (1999), adding Section 12236 to the Government Code.	

The Commission has adopted the financial portion of the “Local Government Records Management Guidelines”, issued by the California Secretary of State pursuant to Government Code Section 12236, as may be amended from time to time by the Secretary of State, as the Commission’s official retention schedule **for financial documents and records**. This policy shall be reviewed, and when necessary updated, at least every five years pursuant to the Secretary of State Guidelines.

The Commission has adopted the records retention policy for electronic communications of the County of San Bernardino as the Commission’s official retention schedule for electronic communications.

*San Bernardino LAFCO Policy and Procedure Manual
Section II – Accounting and Financial Policies*

To implement the retention and destruction of the records pursuant to the Schedule, the Commission designates the Executive Officer as the Records Management Coordinator who shall present a Commission agenda item once a year related to records to be destroyed.

DRAFT

**Draft LAFCO
Resolution No. 3258**

Attachment 4

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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RESOLUTION NO. 3258

A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY, STATE OF CALIFORNIA, AMENDING ITS POLICY AND PROCEDURE MANUAL

On Wednesday, January 17, 2018, on motion of Commissioner _____, duly seconded by Commissioner _____, and carried, the Local Agency Formation Commission adopts the following resolution:

SECTION 1. The Local Agency Formation Commission for San Bernardino County, State of California (hereafter shown as "LAFCO"), hereby finds and determines that it wishes to amend its Policy and Procedure Manual within the Human Resources section (new policy and renumbering of following sections) and Accounting and Financial section (amended policy) related to electronic communications.

SECTION 2. The Local Agency Formation Commission for San Bernardino County therefore determines, resolves and orders that:

1. The Policy and Procedure Manual is hereby amended as follows;
2. Chapter 4 of Section III is amended as follows:
 - a. The title of Chapter 4 of Section III is amended to read "Electronic Communication, Safety, and Equipment" is adopted and approved;
 - b. The revision to add new Policy 2: Electronic Communications Policy of Chapter 4 of Section III attached to this resolution as Exhibit "A", and incorporated herein by reference, is adopted and approved; and,
 - c. The revision to subsequent polices in Chapter 4 of Section III are renumbered pursuant to the addition of Item 2 above, is adopted and approved.
3. The amended Policy 7: Records Retention Policy of Chapter 1 of Section II attached to this resolution as Exhibit "B" and incorporated herein by reference, is adopted and approved.

RESOLUTION NO. 3258

SECTION 3. The Executive Officer of LAFCO is ordered to certify the passage of this resolution and to cause a copy of the amended Policy and Procedure Manual to be posted on the LAFCO Website, and a certified copy of this resolution to be forwarded to the County Executive Officer, each City, Town, and Independent Special District in the County and to affected County Departments.

THIS ACTION APPROVED AND ADOPTED BY THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

STATE OF CALIFORNIA)
)ss.
COUNTY OF SAN BERNARDINO)


I, KATHLEEN ROLLINGS-McDONALD, Executive Officer of the Local Agency Formation Commission for San Bernardino County, California, do hereby certify this record to be a full, true, and correct copy of the action taken by said Commission, by vote of the members present, as the same appears in the Official Minutes of said Commission at its meeting of January 17, 2018.

DATED: January __, 2018

KATHLEEN ROLLINGS-McDONALD
Executive Officer

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
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DATE: FEBRUARY 14, 2018 
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
MICHAEL TUERPE, Project Manager
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #8: Mid-Year Financial Review for Period
July 1 through December 31, 2017

RECOMMENDATION:

Staff recommends that the Commission take the following actions:

1. Note receipt of this report and file.
2. Approve the Increase in Expenditure Account 2400 (Legal Counsel) by \$95,814 to \$130,114 by:
 - a) Transferring \$40,000 from Account 2310 (Postage),
 - b) Transferring \$25,229 from Reserve Account 6025 (Legal Reserve), resulting in a balance of \$200,000, and
 - c) Increasing Revenue Account 9555 (Legal Services) by \$30,585 to a total of \$40,185.
3. Provide direction to staff on items of concern for the balance of the fiscal year.

BACKGROUND:

At this time, staff is presenting the Commission with the FY 2017-18 mid-year financial report to identify the financial transactions and their impacts for the first half of the fiscal year. This fiscal year has been profound in that the staff office has been transitioned to the Santa Fe Depot, providing a base for up to 15 years, and we have incurred

significant unanticipated legal costs. The discussion which follows addresses these occurrences by providing:

1. A review of the mid-year financial activities and the presentation of a spreadsheet (Attachment #1) on expenditures and reserves, revenues received, an update on special project activities, and a breakdown of the fund balance through the mid-year. The spreadsheet also provides a forecast of anticipated expenditures and revenues through the end of the fiscal year. This information is shown in the following narrative as “remaining activity”.
2. Transfer of funds and budget adjustments to address increased legal charges.

MID-YEAR REVIEW:

The following information includes a description of the financial transactions which relate to expenditures and reserves, revenue and proposal activity, an update on special project activities, and a breakdown of the Commission’s fund balance.

Expenditures and Reserves

Through the mid-year, Total Expenditures incurred are 57% of Approved Budget authority. The following includes detailed information for the primary accounting segments -- Salaries and Benefits (1000 series) and Services and Supplies (2000 series).

1. Salaries and Benefits (1000 series)

A. Mid-Year Activity

The Salaries and Benefits series of accounts (1000 series) had expenditures of \$376,720 through the mid-year, representing 49% of Approved Budget authority.

B. Remaining Activity

The remainder of the year is anticipated to maintain the adopted budget with a projection to expend 99% of budget authority.

2. Services and Supplies (2000 and 5000 series)

A. Mid-Year Activity

For the mid-year, the Services and Supplies accounts (2000 and 5000 series) had expenditures of \$432,595 or 66% of Approved Budget authority. The single most significant event was the payment of the majority of the costs related to the move being processed during this fiscal year, totaling \$115,609. Many of these invoices were received in the prior year, but the County ceased payment

processing due to the transition to its new financial system affecting the timing of the expenses being included on the books.

In addition, the first two quarters included unanticipated activity related to legal counsel charges described as follows:

1. Litigation of two cases related to LAFCO 3216: City of Upland annexation to the San Bernardino County Fire Protection District et al filed by the San Antonio Heights Property Owners Association. LAFCO is indemnified by the City of Upland and County Fire for these cases; however, the costs are paid and subsequently reimbursed. Through January, LAFCO has received invoices totaling \$21,209, and these costs have been billed to both the City and County Fire.
2. Exposure to litigation related to a number of individual items: review of activation of latent powers, declaration statement related to litigation, subpoena issued to the Commission staff, and the Commission's authorization of the Executive Officer's contract. These legal charges are not directly related to a proposal; therefore, they are not recoverable. Through the mid-year, charges total \$66,974. During the month of December, staff became aware of a settlement between the City of San Bernardino and its Municipal Water Department, the San Bernardino Valley Municipal Water District, and the East Valley Water District which directly relates to the exposure to litigation. Since this date, there have been no further costs incurred associated with the Commission's exposure.

However, in order to account for the unanticipated legal expenditures and its impact on the budget, staff is recommending that the Commission:

- Approve an increase in legal revenues due to the receipt of indemnification payments to match legal expenditures (for recoverable activity – Item 1 above), and
- Approve a transfer of funds from reserves (\$25,000) and a transfer of expenditure authority from the Postage Expenditure Account 2310 (\$40,000) (for non-recoverable activity – Item 2 above).

The postage budget line item anticipated a proposal for annexation to County Fire and its special tax, which would have required significant individual notice. However, no such proposal is anticipated at this time; therefore, there is excess expenditure authority in the Postage account available for transfer.

B. Projected Remaining Activity

Budgeted and anticipated activities for the second half of the fiscal year include significant expenditures, identified as:

- Full-year payments for the annual financial audit (\$7,800). This is the second year of a four-year contract with the firm Davis Farr LLP.
- Additional legal charges related to LAFCO 3216 – Upland/County Fire Reorganization (~\$10,000). Any such future charges would be indemnified by the City of Upland and County Fire.
- Subscription to the County Street Network (\$10,500) for maintenance of digital mapping and Google Earth Subscription (\$3,000).
- Payments for the processing of proposals and countywide wastewater service review (legal costs, advertising and mailing) are anticipated. (~\$10,000)
- Remaining payments of roughly \$43,000 for the consulting contract with Bob Aldrich – the Commission approved the contract extension for Fiscal Year 2017-18. Staff anticipates utilizing the full authority of this contract to accommodate Executive Officer recruitment as well as ongoing staff support of proposals and the wastewater service review.

C. Status of Ongoing Commission-approved Projects

The following provides an update on expenditures and progress on projects approved by the Commission.

EDUCATIONAL TRAINING PROGRAM FOR SPECIAL DISTRICTS:

The Commission is continuing its efforts to provide governance training for special districts, as well as other levels of government, within the County. As a part of this year's budget, the Commission continued its education program, and staff developed the program in coordination with the California Special Districts Association (CSDA) and the Institute for Local Government (ILG). The budget allocates \$7,500 total for payments to the collaborators, per the agreed upon cost of up to \$2,500 per session.

The first and second sessions on December 7 and January 29, respectively, were well attended, the surveys indicate they were well received, and the costs for both are within range of budget authority at \$5,000. The third session is scheduled for March 28 in Apple Valley.

Educational Training Program Timeline		
Training Session	Collaboration	Date
<i>Fraud Detection and Prevention for Local Government Agencies</i>	California Special Districts Association	March 28, 2018 10:00 a.m. - Noon Mojave Water Agency, Apple Valley

Expenditures within the 2000 Series are anticipated to end the Fiscal Year, with the modifications proposed above, at 96% of expenditure authority.

3. Contingency and Reserves (6000 series)

No activity was requested by staff or authorized by the Commission to take place in the Contingency or Reserve accounts during the first two quarters.

However, the non-recoverable legal matter identified above requires a transfer from General/Litigation Reserve (Account 6025) to Legal Charges (Account 2400) in order to accommodate existing and anticipated expenditures. A transfer of \$25,229 would reduce the General/Litigation Reserve fund to the minimum \$200,000 balance required by Commission policy (Section II, Chapter 1, Policy 6).

Revenues

1. Revenues through Mid-Year

A. *Mid-Year Activity*

The Commission has received 89% of Approved Budget revenues through the mid-year. The items below outline this revenue activity:

- Interest (Account 8500) 67% of the budgeted interest has been received from the Commission's cash in the County Treasury. However, the bulk of LAFCO's revenues are received during the first quarter of the fiscal year through receipt of the annual apportionment and are utilized to cover expenses. Interest earnings decrease during the year accordingly.
- Apportionment (Account 8842) - 100% of the mandatory apportionment payments from the County, cities, and independent special districts billed by the County Auditor were received by the due date.
- Fees and Deposits (Accounts 9545 – 9800) – Through the mid-year, the Fees and Deposits series of accounts have received 11% of its budgeted revenue (\$26,178). This is made up of a combination of a service contract

filing fee and cost recovery. Proposals thought to have been received in the first two quarters are anticipated for submission later in the fiscal year, with three proposals received in January 2018.

B. Projected Remaining Activity

This LAFCO has historically taken a conservative approach to projecting revenues. Keeping with this practice, staff is projecting \$112,050 in revenue for the second half, to include:

- Receipt of limited interest payments for the remaining two quarters (\$3,500).
- Receipt of six proposals (\$108,550).
 - Three proposals have been received in January with revenues totaling \$20,000.
 - Three additional proposals are anticipated in the coming months based upon staff discussions.

Based upon the recommended Amended Budget, Total Revenues are projected to end the year at 93% of the current budget authority.

2. Proposal Activity

The figure below identifies the number of proposals (four) and service contracts (four) received through January. Attachment #2 to this staff report includes a chart showing the yearly comparison of proposal, service contract, and completed service review activity.

Activity	Budget	Through January	
		No.	% of Budget
Proposals	11	4	36%
Service Contracts - Commission approval	2	1	50%
Service Contracts - Commission approval for exemption	0	1	--
Service Contracts - Admin (E.O.) approval	6	2	33%
Protest Hearing Deposits	5	1	20%

In the first quarter the Commission completed the Countywide Service Review for Water, encompassing over 100 water systems across four regions. The remainder of the year anticipates the completion of the Countywide Service Review for Wastewater and the commencement of the fire protection/emergency medical response/ambulance service review in late April/early May.

Fund Balance

As of December 31, the Commission’s cash in the County Treasury was \$987,963. A breakdown of this amount is shown below. As shown, at this time a \$40,597 deficit is projected for year-end. As a part of the Third Quarter Budget Update/Preliminary Budget Review in April, staff will refine this number with an update on activity. Based upon this refinement, future actions will be required for the Commission to close this gap.

December 31, 2017 Balance		\$987,963
Balance is composed of the following:		
Liabilities		
	Deposits Payable (Receivable) from open applications, as of 1-28-18	(14,773)
Committed (constrained to specific purposes)		
	Net Pension Liability Reserve (Account 6010)	148,450
	Compensated Absences Reserve (Account 6030)	89,708
Assigned (intended for specific purposes)		
	Contingency (Account 6000)	139,116
	General Reserve (Account 6025)	200,000
Remaining Activity, Projected		
	Expenditures	578,109
	Revenues (shown as a negative)	(112,050)
Additional Carryover or (Deficit)		(\$40,597)

CONCLUSION:

Through the first-half of the year, expenditures are above the mid-year mark and revenues have not met mid-year targets. The final costs related to the move have been processed, with the majority of the costs processed in this fiscal year. Additionally, significant legal charges were incurred, the vast majority of which are not recoverable. On a positive note, a settlement between outside parties has been reached on the exposure to the litigation matter and the legal charges have stemmed.

The budget anticipated 11 proposals for the year. Through January, four proposals have been received. Based upon talks with agencies, staff projects an additional three proposals in the remaining months, for a total of seven for the year.

In response to the information presented in this report, staff is recommending that the Commission take the actions identified on page 1 of this report which accounts for the unanticipated legal expenditures by Increasing Expenditure Account 2400 (Legal Counsel) by \$95,814 to a total of \$130,114 by:

- a) Transferring unused appropriation authority of \$40,000 from Account 2310 (Postage),
- b) Transferring \$25,229 from Reserve Account 6025 (Legal Reserve), resulting in a remaining reserve account balance of \$200,000, and
- c) Increasing Revenue Account 9555 (Legal Services) by \$30,585 to \$40,185 to account for indemnification revenues received to date.

Staff will be happy to answer any questions from the Commission prior to or at the hearing regarding the items presented in this report.

KRM/MT

Attachments:

1. Spreadsheet of Mid-Year Expenditures, Reserves, and Revenues
2. Chart Illustrating Yearly Proposal, Service Contract, and Service Review Activity

**Spreadsheet of Mid-Year
Expenditures, Reserves and
Revenues**

Attachment 1

FISCAL YEAR 2017-18

ACCT. #	ACCOUNT NAME	ACTUAL YEAR-END FY 15-16	ACTUAL YEAR-END FY 16-17	AMENDED BUDGET Oct-17	PROPOSED BUDGET Feb-18	TOTAL THRU 1st Quarter	TOTAL THRU MID-YEAR	PERCENT THRU MID-YEAR	PROJECTED REMAINING	PROJECTED YEAR-END	PROJECTED YEAR-END % Oct 17 Budget
SALARIES AND BENEFITS											
1010	Regular Salary and Bilingual	\$ 432,740	\$ 466,526	\$ 483,128	\$ 483,128	\$ 125,654.39	\$ 236,425	49%	\$ 239,775	\$ 476,200	99%
1030	Auto and Cell Phone Allowances	17,000	17,000	17,065	17,065	4,576.95	8,500	50%	8,500	17,000	100%
1035	Overtime	395	38								
1045	Termination Payment	2,506	632								
1110	General Member Retirement	109,012	112,783	125,311	125,311	32,940.48	61,479	49%	62,073	123,552	99%
1130	Survivors Benefits	210	210	224	224	60.20	112	50%	112	224	100%
1135	Indemnification - General	16,739	18,264	15,887	15,887	5,415.34	9,067	57%	7,913	16,980	107%
1200	Employee Group Insurance (Health Subsidy)	41,121	45,801	49,285	49,285	14,206.15	26,387	54%	24,548	50,935	103%
1205	Long-Term Disability	882	883	969	969	253.91	473	49%	483	956	99%
1207	Vision Care Insurance	771	771	825	825	221.20	411	50%	411	822	100%
1215	Dental Insurance & Health Subsidy	1,363	1,251	1,235	1,235	336.00	620	50%	615	1,235	100%
1222	Short-Term Disability	3,404	3,477	3,808	3,808	999.09	1,862	49%	1,897	3,759	99%
1225	Social Security Medicare	5,492	6,143	6,190	6,190	1,628.10	3,043	49%	3,086	6,129	99%
1235	Workers' Compensation	2,305	2,097	5,216	5,216	1,939.14	2,160	41%	2,600	4,760	91%
1240	Life Insurance & Medical Trust Fund	5,522	5,316	7,526	7,526	1,764.19	3,391	45%	3,749	7,139	95%
1305	Medical Reimbursement Plan	2,770	3,380	6,840	6,840	990.00	1,890	28%	2,600	4,490	66%
1310	ID Allowance Café		17,453	12,306	12,306	3,301.90	6,132	50%	6,130	12,262	100%
1314	457/401a Defined (LAFCO Contribution)	1,571	1,544	1,795	1,795	396.79	740	41%	894	1,634	91%
1315	401k Contribution	25,136	26,020	28,721	28,721	7,524.00	14,028	49%	14,305	28,333	99%
TOTAL SALARIES & BENEFITS		\$ 668,940	\$ 729,589	\$ 766,331	\$ 766,331	\$ 202,207.83	\$ 376,720	49%	\$ 379,690	\$ 756,409	99%
	Staffing (Full time equivalent units)	5.5		5.5	5.5						
SERVICES AND SUPPLIES											
Services:											
2035	Communications		\$ 1,053								
2037	COMNET Charge (ISF)	\$ 3,003	2,872	2,730	2,730	\$ 591.12	\$ 1,806	66%	\$ 1,477.80	\$ 3,284	120%
2038	Long Distance Charges	15							-		
2040	Relocation Charges - Phone Service	12,944	10,647			117.62	118		-	118	
2041	Phone Service/Outside Company	670	947	10,318	10,318	61.43	61	1%	4,406.34	4,468	43%
2043	Electronic Equipment Maintenance	926				6,015.89	6,016		-	6,016	
2075	Membership Dues	8,733	9,338	9,831	9,831	8,674.00	9,973	101%	-	9,973	101%
2076	Tuition Reimbursement	100	2,000	3,000	3,000			0%	2,000.00	2,000	67%
2080	Publications	2,383	3,021	3,288	3,288	965.58	966	29%	1,679.37	2,645	80%
2085	Legal Notices	18,860	18,129	20,284	20,284	7,940.18	11,889	59%	5,750.00	17,639	87%
2090	Miscellaneous Expense (Costs related to move)		100,000	111,683	111,683	23,903.24	35,277	32%	5,000	40,277	36%
2115	Computer Software	5,777	2,552	3,502	3,502	1,313.00	1,313	37%	1,964.36	3,277	94%
2125	Inventoriable Equipment		2,685	17,000	17,000			0%	1,785.84	1,786	11%
2130	Moving Expenses						67,416			67,416	
2180	Electricity for Office			4,800	4,800	2,103.33	2,467	51%		2,467	51%
2182	Electricity						895		1,800.00	2,695	
2195	Reimbursement Services and Supplies	-									
2245	Other Insurance	7,085	9,100	9,050	9,050	9,965.06	9,965	110%	-	9,965	110%
Supplies:											
2305	General Office Expense	6,364	8,105	7,410	7,410	5,985.66	6,405	86%	3,425.00	9,830	133%
2308	Credit Card Clearing Account	467	(465)			6,422.51	11,091		-	11,091	
2309	Visa Temp Card	267									
2310	Postage - Direct Charge	56,031	75,917	60,694	20,694	4,147.57	8,003	13%	5,090.00	13,093	22%
2315	Records Storage	596	749	696	696	246.20	246	35%	357.72	604	87%
2316	Surplus Handling					-	-				

FISCAL YEAR 2017-18

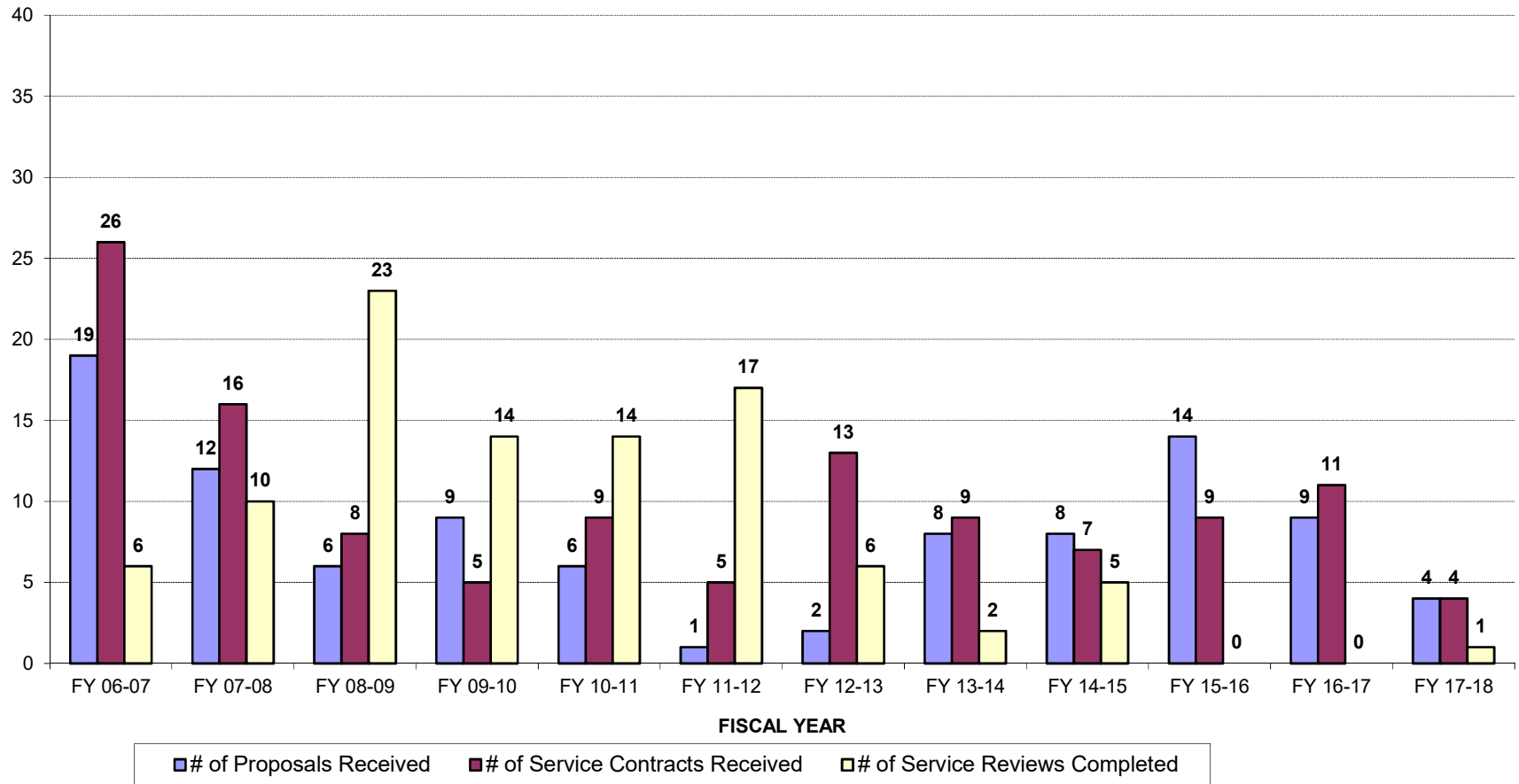
ACCT. #	ACCOUNT NAME	ACTUAL YEAR-END FY 15-16	ACTUAL YEAR-END FY 16-17	AMENDED BUDGET Oct-17	PROPOSED BUDGET Feb-18	TOTAL THRU 1st Quarter	TOTAL THRU MID-YEAR	PERCENT THRU MID-YEAR	PROJECTED REMAINING	PROJECTED YEAR-END	PROJECTED YEAR-END % Oct 17 Budget
2323	Reproduction Services	13,046	15,084	21,274	21,274	1,215.64	1,639	8%	-	1,639	8%
2335	Temporary Services		3,033	7,650	7,650	131.68	132	2%	-	132	2%
	Consultant & Special Services:										
2400	Prof & Special Service (Legal Counsel)	40,346	37,867	34,300	130,114	59,599.56	112,647	328%	23,000.00	135,647	395%
2405	Auditing	14,258	11,492	11,783	11,783	3,018.58	3,019	26%	7,800.00	10,819	92%
2410	Data Processing	8,244	7,827	7,827	7,827			0%	-		0%
2415	COWCAP		13,236	20,000	20,000	2,114.40	4,229	21%	4,228.80	8,458	42%
2420	ISD Other IT Services	4,614	245	210	210	34.94	100	48%	104.82	204	98%
2421	ISD Direct	10,073	8,949	8,927	8,927	2,337.84	7,467	84%	8,597.52	16,064	180%
2424	Mgmt & Tech (Environmental Consultant)	11,329	9,077	6,650	6,650	2,140.00	5,285	79%	250.00	5,535	83%
2444	Security Services	444	390	408	408	817.00	934	229%	234.00	1,168	286%
2445	Other Prof (Commission, Surveyor, ROV)	123,413	124,571	140,385	140,385	27,267.92	60,362	43%	66,326.80	126,689	90%
2449	Outside Legal (Litigation & Special Counsel)	4,319							-	-	
2450	Application Development Support	345		200	200			0%	-	-	0%
2460	GIMS Charges	13,656	13,500	16,170	16,170			0%	13,500.00	13,500	83%
	Lease/Purchases:										
2845	Rent/Lease Equipment (copier)					475.18	475			475	
2895	Rent/Lease Equipment (copier)	4,743	7,226	7,200	7,200			0%	3,000.00	3,000	42%
2905	Office/Hearing Chamber Rental	57,125	49,874	82,788	82,788	15,817.90	50,607	61%	32,545.80	83,153	100%
	Travel Related Expenses:										
2940	Private Mileage	3,868	4,963	4,855	4,855	1,036.88	2,521	52%	1,660.50	4,182	86%
2941	Conference/Training	3,974	6,465	6,140	6,140	4,766.23	4,766	78%	310.00	5,076	83%
2942	Hotel	5,053	12,417	10,550	10,550	2,424.75	2,425	23%	900.00	3,325	32%
2943	Meals	1,098	1,502	2,235	2,235	441.92	550	25%	275.00	825	37%
2944	Car Rental	107	228	200	200	109.37	109	55%	200.00	309	155%
2945	Air Travel	2,629	4,188	2,000	2,000	779.88	780	39%	600.00	1,380	69%
2946	Other Travel	887	871	400	400	367.35	455	114%	50.00	505	126%
	Other Charges:										
5012	Services Out (Staples)	1,449	14	1,200	1,200	184.94	185	15%	100.00	285	24%
	TOTAL SERVICES & SUPPLIES	\$ 449,237	\$ 579,668	\$ 657,638	\$ 713,452	\$ 203,534.35	\$ 432,595	66%	\$ 198,420	\$ 631,014	96%
	TOTAL EXPENDITURES	\$ 1,118,178	\$ 1,309,258	\$ 1,423,969	\$ 1,479,783	\$ 405,742.18	\$ 809,314	57%	\$ 578,109	\$ 1,387,423	97%
	RESERVES										
6000	Contingency		\$ -	\$ 139,116	\$ 139,116		\$ -	0%			
6010	Net Pension Liability Reserve		-	148,450	148,450		-	0%			
6025	General Reserve - Litigation		-	225,229	200,000		-	0%			
6030	Compensated Absences Reserve		(1,216)	89,708	89,708		-	0%			
	TOTAL CONTINGENCIES & RESERVES	\$ -	\$ (1,216)	\$ 602,503	\$ 577,274	\$ -	\$ -	0%	\$ -	\$ -	0%
	TOTAL APPROPRIATION	\$ 1,118,178	\$ 1,308,042	\$ 2,026,472	\$ 2,057,057	\$ 405,742.18	\$ 809,314	40%	\$ 578,109	\$ 1,387,423	68%

ACCT #	ACCOUNT NAME	ACTUAL YEAR-END FY 15-16	ACTUAL YEAR-END FY 16-17	AMENDED BUDGET Oct-17	PROPOSED BUDGET Feb-18	TOTAL THRU 1st Quarter	TOTAL THRU MID-YEAR	PERCENT THRU MID-YEAR	PROJECTED REMAINING	PROJECTED YEAR-END	PROJECTED YEAR-END Oct 17 Budget
	CONTRIBUTION REVENUES										
	Use of Money:										
8500	Interest	\$ 5,917.01	\$ 9,318	\$ 8,000	\$ 8,000	\$ 3,066.28	\$ 5,355	67%	\$ 3,500	\$ 8,855	111%
	Mandatory Contribution from Governments:										
8842	Local Government -- For FY 2017-18 apportionment to County, Cities, and Independent Special Districts of approximately \$336,528 each	882,117	926,223	1,009,583	1,009,583	1,009,583.00	1,009,583	100%	-	1,009,583	100%
	Fees and Deposits (Current Services):										
9545	Individual Notice	56,670	27,507	42,320	42,320	340.76	1,041	2%	5,600	6,641	16%
9555	Legal Services	26,361	10,311	9,600	40,185	672.69	4,028	42%	47,200	51,228	534%
9595	Protest Hearing	33,297	34,000	43,620	43,620	-	1,500	3%	4,500	6,000	14%
9655	GIMS Fees	12,505	5,015	7,520	7,520	-	3,230	43%	3,000	6,230	83%
9660	Environmental	12,940	7,145	6,000	6,000	25.00	475	8%	4,500	4,975	83%
9800	LAFCO Fees	260,206	117,531	127,773	127,773	9,404.00	15,904	12%	43,750	59,654	47%
	Total Fees and Deposits	401,978	201,509	236,832	267,417	10,442.45	26,178	11%	108,550	134,728	57%
	TOTAL CONTRIBUTION REVENUES	1,290,012	1,137,049	1,254,415	1,285,000	1,023,091.73	1,041,116	83%	112,050	1,153,166	92%
	OTHER REVENUES										
9910	Prior Year Activity (refunds, collections)	\$ (30)	\$ (20,757)	\$ (1,250)	\$ (1,250)	\$ 2,438.45	\$ 2,438	-195%	\$ -	\$ 2,438	-195%
9930	Miscellaneous Revenues	12,040	345	2,000	2,000	342.44	1,079	54%	-	1,079	54%
9970	Carryover of Open Proposals/Projects	55,114	42,219	23,671	23,671	5,507.63	5,008	21%	-	5,008	21%
9970	Carryover from Prior Year, Assigned	186,960	296,065	101,683	101,683	101,683.00	101,683	100%	-	101,683	100%
	TOTAL OTHER REVENUES	254,084	317,873	126,104	126,104	109,971.52	110,208	87%	-	110,208	87%
	TOTAL REVENUES	\$ 1,544,096	\$ 1,454,922	\$ 1,380,519	\$ 1,411,104	\$ 1,133,063.25	\$ 1,151,324	83%	\$ 112,050	\$ 1,263,374	92%
	RESERVES FROM PRIOR YEAR, as of July 1										
9970	Contingency	\$ 87,356	\$ 155,501	\$ 155,501	\$ 155,501	\$ 155,501.00	\$ 155,501	100%	-	\$ 155,501	100%
9970	Net Pension Liability Reserve	56,432	82,750	117,097	117,097	117,097.00	117,097	100%	-	117,097	100%
9970	General Reserve - Litigation	300,000	291,007	284,917	284,917	284,917.00	284,917	100%	-	284,917	100%
9970	Compensated Absences Reserve	72,897	76,607	88,438	88,438	88,438.00	88,438	100%	-	88,438	100%
	TOTAL RESERVES FROM PRIOR YEAR	\$ 516,685	\$ 605,865	\$ 645,953	\$ 645,953	\$ 645,953.00	\$ 645,953	100%	\$ -	\$ 645,953	100%
	TOTAL REVENUE AND RESERVES	\$ 2,060,781	\$ 2,060,787	\$ 2,026,472	\$ 2,057,057	\$ 1,779,016.25	\$ 1,797,277	89%	\$ 112,050	\$ 1,909,327	94%
	Note: Spreadsheet utilizes the cash basis of accounting and does not include accrual/reversal data which do not affect fund balance.										

**Chart Illustrating Yearly
Proposal, Service Contract,
and Service Review Activity**

Attachment 2

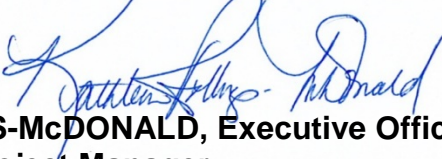
Number of Proposals & Service Contracts Received, and Service Reviews Completed by Fiscal Year



Through Jan 2018

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: FEBRUARY 14, 2018 
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
MICHAEL TUERPE, Project Manager
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #9: Update on LAFCO 3187 – Countywide Service Review for Water Continued Monitoring

RECOMMENDATION:

Staff recommends that the Commission take the following actions:

1. Note receipt of status report and file.
2. Continue the status report for Daggett Community Services District to the March 21, 2018 hearing.
3. Close monitoring of County Service Area 70 Zone CG.
4. Set the next status report for the August 2018 hearing for County Service Area 70 Zone J and County Service Area Zone W-4.

BACKGROUND:

As a part of its Countywide Service Review for Water (LAFCO 3187), LAFCO at its July 19, 2017 hearing directed staff to:

1. Monitor two board-governed agencies and provide an update to the Commission at the February 2018 hearing:
 - A. County Service Area 70 Zone CG (Cedar Glen)
 - B. County Service Area 70 Zone J (Oak Hills)

2. Coordinate with Mojave Water Agency (“MWA”) to seek further assistance for the Daggett Community Services District through MWA’s Small Water Assistance Program.

Resolution No. 3248 for LAFCO 3187 memorialized the Commission’s actions, and this staff report provides the updates directed by the Commission.

Additionally, during the service review’s presentation significant public comment was provided regarding the water quality challenges of County Service Area 70 Zone W-4 (Pioneertown). The service review classifies CSA 70 W-4 as a “hot spot”, and the Commission questioned if there was a LAFCO solution for the matter. Staff responded that multiple agencies are involved, including the Federal Environmental Protection Agency, and that the Commission cannot initiate a change of organization related to this matter. However, due to the significant challenges identified in the service review coupled with the public comments, LAFCO staff is also providing the Commission with an update on CSA 70 W-4.

County Service Area 70 Zone CG (Cedar Glen)

Agency and Area Description

County Service Area 70 Zone CG (“Zone CG”) is governed by the County Board of Supervisors, and is located in the Mountain Region adjacent to the Lake Arrowhead community. In 2005 the County Board formed CSA 70 Zone CG for the purposes of providing water and future road maintenance service to the area impacted by the Old Fire of 2003 (Cedar Glen Disaster Recovery Redevelopment Project Area). The Zone provides water service to the community of Cedar Glen and serves approximately 330 customers.

Service Review Recap

Below is the summary from the water service review for Zone CG:

- Issue - County Service Area 70 Zone CG (Cedar Glen) experiences ongoing challenges due to County’s purchase of a failing water system as detailed in Section IV.
- Staff Recommendation - *Direct staff to continue to monitor the Zone CG system and provide an update to the Commission by February 2018.*

Update

The County Special Districts Department is continuing to improve the water system with many projects to ensure that customers in Cedar Glen have a safe potable water supply now and in the future. The Department has already completed numerous pipeline projects, valve and hydrant projects, and the construction of Western Tank. The following is a list of current projects now in process:

Project	Location	Project Stage	Anticipated Construction Completion
Cypress Tank Construction	Located on Cypress Road	Construction phase	March 2018
Cypress Tank Pipeline Project	Located on Cypress Road	Design phase – 100%	October 2018
Hook Creek Pneumatic Tank Site	Located on Hook Creek Road	Design phase – 100% completed	October 2018
Horizontal Well Site - Pump Station	Located off of Pineridge	Design phase – 100% completed	December 2018
Cypress Tank Site – Pump Station	Located on Cypress Road	Design phase – 100% completed	January 2019

LAFCO Analysis

As a part of the Countywide Service Review for Water, Zone CG was classified as a “hot spot” due to the infrastructure challenges it faces. No Commission action was recommended as the water system is a county service area zone, which do not have spheres of influence.

The County Special Districts Department has provided information that shows improvements to the failing system that the County purchased. Therefore, LAFCO staff recommends that no further formal monitoring occur.

County Service Area 70 Zone J (Oak Hills)

Agency and Area Description

County Service Area 70 Zone J (“Zone J”) is governed by the County Board of Supervisors,. The zone provides funding for retail water service to 3,255 customers in Oak Hills within the Hesperia community.

Service Review Recap

Below is the summary from the water service review for Zone J:

- Issue - All sources have hexavalent chromium above MCL; Zone J is currently working on a hexavalent chromium compliance plan under Senate Bill 385 to achieve compliance; previous service review determined the need to resolve boundary conflicts between the Hesperia Water District and Zone J in the Maple/Topaz strip which is currently a part of the City of Hesperia.
- Hot Spot Identification – CSA 70 Zone J has been identified in this service review as a hot spot due to the issues identified above and detailed in Section V.

- Staff Recommendation - Indicate the Commission's preference that the Hesperia Water District and Zone J implement a mechanism (e.g., joint powers agreement or memorandum of understanding) to provide stability to the water source and boundary challenges in the overall Hesperia and Oak Hills communities.

Although LAFCO staff is working with the Hesperia Water District and CSA 70 Zone J on a mechanism to resolve the boundary conflicts, staff recommends that the Commission direct staff to continue to monitor the Zone J system and provide an update to the Commission by February 2018.

Update

County Special Districts Department provide the following update to the Zone J system:

While the district currently does not exceed the MCL for total chromium and is not currently in violation of hexavalent chromium, the Department continues to evaluate the elevated hexavalent chromium in CSA 70 J and continues to monitor the State's re-evaluation of the hexavalent chromium MCL. The Department conducted three pilot studies in CSA 70 J in 2017 to evaluate the removal of hexavalent chromium, including: Layne Christensen Company conducted Zone Testing at Well #1; Layne Christensen Company conducted a pilot of Weak Based Anion hexavalent chromium removal; and Water Remediation Technology (WRT) pilot tested packed-bed media filtration for hexavalent chromium removal. The Department is continuing to keep apprised of the State's action regarding this issue and should the State set an MCL for hexavalent chromium, the Department is evaluating and monitoring Coachella Valley Water District's pilot test in which stannous chloride is being used to convert chromium-6 to chromium-3, which is a nutrient that the body needs to process certain sugars, fats, and proteins.

The Department is continuing to work with the City of Hesperia [Hesperia Water District] on a Joint Powers Agreement to manage the water system and water exchange in those areas where CSA 70 J is providing water service within the City of Hesperia. County Counsel has reviewed the agreement and it was sent to the City of Hesperia. The City had comments and questions that the County is currently answering. The County is anticipating to have the agreement sent back to the City by the end of this week [week of Feb 12] for their review.

LAFCO Analysis

As a part of the Countywide Service Review for Water, Zone J was classified as a "hot spot" due to the water quality challenges it faces, as well as lingering boundary irregularities that have patch work fixes. No Commission action was recommended as the water system is a county service area zone, which do not have spheres of influence.

The County Special Districts Department has provided information identifying that the water contaminants do not currently exceed the MCL. However, staff's understanding of the State's reevaluation of the hexavalent chromium MCL is that the State will be re-adopting a lower MCL level but with adequate substantiation to support that level. As for the boundary

irregularities and water exchange with the City of Hesperia subsidiary Hesperia Water District, progress towards forming a JPA is occurring.

While progress has been made, LAFCO staff recommends that the Commission direct staff to return in six months, at the August 2018 hearing, with an update on the Zone J system and the potential agreement with the Hesperia Water District.

Daggett Community Services District

Inadvertently, Daggett CSD was not provided notice of the February 21 hearing. Therefore, LAFCO staff recommends continuing the status report for Daggett Community Services District to the March 21, 2018 hearing.

Additionally, LAFCO staff has obtained information on the efforts of Daggett CSD and CRWA to obtain grant funding and possibly drill new wells. Staff understands that additional information will be provided shortly regarding submission of an engineering report to the appropriate state agencies. This additional information will provide for a more timely and complete update on the determinations from the Water Service Review.

County Service Area 70 Zone W-4 (Pioneertown)

Agency and Area Description

The domestic water system of County Service Area 70 Zone W-4 (Zone W-4), which has been maintained and managed under the County Special Districts Department's Water and Sanitation Division since 1980, has 120 service connections in the desert community of Pioneertown northwest of Yucca Valley. Zone W-4 is within the sphere of influence of Hi-Desert Water District, but not within Hi-Desert Water District's boundary.

Service Review Recap

Below is the summary from the water service review for the CSD:

- Issue - Notice of Violation issued in March 2016 by U.S. EPA indicating water system in violation of Safe Drinking Water Act for exceeding MCL for arsenic, fluoride and uranium; state grant funding provides customers with bottled water supplies every two weeks.
- Staff Recommendation – *No Commission action because zones do not have spheres of influence. See "Opportunities" below.*
- Opportunities - Classified as a small water system and eligible for SB 88 funds; funding requires consolidation with an adjacent system; CSA 70 W-4 under consideration for potential SB 88 consolidation with Hi-Desert Water District.

Update

On October 31, 2017, the County Board of Supervisors took actions related to the Zone W-4 water system, to include:

- Approving the submittal of a grant application to the United States Department of Agriculture (USDA)-Rural Development requesting federal funding in the amount of \$2,500,000 for the Pioneertown Pipeline and Water System Improvement Project.
- Approving the Water Exchange Agreement with the Hi-Desert Water District (HDWD) allowing Zone W-4 access to groundwater within the Warren Valley Sub-basin in exchange for an equal amount of groundwater provided to HDWD from within the Ames/Reche Basin pursuant to the water rights of Zone W-4 for a term of 20 years, with an annual service and exchange charge to Zone W-4 of \$1,000 that increases by 5% after each five years of the agreement.

The Water Exchange Agreement with HDWD is a required stipulation to both SWRCB and USDA grant funding, as the Project is not viable without securing a clean water source.

On December 12, 2017, the HDWD approved the Water Exchange Agreement with the County. The board agenda items from the County and HDWD are included as attachments to this report.

LAFCO Analysis

As a part of the Countywide Service Review for Water, Zone W-4 was classified as a “hot spot” due to the water quality challenges it faces. No Commission action was recommended as the water system is a county service area zone, which do not have spheres of influence. Further, Zone W-4 is already within the sphere of influence of HDWD. Therefore, the service review did not have any recommendations for Commission action.

While progress has been made, LAFCO staff recommends that the Commission direct staff to return in six months, at the August 2018 hearing, with an update on the Zone W-4 system.

CONCLUSION:

Due to issues identified in the Countywide Service Review for Water in July 2017, the Commission directed staff to return at the February 2018 hearing with updates for three water systems. Additionally, staff included an update for the CSA 70 Zone W-4 system due to the gravity of the situation related to water quality.

Significant progress has been made on improving the County Service Area 70 Zone CG system; therefore, LAFCO staff recommends no further monitoring. LAFCO staff does recommend, however, that the Commission direct staff to return in six months, at the August 2018 hearing, with an update on the Zone J and Zone W-4 systems. Additionally,

staff recommends that the Commission continue the status report for Daggett Community Services District to the March 21, 2018 hearing.

KRM/MT

Attachments:

1. LAFCO Resolution 3248 for LAFCO 3187 and Executive Summary from LAFCO 3187
2. County Service Area 70 Zone CG (Cedar Glen)
 - a. Map
3. County Service Area 70 Zone J (Oak Hills)
 - a. Map
4. Daggett Community Services District
 - a. Map
5. County Service Area 70 Zone W-4 (Pioneertown)
 - a. Map
 - b. County of San Bernardino Board Item 53 from October 31, 2017
 - c. Hi-Desert Water District Board Item from December 12, 2017
 - d. Copy of Contract between the County and Hi-Desert Water District

**LAFCO Resolution 3248 for
LAFCO 3187 and Executive
Summary from LAFCO 3187**

Attachment 1

**LOCAL AGENCY FORMATION COMMISSION
FOR SAN BERNARDINO COUNTY**

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PROPOSAL NO.: LAFCO 3187

HEARING DATE: JULY 19, 2017

RESOLUTION NO. 3248

A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY MAKING DETERMINATIONS ON LAFCO 3187 – COUNTYWIDE SERVICE REVIEW FOR WATER (RETAIL, WHOLESALE, RECYCLED).

On motion of Commissioner Curatalo, duly seconded by Commissioner Williams, and carried, the Local Agency Formation Commission adopts the following resolution:

WHEREAS, a service review mandated by Government Code 56430 has been conducted by the Local Agency Formation Commission for San Bernardino County (hereinafter referred to as “the Commission”) in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Sections 56000 et seq.); and,

WHEREAS, at the times and in the form and manner provided by law, the Executive Officer has given notice of the public hearing by the Commission on this matter; and,

WHEREAS, the Executive Officer has reviewed available information and prepared a report including her recommendations thereon, the filings and report and related information having been presented to and considered by this Commission; and,

WHEREAS, a public hearing by this Commission was called for July 19, 2017 at the time and place specified in the notice of public hearing and in any order or orders continuing the hearing; and,

WHEREAS, at the hearing, this Commission heard and received all oral and written support and opposition; the Commission considered all objections and evidence which were made, presented, or filed; and all persons present were given an opportunity to hear and be heard in respect to any matter relating to the service review, in evidence presented at the hearing; and,

WHEREAS, at this hearing, this Commission certified that the service review is statutorily exempt from environmental review pursuant to the provisions of the California Environmental Quality Act (CEQA) and such exemption was adopted by this Commission on July 19, 2017. The Commission directed its Executive Officer to file a Notice of Exemption within five working days of its adoption; and,

WHEREAS, the determinations required by Government Code Section 56430 and local Commission policy are included in the report prepared and submitted to the Commission dated July

RESOLUTION NO. 3248

5, 2017 and is recommended for acceptance and filing by the Commission on July 19, 2017, a complete copy the service review is on file in the LAFCO office.

WHEREAS, the following additional determinations are made in conformance with the Government Code and local Commission policy:

- A stakeholder group was convened within each region (Valley on May 8, 2017; Mountain on June 15, 2017; North Desert on January 31, 2017; and South Desert on May 15, 2017) to provide a peer review of the service review's purpose, objective, and methodology. The stakeholder groups were composed of a variety of public agencies and at least one private system.
- Following the peer review, each water system identified in this review was provided a draft of the report for review and comment. Comments from the water purveyors are included in Appendix A of the service review.
- As required by State Law, notice of the hearing was provided through publication in newspapers of general circulation within the area, the *Big Bear Grizzly*, *Daily Press*, *Desert Dispatch*, *Hi-Desert Star*, *Inland Valley Daily Bulletin*, *Mountain News*, and *San Bernardino Sun*. Individual notice was not provided as allowed under Government Code Section 56157 as such mailing would include more than 1,000 individual notices. As outlined in Commission Policy, in-lieu of individual notice the notice of hearing publication was provided through an eighth page legal ad.
- As required by State law, individual notification of the hearing was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.
- Due to the size and scope of the report, the service review document was provided in advance of the staff report to allow additional time for review. The service review document was published July 5, 2017 and a copy was provided to affected and interested agencies and County departments, as well as those agencies and individuals requesting mailed notice. The service review document was also made accessible on the LAFCO website.

NOW, THEREFORE, BE IT RESOLVED by the Local Agency Formation Commission for San Bernardino County, State of California, that this Commission shall:

1. Accept and file the Countywide Service Review (Retail, Wholesale, Recycled), included as Exhibit A to this resolution, which sets forth the written statements for the six determinations outlined in Government Code Section 56430 as presented and as amended at the hearing.
2. Initiate the establishment of a sphere of influence for Metropolitan Water District of Southern California within San Bernardino County to be coterminous with the sphere of influence of its member agency, Inland Empire Utilities Agency.
3. Direct LAFCO staff to continue to monitor County Service Area 70 Zone CG (Cedar Glen) and provide an update to the Commission by February 2018.

RESOLUTION NO. 3248

4. Indicate the Commission's intent to reduce the City of Adelanto's sphere of influence following the completion of the countywide wastewater service review.
5. Indicate the Commission's preference that the Hesperia Water District and County Service Area Zone J implement a mechanism (e.g., joint powers agreement or memorandum of understanding) to provide stability to the water source and boundary challenges within the territory of southwestern Hesperia and Oak Hills communities.
6. Direct LAFCO staff to continue to monitor County Service Area 70 Zone J (Oak Hills) and provide an update to the Commission by February 2018.
7. Reaffirm the Commission's position that the Apple Valley Foothill, Apple Valley Heights, and Mariana Ranchos County Water Districts have a combined sphere of influence signaling the Commission's position that a future consolidation of the agencies is appropriate.
8. Reaffirm the Commission's position that Daggett Community Services District and Yermo Community Services District have a combined sphere of influence signaling the Commission's position that a future consolidation of the agencies is appropriate, and direct LAFCO staff to coordinate with Mojave Water Agency to further assist Daggett Community Services District through its Small Water Assistance Program.

THIS ACTION APPROVED AND ADOPTED by the Local Agency Formation Commission for San Bernardino County by the following vote:

AYES: COMMISSIONERS: Bagley, Cox, Curatalo, Williams

NOES: COMMISSIONERS: None

ABSENT: COMMISSIONERS: Lovingood, McCallon, Ramos

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

I, KATHLEEN ROLLINGS-McDONALD, Executive Officer of the Local Agency Formation Commission for San Bernardino County, California, do hereby certify this record to be a full, true, and correct copy of the action taken by said Commission, by vote of the members present, as the same appears in the Official Minutes of said Commission at its meeting of July 19, 2017.

DATED: July 24, 2017



KATHLEEN ROLLINGS-McDONALD
Executive Officer

Executive Summary

This service review consists of a countywide service review on water (wholesale, retail and recycled) within San Bernardino County. It fulfills the service review requirements identified in the Cortese-Knox-Hertzberg Local Reorganization Act of 2000 (Government Code §56000 et. seq.). The report is organized geographically by the county's four major regions: Valley, Mountain, North Desert and South Desert. A stakeholder group was formed within each region to provide a peer review of the service review's purpose, objectives and methodology. A draft copy was circulated to all water systems reviewed in this report as well as interested parties for review and comment. The final version of this report includes LAFCO staff's responses to the comments. LAFCO may use this report as a basis to initiate agency sphere of influence updates, where warranted, and to help address identified service deficiencies.

Approach

Legislation adopted since 2012 impacting service reviews or the provision of services has been incorporated into the report's analysis. These laws are detailed in the Introduction portion of this report and address:

- Mutual water companies in service reviews
- Disadvantaged unincorporated communities
- Pilot program for San Bernardino LAFCO regarding services outside an agency sphere of influence
- The Sustainable Groundwater Management Act of 2014, and
- Authorization for the State Water Resources Control Board to consolidate water systems that are serving disadvantaged communities with unreliable and unsafe drinking water with other water systems.

The primary goal of this service review is to provide the Commission with recommendations to: (1) update the determinations from previous service reviews, and (2) initiate sphere of influence updates where appropriate. To arrive at these recommendations, the service review focuses on two areas:

- (1) Identification of "hot spots" – Those areas or agencies within the county which have significant water-related issues including, but not limited to, insufficient water supply, water quality related issues, deficient infrastructure, financial constraints, and/or inadequate oversight and monitoring.
- (2) Service review update – Update of water agencies' determinations since the prior service review.

To identify the County's water "hot spots," staff utilized a multi-pronged approach using prior service reviews, audits, budgets, consumer confidence reports, sanitary survey reports, and GIS data to identify future population growth areas, disadvantaged communities, and small community water systems. This Executive Summary summarizes the hot spots identified in the report and staff recommendations. Additionally, staff has identified opportunities for efficiencies for the community at large to consider – these do not have a recommendation for Commission action.

What Did We Learn?

Countywide

- 80% of the land in the county (roughly 16,200 sq. miles) is primarily vacant and outside the governing control of the County's Board of Supervisors and 24 cities.
- Significant opportunities for economies of scale via consolidation exist in the Mountain, North Desert, and South Desert regions.
- San Bernardino County and the broader Inland Empire region are anticipated to see more population growth in the near term than the coastal regions of Southern California. The high cost of housing in the coastal counties of Los Angeles, Orange and San Diego has made the Inland Empire a destination of choice for many residents willing to commute to those areas.
- The Metropolitan Water District of Southern California has never been assigned a sphere of influence in San Bernardino County.
- LAFCO staff has comprehensively digitally mapped all the water systems identified in this report. The following entities requested access to this data which LAFCO has provided: Department of Water Resources, Division of Drinking Water of the State Water Resources Control Board, California Environmental Health Tracking Program of the Department of Public Health, and the County of San Bernardino as a part of its upcoming general plan update.

Legislation/Regulations

- Senate Bill 88 authorizes the State Water Board to order consolidation with a receiving water system where a public water system, or a state small water system within a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water. This authority provides an opportunity for water system improvements by offering inducements or by ordering consolidation of systems.
- Other State agencies, such as the California EPA, use alternative criteria to identify disadvantaged communities for grant funding purposes. The different criteria at the local and state government levels is confusing and complicates implementation of a consistent approach to address our disadvantaged residents. While staff recognizes the difficulty in developing a one-size-fits-all definition, LAFCO staff's position is that additional work needs to be done state-wide to develop a method for identifying disadvantaged communities that is more consistent yet recognizes the diversity of communities and geographies in California.
- Agencies have adopted resolutions to form Groundwater Sustainability Agencies for areas identified as fringe areas – areas outside a local agency boundary.
- There is a systemic lack of understanding and compliance with the California Land Conservation Act of 1965 (known as the Williamson Act) statutes and implementation by the County and cities. Government Code §51243 states that when annexing properties into a city, "...the city shall succeed to all rights, duties, and powers of the county under the contract." As a whole, the data provided to LAFCO by the County and cities is either incomplete, outdated, and/or not in compliance between Agricultural Preserves and Williamson Act parcels. LAFCO staff will continue work on this matter and present a final product to the Commission as a part of the wastewater service review.

Water Systems

- Many systems identified in the first round of service reviews as having experienced significant challenges, remain as having significant challenges.
- There are clusters where challenges are difficult to overcome due to groundwater quality and economic status (being defined as a disadvantaged community).
- There are areas where agencies provide, or plan to provide, service outside of its sphere of influence: (1) City of Colton, (2) City of Big Bear Lake via its Department of Water and Power, and (3) Town of Apple Valley (potential condemnation and purchase of the Liberty Utilities system). This is addressed in the context of Gov't. Code §56133.5 - a pilot program, through 2020, for Napa and San Bernardino LAFCOs to authorize a city or district to extend services outside of a sphere for additional purposes beyond responding to threat to public health or safety.
- During the course of the service review, two areas were identified that warrant identification but are not considered a hot spot as remediation efforts are well underway: (1) Rockets, Fireworks, and Flares Site (Rialto area), and (2) County Service Area 70 CG – Cedar Glen.
- During the drought, many local agencies that self-reported water usage data to the state (which meant that a zero state conservation standard was applied) opted to implement a higher conservation standard.
- On average, the 33 water systems that were required to report to the State their water usage during the drought reported in February 2017 a 16.7% cumulative savings as compared to the same month in 2013.

Successes

The following provides one positive effort for each region:

- *Valley Region* - There is extensive coordination amongst agencies within groundwater basins. Between certain basins conflict is present.
- *Mountain Region* - The County purchased a failing water system in Cedar Glen which is now operated under County Service Area 70 Zone CG. Great progress has been made to improve this once failing system, although challenges remain.
- *North Desert Region* - To assist small water systems within the boundaries of Mojave Water Agency ("MWA"), MWA's Small Water Systems Assistance Program provides resources for disadvantaged and severely disadvantaged small water systems that lack staff, expertise, and funding to meet their individual water reliability, conservation and quality standards. The MWA service area includes 36 small water systems of which 65% meet the criteria of disadvantaged communities.
- *South Desert* – The Twentynine Palms Water District ("TPWD") has become a test district for the EPA's research into an economical method for small, low-income water agencies to remove arsenic. This new method brings the TPWD drinking water into compliance with the new maximum contaminant levels for arsenic and saves the district over \$20,000 annually. Not only does this clean the local water, the results from this test case will support the removal of arsenic in other areas of the country with a lower cost method. Additionally, the District operates a 3MGD Fluoride Removal Plant that removes high levels of naturally occurring fluoride from the Mesquite Lake sub-basin.

Staff Recommendations for Commission Action

The following outlines staff's recommendations for the Commission. The first recommendation concerns the lack of a sphere of influence for the Metropolitan Water District of Southern California within San Bernardino County. The remaining five recommendations stem from the agencies being identified a "hot spot".

Metropolitan Water District of Southern California

- Issue - Metropolitan Water District of Southern California lacks sphere of influence within San Bernardino County. Metropolitan is a special district subject to LAFCO purview. Therefore, San Bernardino LAFCO is obligated to establish a sphere of influence. This issue is detailed in Section III.
- Staff Recommendation - *Initiate the establishment of a sphere of influence for Metropolitan within San Bernardino County to be coterminous with the sphere of its member agency, Inland Empire Utilities Agency.*

County Service Area 70 Zone CG (Cedar Glen)

- Issue - County Service Area 70 Zone CG (Cedar Glen) experiences ongoing challenges due to County's purchase of a failing water system as detailed in Section IV.
- Staff Recommendation - *Direct staff to continue to monitor the Zone CG system and provide an update to the Commission by February 2018.*

City of Adelanto

- Issue - Water operations of the Adelanto Public Utilities Authority, a component of the City, in significant debt to the City; 2014 audit (most recent completed) questions agency's ability to continue given inability to secure financing to address debt payments; City's water system has multiple deficiencies; City under a conservation order from the State Board; City has inadequate water storage facilities to accommodate future growth.
- Hot Spot Identification – The City of Adelanto has been identified in this service review as a hot spot due to the issues identified above and detailed in Section V.
- Staff Recommendation - *Indicate the Commission's intent to initiate a sphere of influence review to reduce the City's sphere of influence following the completion of the wastewater and fire service reviews.*

Apple Valley Foothill County Water District

Apple Valley Heights County Water District

Mariana Ranchos County Water District

- Issue:
 - Apple Valley Foothill County Water District - Lack of audit internal controls; lack of inter-tie with another water system; classified as a disadvantaged community.
 - Apple Valley Heights County Water District - Lack of audit internal controls; lack of inter-tie with another water system. The Sanitary Survey Report identifies that additional source capacity is needed to meet State regulation and for reliability. Additionally, the District is deficient in storage capacity and must develop a plan of action to meet the storage capacity requirements.

Deterioration of its tanks and failure of its existing pipeline resulted in emergency repairs.

- **Hot Spot Identification** – The Apple Valley Foothill CWD and Apple Valley Heights CWD have been identified in this service review as a hot spots due to the issues identified above and detailed in Section V. Mariana Ranchos CWD is not identified as a hot spot but is contiguous to the other two districts.
- **Staff Recommendation** - *Reaffirm the Commission's position that Apple Valley Foothill, Apple Valley Heights, and Mariana Ranchos County Water Districts have a combined sphere of influence signaling the Commission's preference that the three districts consolidate.*

County Service Area 70 Zone J

- **Issue** - All sources have hexavalent chromium above MCL; Zone J is currently working on a hexavalent chromium compliance plan under Senate Bill 385 to achieve compliance; previous service review determined the need to resolve boundary conflicts between the Hesperia Water District and Zone J in the Maple/Topaz strip which is currently a part of the City of Hesperia.
- **Hot Spot Identification** – CSA 70 Zone J has been identified in this service review as a hot spot due to the issues identified above and detailed in Section V.
- **Staff Recommendation** - *Indicate the Commission's preference that the Hesperia Water District and Zone J implement a mechanism (e.g., joint powers agreement or memorandum of understanding) to provide stability to the water source and boundary challenges in the overall Hesperia and Oak Hills communities.*

Although LAFCO staff is working with the Hesperia Water District and CSA 70 Zone J on a mechanism to resolve the boundary conflicts, staff recommends that the Commission direct staff to continue to monitor the Zone J system and provide an update to the Commission by February 2018.

Daggett Community Services District

- **Issue** - Classified as a disadvantaged community; lacks intertie with an adjacent agency; significant deficiencies identified in sanitary survey report; located within the Mojave Basin Baja subarea which is at 45% ramp down; significant financial challenges identified in audits; prior service review identified concerns with the aging pipes; lack of adequate managerial oversight.
- **Hot Spot Identification** – Daggett CSD has been identified in this service review as a hot spot due to the issues identified above and detailed in Section V.
- **Staff Recommendation** - *Reaffirm the Commission's position that Daggett CSD and Yermo CSD have a combined sphere of influence signaling the Commission's position for consolidation.*

Systems Identified as Hot Spots – No Staff Recommendations

The following outlines water systems identified as hot spots but are either not under Commission purview or where no tangible Commission action is recommended. In the Mountain Region, no water systems were identified as hot spots.

In the Valley Region, staff identified one private water purveyor as a “hot spot”:

Hot Spots	Rationale	Summary
San Antonio Canyon Mutual Service Company	Non-compliance with source capacity requirements and interim drought measures.	Not under LAFCO purview. See “Opportunities” below.

In the North Desert, staff identified the following seven public water agencies and three private water purveyors as “hot spots”:

Hot Spots	Rationale	Summary
Baker CSD	Located within a disadvantaged unincorporated community; is an isolated area with no access to another water system; gross alpha and uranium levels exceed the MCL; Well #2 and Well #3 exceed the MCL for hexavalent chromium, Cr (VI), of 10 µg/L; lack of quarterly monitoring of Cr (VI) in violation of state regulations.	System is not eligible for SB 88 grant funds since there are no adjacent systems for potential consolidation.
Bar Len MWC	The sanitary survey report identifies significant deficiencies of the water system; system is under consideration by the State Water Board for potential Water System (SB 88) consolidation with the adjacent Hi Desert Mutual Water Company.	Not under LAFCO purview.
County Service Area 42	Classified as a disadvantaged community; system lacks an inter-tie connection; previous service review determined system did not meet required storage capacity; substantial rate increases have been implemented in order to pay for capital upgrades.	There are no recommendations for the Commission.
Desert Springs MWC	The sanitary survey report identifies issues with system leaks and inadequate storage capacity; 2015 Consumer Confidence Report indicates inadequate water quality testing.	Not under LAFCO purview.
Gordon Acres WC	System not complying with sampling requirements for a community water system; two violations issued by County Public Health in 2017 regarding failure to monitor and test for inorganic chemicals, perchlorate and secondary standards; system is under consideration by the State Water Board for potential Water System (SB 88) consolidation with the adjacent Jubilee Mutual Water Company.	Not under LAFCO purview.

*Countywide Service Review for Water
Executive Summary*

In the South Desert, staff identified the following three public agencies and one private water purveyor as “hot spots”:

Hot Spots	Rationale	Summary
CSA 70 Zone F (Morongo Valley)	2015 Consumer Confidence Report states source water violates gross alpha and uranium MCLs; 2016 Sanitary Survey Report notes water exceeds uranium MCL, and system has aging distribution lines requiring frequent maintenance.	No Commission action because zones do not have spheres of influence. See “Opportunities” below.
CSA 70 Zone W-3 (Hacienda Heights, Morongo Valley)	2015 Consumer Confidence Report notes that source water exceeds uranium MCL; 2016 Sanitary Survey Report reports that distribution lines are old and require frequent maintenance; Well #1 exceeds MCL for gross alpha and uranium; Well #2 is very close to the MCL; system lacks an emergency response plan.	No Commission action because zones do not have spheres of influence. See “Opportunities” below.
CSA 70 Zone W-4 (Pioneertown)	Notice of Violation issued in March 2016 by U.S. EPA indicating water system in violation of Safe Drinking Water Act for exceeding MCL for arsenic, fluoride and uranium; state grant funding provides customers with bottled water supplies every two weeks.	No Commission action because zones do not have spheres of influence. See “Opportunities” below.
Golden State Water Company – Morongo del Norte	2016 Sanitary Survey Report identifies Elm Well exceeding uranium MCL; well will not be placed in service until a uranium treatment system is in place and operational, or district submits a compliance plan; gross alpha and uranium levels are at or near MCL for Bella Vista and Highway Wells.	Not under LAFCO purview.

Opportunities for Future Consideration

The following identifies opportunities for the Commission and the water systems to consider.

Opportunities – Valley Region

Agency	Issue	Opportunity
San Antonio Canyon Mutual Service Company	Insufficient source capacity.	Consolidation of San Antonio Canyon Mutual Service Company with Mt. Baldy HOA would allow eligibility for SB 88 funding to upgrade facilities.

Opportunities – Mountain Region

Agencies	Issue	Opportunity
Crest Forest-Crestline Village Water District and Crestline Sanitation District	Overlapping territory	Consolidation of water and wastewater services under a single agency would benefit the community and likely reduce staffing and admin costs.
CSA 70 Zone CG, Lake Arrowhead Community Services District, and Crestline-Lake Arrowhead Water Agency Improvement Districts	Multiple public agencies overlaying the same area providing the same service.	Consolidate or form a community services district to increase service delivery efficiency through a single agency.
Running Springs Water District, Arrowbear Park County Water District, CSA 79 (sewer only)	Adjacent agencies, which work together and share facilities, providing similar services under the same parent act.	Consolidation of water and wastewater services under a single agency would provide for an efficient delivery pattern.

Opportunities – North Desert Region

Agencies	Issue	Opportunities
Apple Valley Foothill County Water District, Apple Valley Heights County Water District	Lack of financial internal controls; lack of inter-ties with another system; Apple Valley Heights County Water District is deficient in storage capacity and water source capacity.	Districts should consider initiating consolidation and include Mariana Ranchos County Water District – all three share a single sphere of influence; consolidation would open up opportunities for SB 88 grant funding.
Bar Len Mutual Water Company	Sanitary survey report identifies significant deficiencies	Under consideration by State Water Board for potential water system (SB 88) consolidation with Hi-Desert Mutual Water Company.
Gordon Acres Water Company	Non-compliance with water quality monitoring requirements.	Under consideration by State Water Board for potential Water System (SB 88) consolidation with Hi-Desert Mutual Water Company.
Daggett Community Services District and Liberty Utilities Yermo	Significant deficiencies/financial challenges.	Consolidation of Daggett Community Services District and Liberty Utilities Yermo would allow eligibility for SB 88 funding to upgrade facilities.

Opportunities – South Desert Region

Agencies	Issue	Opportunities
CSA 70 Zone F, CSA Zone W-3, Golden State WC Morongo del Norte and Golden State WC Morongo del Sur	High gross alpha, uranium levels; ongoing operation and maintenance issues.	All classified as small water systems; eligible for SB 88 funds if consolidated; all four agencies should consider jointly initiating a consolidation application to the state since additional resources are available when three or more agencies consolidate.
CSA 70 W-4	Water system exceeds MCLs for arsenic, fluoride and uranium.	Classified as a small water system and eligible for SB 88 funds; funding requires consolidation with an adjacent system; CSA 70 W-4 under consideration for potential SB 88 consolidation with Hi-Desert Water District.

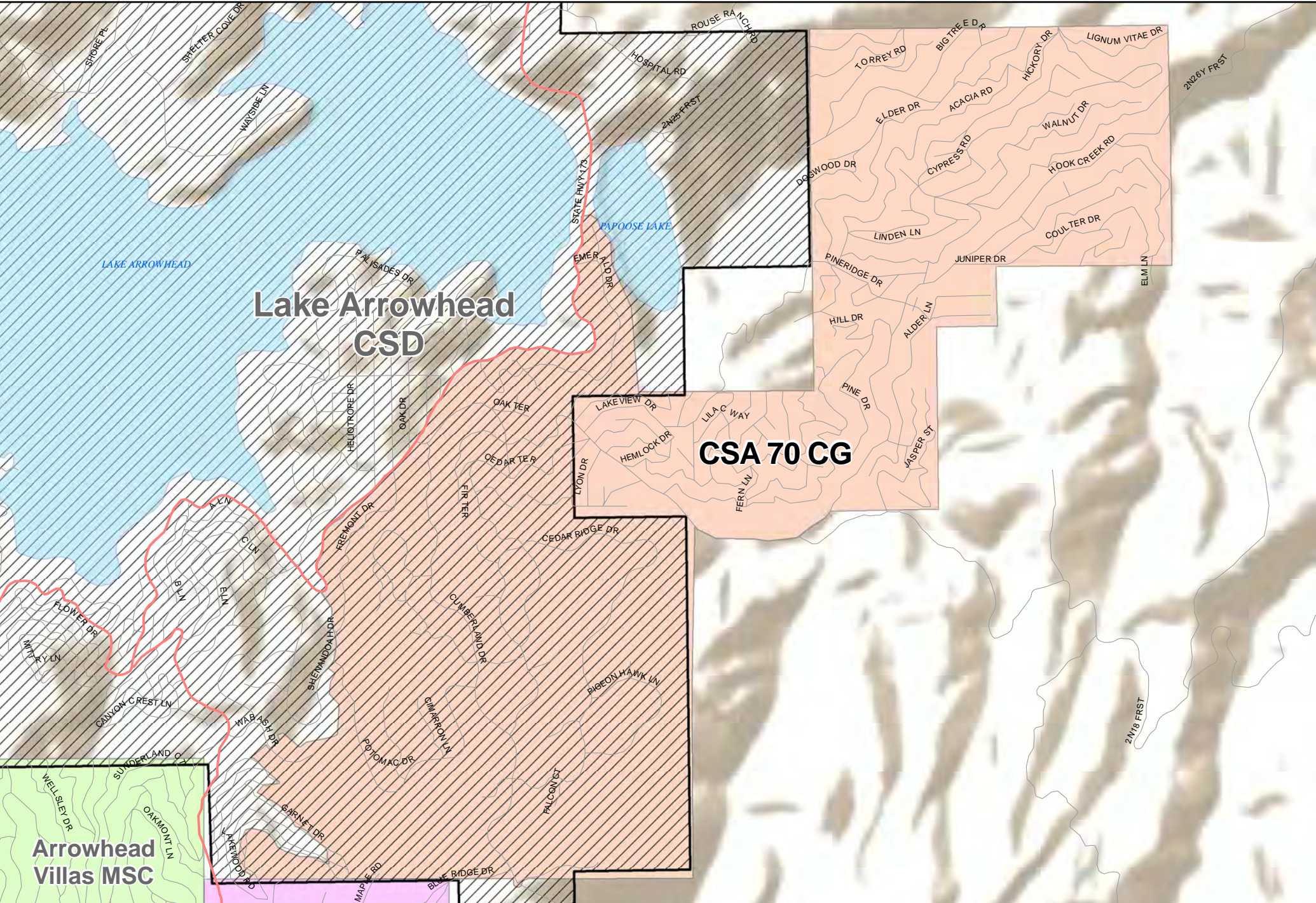
County Service Area

70 Zone CG

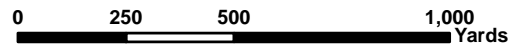
(Cedar Glen)

a. Map

Attachment 2



County Service Area 70 Zone Cedar Glen



Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.

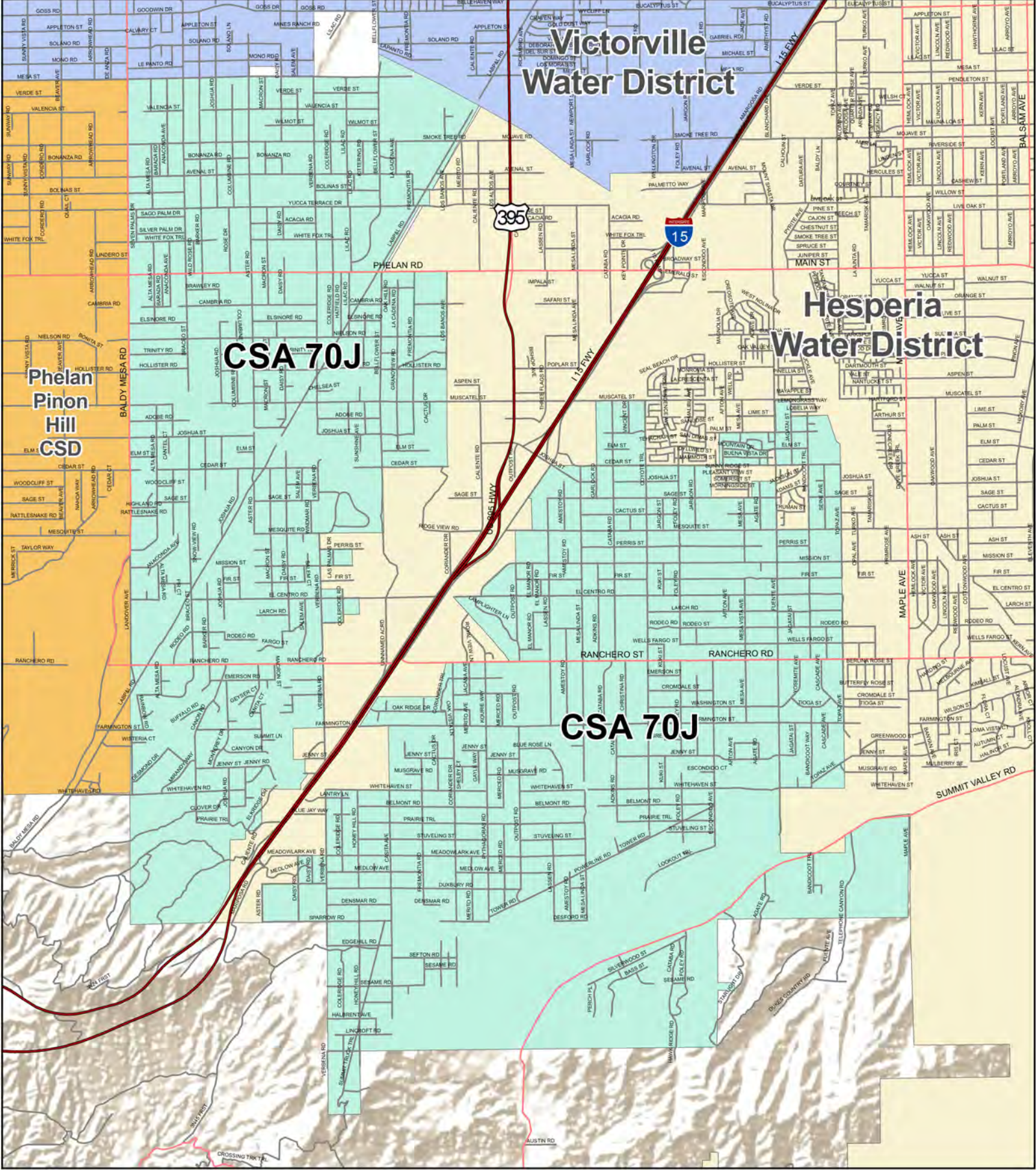
Map Created: 5/1/2017

*In instances of overlapping water systems, the boundary of the underlying government system is reduced.

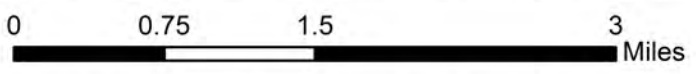
- County Service Area 70 Zone Cedar Glen
- Arrowhead Villas Mutual Service Company
- Lake Arrowhead Community Service District (Water Service Area)
- Skyforest Mutual Water Company

**County Service Area
70 Zone J (Oak Hills)
a. Map**

Attachment 3



County Service Area 70J



- Victorville Water District
- Phelan Pinon Hill Community Service District
- Hesperia Water District
- County Service Area 70 J

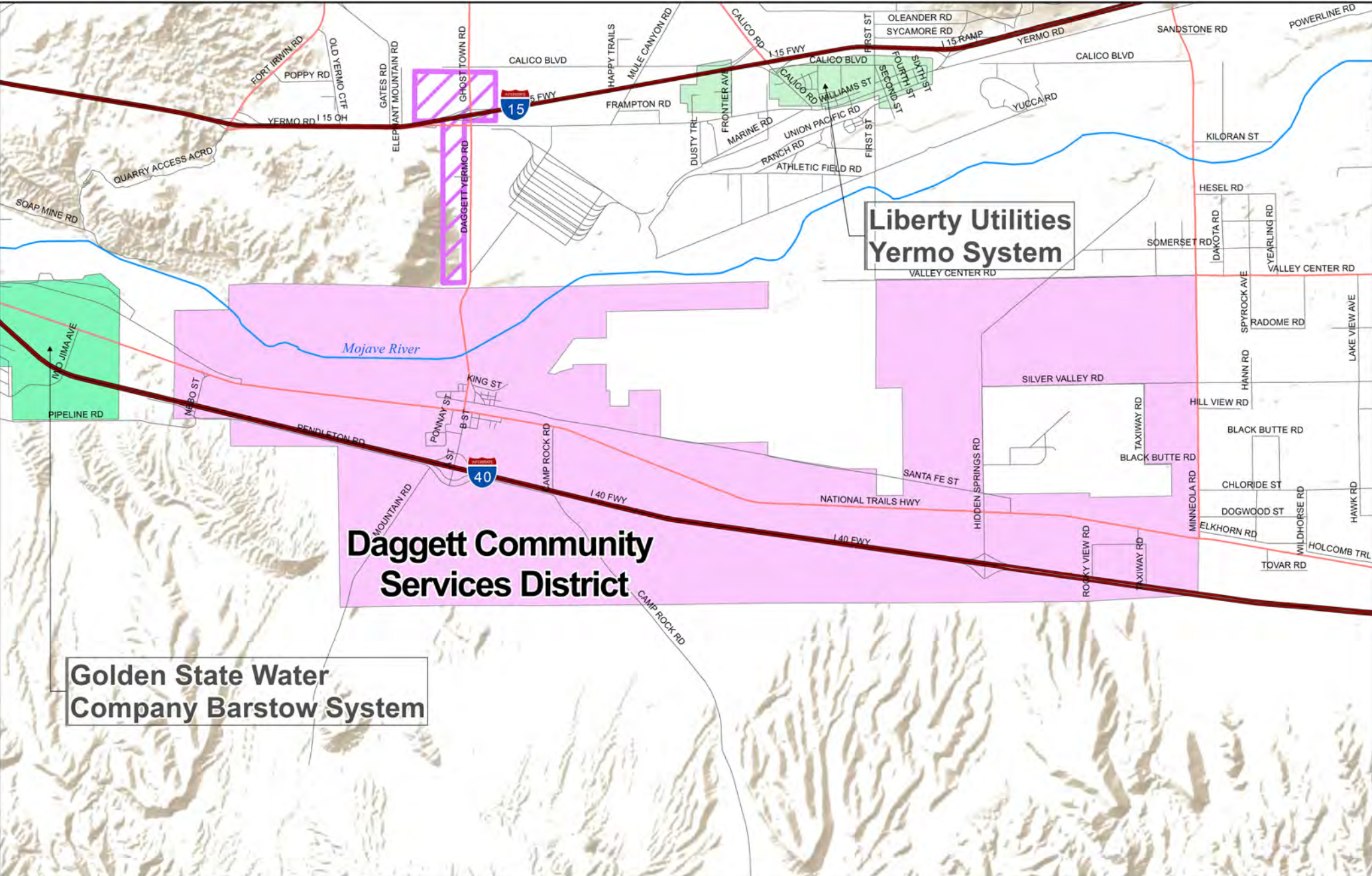
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Map Created: 1/12/2017

**Daggett Community Services
District**

a. Map

Attachment 4



Daggett Community Services District

- Daggett Community Service District
- Daggett CSD Out-of-agency Service Agreement into Yermo
- Golden State Water Company Barstow System
- Yermo Water Company

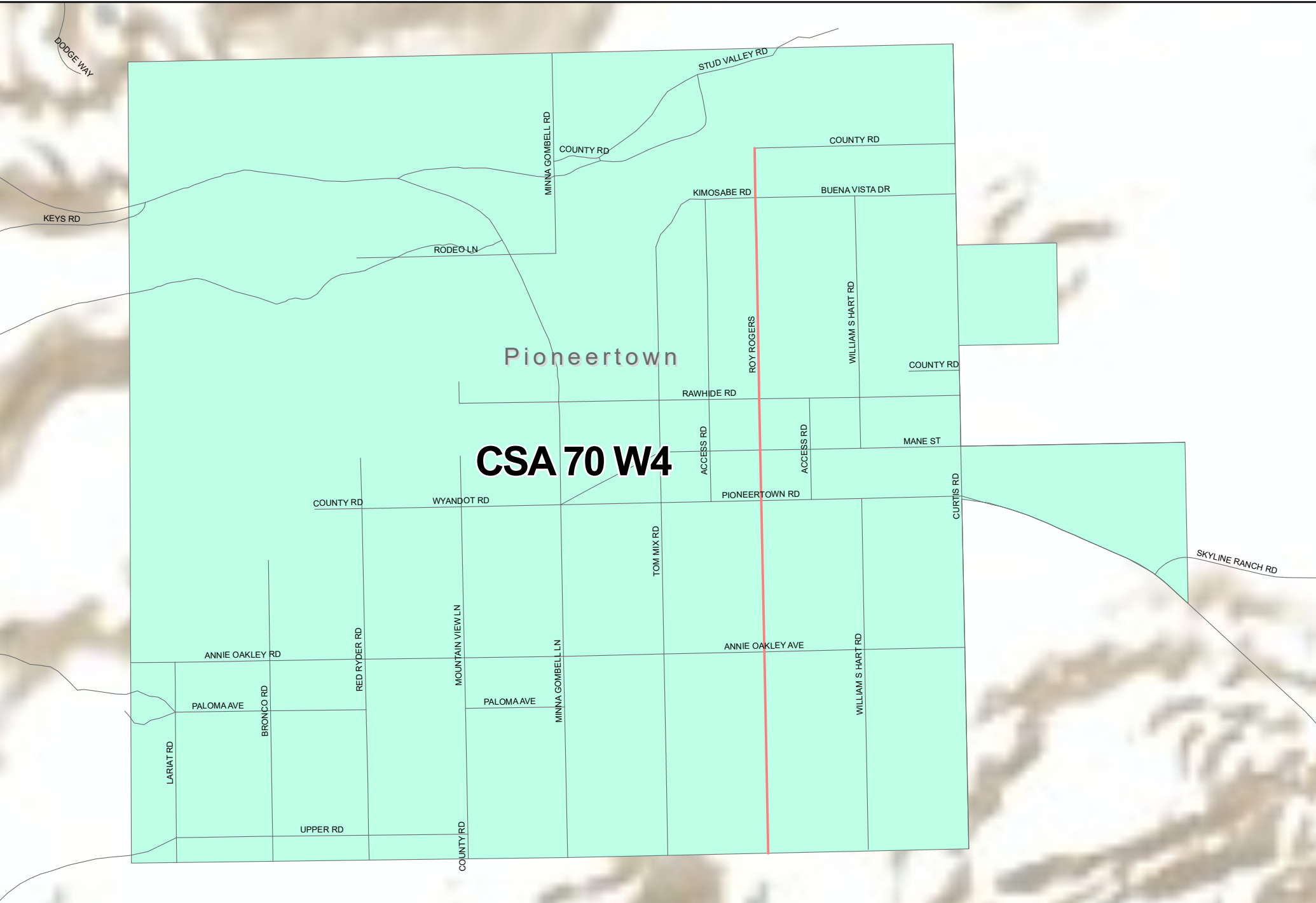
Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.

Map Created: 1/17/2017



**County Service Area 70 Zone
W-4 (Pioneertown)**

- a. Map**
- b. County of San Bernardino
Board Item 53 from
October 31, 2017**
- c. Hi-Desert Water District
Board Item from
December 12, 2017**
- d. Copy of Contract between
the County and Hi-Desert
Water District**



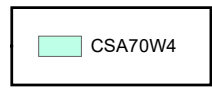
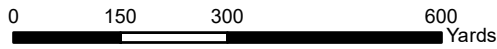
Pioneertown

CSA 70 W4

CSA 70 W4

Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.

Map Created: 5/18/2017



**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE BOARD GOVERNED COUNTY SERVICE AREAS
AND RECORD OF ACTION**

53

October 31, 2017

**FROM: JEFFREY O. RIGNEY, Director
Special Districts Department**

**SUBJECT: COUNTY SERVICE AREA 70 ZONE W-4 (PIONEERTOWN) WATER PIPELINE
AND SYSTEM IMPROVEMENT PROJECT**

RECOMMENDATION(S)

Acting as the governing body of Board Governed County Service Area 70, Zone W-4 (Pioneertown):

1. Adopt resolution which:
 - a. Approves the submittal of a grant application to the United States Department of Agriculture (USDA)-Rural Development requesting federal funding in the amount of \$2,500,000 for the Pioneertown Pipeline and Water System Improvement Project (Project).
 - b. Designates the Chair of the Board of Supervisors, Chief Executive Officer, or Director of Special Districts Department, as required by the USDA-Rural Development to participate in the loan and grant program, to conduct all negotiations and execute and submit all documents, including, but not limited to, applications, support documents and non-substantive amendments, upon review by County Counsel, in relation to the USDA grant application.
2. Direct the Chair of the Board of Supervisors, Chief Executive Officer, or Director of Special Districts Department to transmit all documents and amendments in relation to the USDA grant application to the Clerk of the Board of Supervisors within 30 days of execution.
3. Approve Water Exchange Agreement with the Hi-Desert Water District (HDWD) allowing CSA 70 W-4 access to groundwater within the Warren Valley Sub-basin in exchange for an equal amount of groundwater provided to HDWD from within the Ames/Reche Basin pursuant to the water rights of CSA 70 W-4 for a term of 20 years, with an annual service and exchange charge to CSA 70 W-4 of \$1,000 that increases by 5% after each five years of the agreement.

(Presenter: Jeffrey O. Rigney, Director, 387-5967)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS AND OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

Pursue County Goals and Objectives by Working with Other Agencies.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The overall estimated cost of the Project is \$5.5 million. This cost, which includes

engineering, planning, construction of a pipeline and pumping stations, and renovation of a HDWD well, has the following potential funding sources:

- On September 1, 2015 (Item No. 45), the Board of Supervisors (Board) approved the submittal of a grant application to the State Water Resources Control Board (SWRCB) requesting \$5.0 million under the Drinking Water State Revolving Fund for the Project. Of the \$5.0 million requested, initial indications are that SWCB may commit \$3.0 million in grant funding.
- With Board approval of this item, submittal of a grant application to the USDA requesting \$2.5 million to augment the SWRCB funding.

If one or both of these grant applications is successful, the Special Districts Department (Department) will return to the Board for acceptance of the grant(s) in accordance with County policy.

As for the Water Exchange Agreement, CSA 70 W-4 will pay HDWD a base ground well lease service and exchange charge of \$1,000 annually with 5% increases after each five years. This charge will be funded through the CSA 70 W-4 annual operating budget.

BACKGROUND INFORMATION

The domestic water system of CSA 70 W-4, which has been maintained and managed under the Department's Water and Sanitation Division since 1980, has 120 service connections in the desert community of Pioneertown north of Yucca Valley. The existing CSA 70 W-4 well water sources supplying Pioneertown contain elevated levels of fluoride, arsenic, and uranium that either exceed or are approaching the maximum contaminant levels (MCL) set by the Environmental Protection Agency and the California Department of Public Health. The tap water from these well sources is not potable and CSA 70 W-4 is currently providing bottled water for residents and businesses to meet their daily consumption needs.

In response to drinking water deficiencies, and in partnership with the Hi-Desert Water District (HDWD), the Wildlands Conservancy (Conservancy), and the SWRCB through grant funds sought under the Drinking Water State Revolving Fund, CSA 70 W-4 has developed the Pioneertown Pipeline and Water System Improvement Project (Project). The Project entails construction of a four-mile long water distribution pipeline to convey water from a HDWD water well in the Town of Yucca Valley by way of a new transfer tank and pump station located at the midpoint on a 1.5-acre site made available by the Conservancy. On September 26, 2017 (Item No. 47), the Board approved the purchase of this land from the Conservancy in the amount of \$4,500. Along with the acquisition of property, the Project is dependent on the execution of a water exchange agreement between CSA 70 W4 and the HDWD to provide access to untainted water. The Water Exchange Agreement with HDWD is a required stipulation to both SWRCB and USDA grant funding as the Project is not viable without securing a clean water source.

The Project involves the installation of approximately 21,000 linear feet of eight-inch diameter pipeline aligned with Pioneertown Road and includes two booster stations to move water from the HDWD Well 2w site at Sunland Drive to CSA 70 W-4 existing pipe infrastructure in the vicinity of Mane Street and Curtis Road in Pioneertown. Section 15063 of the California Environmental Quality Act (CEQA) Guidelines (Title 14, California Code of Regulations) required the preparation and public circulation of an Initial Study to evaluate the potential environmental impacts

associated with the Project. The Initial Study determined that no significant environmental effects would occur because mitigation measures will be implemented to reduce all potentially significant impacts to less than significant levels. A Mitigated Negative Declaration was prepared and adopted by the Board on September 1, 2015 (Item No. 45) to serve as the CEQA findings for the Project.

The USDA's Water and Waste Disposal Loan and Grant Program specifically addresses the most financially needy rural areas and towns with populations of 10,000 or less. The USDA has identified the Project as qualifying for grant funding under this program to pay for such costs as engineering, project management, installation of pipeline, and booster station equipment and pumps needed to provide potable water. Submission of this USDA electronic grant application seeks supplemental funding to bring the CSA 70 W-4 system into compliance with drinking water standards. The USDA application requires that an authorized agent(s) of CSA 70 W-4 be established by resolution before completion of the electronic grant application. The authorized representative(s) is required to approve designated roles for staff to complete the application.

The Water Exchange Agreement with HDWD provides CSA 70 W-4 with an uncontaminated source of water, which can provide Pioneertown with potable tap water. The agreement is designed to assist CSA 70 W-4 in serving its customers with water of sufficient quality and quantity (not more than 50 acre feet per year) to meet the legal requirements of the San Bernardino County Department of Environmental Health Services, SWRCB and all other legal requirements for domestic water service. As part of the agreement with HDWD, CSA 70 W-4 will gain the ability to extract water from HDWD Sunland Drive Well 2w Site and interconnect to the HDWD distribution system for temporary emergency service when necessary. This agreement with HDWD shall remain in effect for 20 years and automatically renew for an additional ten years unless terminated by written notice from either party.

PROCUREMENT

N/A

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Julie J. Surber, Supervising Deputy County Counsel, 387-5455 on October 6, 2017 and Dawn Martin, Deputy County Counsel, 387-5455 on October 10, 2017); Finance (Tom Forster, Administrative Analyst, 387-4635) on October 12, 2017; and County Finance and Administration (Matthew Erickson, Chief Administrative Analyst, 387-5423) on October 16, 2017.



Date: December 12, 2017
To: Board of Directors
From: Ed Muzik, General Manager
**Prepared/
Presented by:** Ed Muzik, General Manager

Pioneertown Water Project

Recommendation: The Board authorize the General Manager to enter into the Water Exchange Agreement between San Bernardino County Service Area 70, Zone W-4 and Hi-Desert Water District.

Fiscal Impact: To be determined.

Background: Hi-Desert Water District (HDWD) is willing to exchange water with County Service Area 70 W-4 (CSA 70 W-4) by allowing access to groundwater within the Warren Valley Subbasin for use by CSA 70 W-4, in exchange for an equal amount of groundwater provided to HDWD from within the Ames/Reche Basin pursuant to the water rights of CSA 70 W-4 when there is available capacity in the HDWD Mainstream well and water system and such water is available. CSA 70 W-4 will provide water to HDWD before extracting any water from the Warren Valley Subbasin. No HDWD water supply will be deemed to be dedicated for use by CSA 70 W-4 customers. This project is intended to provide a clean, reliable water supply to Pioneer Town, a community that is currently experiencing a water supply and quality emergency.

HDWD makes no representation concerning the quality of the water provided. CSA 70 W-4 shall be responsible for the quality of water provided to Pioneertown and shall be required to complete all required source and distribution water per State sampling guidelines. All water made available under this Agreement shall be for use by CSA 70 W-4 only and shall not be removed or rerouted for use by other agencies, water systems, or water haulers that deliver water outside of the CSA 70 W-4 service boundary.

CSA 70 W-4 shall be responsible for all engineering and construction work, and all improvements necessary to complete the interconnection between HDWD Well 2w and the HDWD water distribution system and CSA 70 W-4 transmission and distribution systems. CSA 70 W-4, at its sole cost, shall rebuild the well's pump and motor to its original specifications or replace it with equipment of the original equipment's equal.

HDWD shall provide at no cost to CSA 70 W-4, access for the life of this Agreement to the Sunland Drive Well 2w Site and the Interconnection site to allow construction, operation, maintenance and repair of Well 2w and the Interconnection by CSA 70 W-4. CSA 70 W-4 will be responsible for operating and maintaining all aspects of water production and extraction pertaining to Well 2w as generally outlined within the Agreement. CSA 70 W-4 shall adhere to all Warren Valley Basin Watermaster Rules and Regulations, current and as approved in the future.

CSA 70 W-4 shall install a flow meter of a size that suite the proper measurement of water extracted by Well 2w, and shall collect quarterly static groundwater surface elevations from Well 2w with equipment approved by HDWD. HDWD and CSA 70 W-4 shall reconcile the amount of water exchanged on an annual basis.

CSA 70 4-W will pay HDWD an “acquisition of service charge, a one-time fee, based on our current fee schedule and the meter size. In addition, CSA 70 4-W will pay a semi-annual fee of \$500 plus a 5% increase every 5 years, plus any other costs incurred by HDWD regarding this agreement.

The term of the agreement will be for 20 years, automatically renew for 10 year periods unless written notice is provided to cancel the agreement. Either party may terminate for cause upon 90 days written notice to the other Party.

CSA 70 4-W shall pay all costs associated with the preparation, review and approval of the Agreement.



**COUNTY SERVICE AREA 70
W-4
F A S
STANDARD CONTRACT**

FOR OFFICIAL USE ONLY

<input checked="" type="checkbox"/> New	FAS Vendor Code		Dept.	Contract Number	
<input type="checkbox"/> Change			SC	A	17-819
<input type="checkbox"/> Cancel					
ePro Vendor Number			ePro Contract Number		
COUNTY SERVICE AREA 70 W-4			Dept.	Orgn.	Contractor's License No.
			EDD	360	N/A
Contract Representative			Telephone		Total Contract Amount
			() -		
Contract Type					
<input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input checked="" type="checkbox"/> Unencumbered <input type="checkbox"/> Other:					
If not encumbered or revenue contract type, provide reason: <u>Added service can change associated costs</u>					
Commodity Code		Contract Start Date	Contract End Date	Original Amount	Amendment Amount
		January 1, 2017	January 1, 2037	\$1,000/yr	\$
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No. Amount
					\$
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No. Amount
					\$
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No. Amount
					\$
Project Name			Estimated Payment Total by Fiscal Year		
<u>Pioneertown Water Exchange</u>			FY	Amount	I/D
			17/18	1,000	—
			18/19	1,000	—
			19/20	1,000	—
			20/21	1,000	—
			21/22	1,000	—
			22/23	1,050	—

THIS CONTRACT is entered into in the State of California by and between the **COUNTY SERVICE AREA 70 W-4 (PIONEERTOWN)**, hereinafter called the **CSA 70 W-4**, and

Name
HI-DESERT WATER DISTRICT

Address
55439 Twentynine Palms Highway

Yucca Valley, CA

Telephone
(760) 365 - 8333

Federal ID No. or Social Security No.
On File

hereinafter called **HDWD**

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

WATER EXCHANGE AGREEMENT BETWEEN COUNTY SERVICE AREA 70, ZONE W-4 AND HI-DESERT WATER DISTRICT

This Agreement (the "Agreement") is entered into, by and between the Hi-Desert Water District ("HDWD") a County Water District organized and operating pursuant to the provisions of the County Water District Law, California Water Code Sections 30,000 et. seq., and County Service Area 70, Zone W-4 ("CSA 70 W-4"), a San Bernardino County Board of Supervisors-governed water district, which are hereafter collectively referred to as the "Parties."

<i>Auditor-Controller/Treasurer/Tax Collector Use Only</i>	
<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

RECITALS

WHEREAS, CSA 70 W-4 is a public agency authorized to provide water service within its boundaries; and

WHEREAS, the HDWD is also a public agency authorized to provide water service within its boundaries; and

WHEREAS, CSA 70 W-4 is unable to pump groundwater within CSA 70 W-4's boundaries of sufficient quality and quantity to meet the San Bernardino County Department of Environmental Health Services, the State Water Resources Control Board ("State Water Board"), or the State Clean Water Act requirements for domestic water service; and

WHEREAS, CSA 70 W-4 cannot currently meet its maximum contaminant levels for all primary drinking water standards or maximum day demand requirement and therefore cannot currently serve water to its customers in the Pioneertown portion of its service area of sufficient quality and quantity, which has resulted in a water service emergency situation; and

WHEREAS, CSA 70 W-4 and HDWD each has the right to pump groundwater from the Ames/Reche basin (which underlies lands near, but not within CSA 70 W-4) as confirmed in the Ames/Reche Groundwater Storage and Recovery Program and Management Agreement ("Ames/Reche Agreement"), a copy of which is attached as Exhibit A; and

WHEREAS, HDWD has rights to pump groundwater from within the Warren Valley Subbasin as confirmed by the Superior Court of San Bernardino County (the "Court") in its judgment pertaining to the case of Hi-Desert Water District vs. Yucca Valley Water Company Ltd., Case No. VCV 20368; and

WHEREAS, the Warren Valley Subbasin is an adjudicated basin in which the Board of Directors of the HDWD serve as the Court appointed Watermaster thereof; and

WHEREAS, the CSA 70 W-4 service area is located adjacent to HDWD's Service Area and also resides within HDWD's Sphere of Influence; and

WHEREAS, HDWD is willing to exchange water with CSA 70 W-4 by allowing access to groundwater within the Warren Valley Subbasin for use by CSA 70 W-4, in exchange for an equal amount of groundwater provided to HDWD from within the Ames/Reche Basin pursuant to the water rights of CSA 70 W-4 when there is available capacity in the HDWD Mainstream well and water system and such water is available, on the terms set forth below; and

WHEREAS, such a water exchange is designed to assist CSA 70 W-4 in serving its customers water in sufficient quality and quantity to meet the legal requirements of the San Bernardino County Department of Environmental Health Services, the State Water Board and all other legal requirements for domestic water service.

NOW THEREFORE, in consideration of the above and the mutual benefits that will accrue to the Parties in carrying out the terms of this Agreement, it is mutually understood and agreed as follows:

AGREEMENT

1. **Water Exchange:** On the terms set forth below, and to the extent there is unused conveyance capacity in the HDWD water system and unused capacity at HDWD's Mainstream Well to accommodate the needs of CSA 70 W-4, as well as sufficient CSA 70 W-4 Ames-Reche and HDWD Warren Valley Subbasin water supplies available to exchange, HDWD agrees to exchange water for the benefit of CSA 70 W-4 (hereafter referred to as the "Project"). HDWD will not be under any obligation to provide or deliver any water for the benefit of CSA 70 W-4 except to the extent an equivalent volume of water is extracted via HDWD's Mainstream Well using CSA 70 W-4 Ames/Reche allocations, and pursuant to all the terms and conditions contained herein. CSA 70 W-4 acknowledges that it is solely responsible for securing the entitlements required for HDWD to pump an amount of water equal to CSA 70 W-4's needs for Pioneertown from the Ames/Reche Basin, so long as the amount of water exchanged does not exceed 50 acre-feet in a single water year (October 1 – September 30) unless approved in writing by HDWD and so long as such additional exchange opportunities exist. CSA 70 W-4 acknowledges that this Project is for the benefit of Pioneertown and that HDWD will not "loan", sell, or otherwise advance any HDWD water or water entitlements to CSA 70 W-4 and that HDWD shall receive 50 acre feet of water from within the Ames/Reche Basin in advance of CSA 70 W-4 extracting water from within the Warren Subbasin.

Should CSA 70 W-4 produce from the Warren Valley Subbasin less than the 50 acre feet extracted by HDWD from the Ames/Reche Basin, then the unused balance will roll over to the next water year and HDWD will extract the balance required to meet that year's water exchange. The amount of water extracted by HDWD from the Ames/Reche Basin shall

not be allowed to fall negative in comparison to CSA 70 W-4's extractions from within the Warren Valley Subbasin. Should the CSA 70 W-4 violate any part of this Agreement, HDWD reserves the right in its sole discretion to impose restrictions by limiting CSA 70 W-4 extractions from within the Warren Valley Subbasin, reduce exchanges, sever interconnection ties, and/or terminate the Agreement per Section 13 of this Agreement. For purposes of Warren Valley Subbasin water rights accounting, all water produced for the benefit of CSA 70 W-4 within the Warren Valley Subbasin shall be considered to be produced under HDWD water rights.

The water required to serve CSA 70 W-4 under this Agreement will be extracted from within the Warren Valley Subbasin via HDWD's Well 2w, which well currently is and will remain the property of HDWD. These extractions will be offset by allowing the HDWD, through its Mainstream Well located in Pipes Canyon to extract an equal amount of water, pursuant to CSA 70 W-4's groundwater entitlements set forth in the Ames/Reche Agreement (including entitlements lawfully obtained via transfer or purchase under the Ames/Reche Agreement), and deliver such water to HDWD customers typically served by Warren Valley Subbasin groundwater wells.

The Parties acknowledge that the Project is intended to provide a clean, reliable water supply to Pioneertown - a community that is currently experiencing a water supply/quality emergency. Notwithstanding, the Parties also acknowledge that any and all CSA 70 W-4 customers are not now and will not become customers of HDWD, except with the written concurrence of HDWD. Accordingly, no HDWD water supply will be deemed to be dedicated for use by CSA 70 W-4 customers. The Parties acknowledge if, in the future, it is determined by HDWD there is or will be insufficient unused capacity in the Mainstream Well or within the HDWD water system, or water supply shortages within the Ames/Reche Basin or Warren Valley Subbasin, said water supply or capacity issues may lead to a further water supply/quality emergency in Pioneertown. As such, and in order to allow as much time as possible for CSA 70 W-4 to arrange an alternative water supply to Pioneertown, HDWD agrees to use best efforts to notify CSA 70 W-4 as soon as possible regarding any HDWD determination that there is not sufficient supply or conveyance capacity within the Warren Valley Subbasin, HDWD distribution system, or Ames/Reche Basin to meet the Pioneertown water demand. HDWD shall have no duty to provide water to CSA 70 W-4 if the CSA 70 W-4 Ames/Reche supplies are not first made available and actually pumped by HDWD.

HDWD makes no representation concerning the quality of the water provided. CSA 70 W-4 shall be responsible for the quality of water provided to Pioneertown, including the dosage of chemicals such as chlorine, and shall be required to complete all required source and distribution water sampling per State sampling guidelines. Results of those samples shall be delivered to HDWD by the 10th of each month. Should any required source and distribution sample be tested for the presence or absence of coliform, as required by the State, and that analysis yields a positive result for coliform, and is either positive or negative for E-coli, then CSA 70 W-4 shall immediately, but no more than 24 hours from the time CSA 70 W-4 was notified of the positive sample, notify HDWD per the State of California's Groundwater Rule. CSA 70 W-4 shall provide HDWD with a map showing each location of its dedicated sampling sites as well as its sampling plan 30 days prior to CSA 70 W-4's first use of water under this Agreement. HDWD will not agree to assist in the notification of CSA 70 W-4 customers as may be required for any emergency water quality notification required by the State or County.

CSA 70 W-4 administrators shall submit to the HDWD, by the 10th of each month, a water availability request on the form provided as Exhibit B, outlining the estimated water required to meet Pioneertown water demands for the following month. Each request shall be reviewed by HDWD staff and be subject to HDWD approval. The first installment of Exhibit B shall be provided to HDWD at least 30 days prior to the first production of water from Well 2w under this Agreement for the benefit of Pioneertown.

All water made available under this Agreement shall be for use by CSA 70 W-4 only and shall not be removed or rerouted for use by other agencies, water systems, or water haulers that deliver water outside of the CSA W-4 service boundary. Water from Well 2w may be untracked for firefighting purposes, however, all system maintenance such as flushing, as well as water used for construction purposes shall be metered and reported to HDWD by the 10th of each month. Upon request, CSA 70 W-4 shall make available, within 14 business days, the total billed water amounts used by CSA 70 W-4 accounts. CSA 70 W-4 shall, at a minimum, adopt and enforce all State of California Emergency Drought Regulations and landscape water use ordinances that are either equal to or more stringent than the State's Model Landscape Ordinance, including any amendments or changes to that ordinance, or to state law or regulations related to water conservation.

1. Engineering and Construction Work: CSA 70 W-4 shall be responsible for the preparation and funding of engineering drawings and specifications, advertisement for bids, and construction of all work and improvements necessary to complete an interconnection between the HDWD Well 2w-23- the HDWD water distribution system and CSA 70 W-4

transmission and distribution systems (all pipelines, booster stations, and appurtenances constructed on HDWD property or within its service boundaries shall hereafter collectively be referred to as the "Interconnection"). As part of this Agreement, CSA 70 W-4 shall remove, repair, rehabilitate, and reinstall HDWD Well 2w, which is currently not able to produce water due to equipment failure. CSA 70 W-4, at its sole cost, shall rebuild the well's pump and motor to its original specifications or replace it with equipment of the original equipment's equal. CSA 70 W-4 will then open and maintain its own account for all Well 2w and Interconnection operations with the area's electrical service provider for the duration of this Agreement. All Well 2w's electricity service and electricity usage charges will become the responsibility of CSA 70 W-4. The Interconnection will be constructed at or near the HDWD Well 2w site (located on APN 0594-061-05) at Sunland Drive between Wamego Trail and Pioneertown Road in Yucca Valley ("HDWD Well 2w Site"). Any work and cost to develop the Interconnection and any other facilities necessary to move Project water from the HDWD Well 2w site and emergency interconnect port to CSA 70 W-4, and then from CSA 70 W-4 to its customers, including permitting and CEQA compliance, will be the responsibility of CSA 70 W-4. HDWD shall have the right and opportunity to review and inspect all Project / Interconnection, and Well 2w facilities being installed / work being performed on HDWD property and/or CSA 70 W-4 work affecting HDWD facilities.

The Interconnection, as well as the interconnect pipeline and pump facilities needed to transfer water from HDWD Well 2w site at Sunland Drive to CSA 70 W-4 existing pipe infrastructure in the vicinity of Mane Street and Curtis Road in Pioneertown, will be fully constructed, owned, operated, and maintained by CSA 70 W-4. In total, CSA 70 W-4 intends to construct approximately 21,000 linear feet of eight-inch diameter pipeline along with two booster stations to move water from the Interconnection point and/or existing CSA 70 W-4 facilities to Pioneertown. Prior to construction of said facilities, CSA 70 W-4 shall provide HDWD with a set of detailed plans and specifications which will include a signature block for the HDWD General Manager to sign approving the Project/Interconnection facilities to be constructed as designed, including where those facilities are shown within those described to be part of the Interconnection. CSA 70 W-4 agrees to not begin construction of these Project or Interconnection facilities until HDWD has approved the plans. Two (2) copies of these plans shall be provided to HDWD on 24"x36" paper with one (1) electronic copy provided on a disc or thumb drive. CSA 70 W-4 agrees to have all changes during construction, either in material or design, approved by HDWD prior to approving the change as it relates to those appurtenances, materials, or construction activities taking place on HDWD property. Should HDWD require additional material or work as part of the required change, then said changes shall be performed at the cost of CSA 70 W-4. The approved plans, once prepared for construction, shall become EXHIBIT C to this Agreement. These plans shall be as-built and a final copy of the plans delivered to HDWD upon completion of the Project/Interconnection facilities with one 24" X 36" mylar plan set, and one electronic version on a disc or thumb drive. The final as-built plans shall replace the original plans in their entirety within EXHIBIT C once approved by the HDWD that such plans reflect the actual construction performed.

3. Lower Booster Station Site Use and Access: HDWD shall provide at no cost to CSA 70 W-4, access for the life of this Agreement to the Sunland Drive Well 2w Site and the Interconnection site to allow for construction, operation, maintenance and repair of Well 2w and the Interconnection by CSA 70 W-4. HDWD shall make available to CSA 70 W-4 on the Well 2w Site Sunland Drive Well Site, at an exact location agreed to by the Parties, sufficient space for the Interconnection described above (approximately 35-foot by 75-foot in size) near the southeast corner of the parcel. The Lower Booster Station site shall be made available to CSA 70 W-4 for the purposes of conveying water from the site to Pioneertown and remain available for CSA 70 W-4 use as long as CSA 70 W-4 uses such space for the purposes stipulated under this Agreement in compliance with the terms and conditions outlined within Section 12 of this document. CSA 70 W-4 shall prepare a "right of entry" agreement outlining the required area needed for CSA 70 W-4 to properly maintain and operate equipment on HDWD property. Subject to HDWD concurrence, the agreement will be approved and executed by HDWD and included as Exhibit D to this Agreement.

Well 2w and all Interconnection equipment requiring limited access, such as the booster facility and other appurtenances that are located on HDWD property, shall be fenced by and at the cost of CSA 70 W-4 with a minimum of one (1) 12' drive gate and one (1) 3' walk gate. HDWD shall have access to all equipment in case of emergency and all gates shall be secured by "daisy" chaining a lock of HDWD's choice. HDWD agrees to attempt to contact CSA 70 W-4 should any emergency arise which requires HDWD's entry into the facility. HDWD agrees not to make any changes to the operation of CSA 70 W-4 installed equipment; however, HDWD has the right to shut down or terminate the water service described in this Agreement under emergency conditions that are not responded to by CSA 70 W-4 within one (1) hour of notification by HDWD. HDWD does not take responsibility for any State required measures, manpower, cost, or equipment needed to re-start the system resulting from the termination of water service.

4. Well 2w Maintenance: CSA 70 W-4 will be responsible for operating and maintaining all aspects of water production and extraction pertaining to Well 2w as generally outlined within the Agreement and as specifically required by industry standards, State regulations, and any rules, regulations, and standard operating procedures applied by CSA 70 W-4.

CSA 70 W-4 shall adhere to all Warren Valley Basin Watermaster Rules and Regulations, current and as approved in the future, (with the current regulations attached as EXHIBIT E), and shall respond to any required repairs of Well 2w as necessary including those brought to CSA 70 W-4's attention by HDWD employees. Should CSA 70 W-4 not respond to repairs that require immediate attention, such as but not limited to excessive leaks and/or threats to public safety and health, HDWD may elect to complete the necessary repair in which case CSA 70 W-4 will be liable for all costs incurred by the repair.

5. Metered Connection: CSA 70 W-4 shall install a flow meter of a size that suits the proper measurement of water extracted by Well 2w. The meter shall be equipped with a meter mounted signal converter on the discharge header of Well 2w. The meter shall include the capability to be read directly by HDWD staff and to indicate instantaneous flow in addition to total flow and shall be connected to the CSA 70 W-4 SCADA system. The meter shall be used for purposes of reconciliation of the volume of water extracted by CSA 70 W-4 from within the Warren Subbasin or provided through the HDWD's distribution system under this Agreement. HDWD shall have the right to request meter calibration, bench testing and/or replacement in accordance with the San Bernardino County Special Districts Department's standard operating policy, the AWWA standards, the meter manufacturer's recommendations and/or any written policy maintained by the HDWD. HDWD shall also have the right to receive information related to water conveyance generated by the CSA 70 W-4 SCADA system, upon request. CSA 70 W-4 shall report to HDWD, the total amount of water used by the 10th of each month for the prior month's extractions. Additional meters may be installed by CSA 70 W-4 as deemed necessary by the agency to track the production and flow of water.
6. Watermaster Monitoring: CSA 70 W-4 shall collect quarterly static groundwater surface elevations from Well 2w with equipment approved by HDWD using the Water Year format described in Section 1. The results of the measurements shall be reported to HDWD by the 10th of the following month. HDWD reserves the right to take additional measurements as needed. In addition, CSA 70 W-4 shall collect one (1) nitrate and one (1) Total Dissolved Solids Sample semi-annually using the Water Year format described in Section 1 of this Agreement. The results of the testing of those samples shall be reported to HDWD by the 10th of the following month.

Water Reconciliation: HDWD and CSA 70 W-4 agree that the Parties shall reconcile the amount of water exchanged using the meter described in Section 5 above and the meter currently in use at the Mainstream Well. During the first water year following approval of this Agreement, CSA 70 W-4 agrees that HDWD shall extract 50 acre-feet at any time it requires. Following the first water year, HDWD will adjust its extractions to match the water extracted by CSA 70 W-4 providing credit for previously extracted water.

8. Service and Exchange Charges: Prior to producing water from Well 2w, CSA 70 W-4 shall pay to HDWD an "acquisition of service charge," a one-time fee, based on the HDWD approved fee schedule, at the time of initiation of service. This charge will be based upon the meter size required for the proper measurement of water as extracted by Well 2w. On a semi-annual basis, with the first installment owed at the time of start-up of Well 2w, CSA 70 W-4 shall also pay to HDWD a "Groundwater Well Lease" base charge in the amount of \$500.00. This amount shall increase at a rate of 5% after each five (5) years of service until the end of the Agreement. The amount may be re-negotiated by both Parties if the term of the Agreement is extended. The base charge to be paid by CSA 70 W-4 to HDWD assumes the minimal amount in expense being incurred by HDWD under the Agreement. HDWD will invoice CSA 70 W-4 for the base charge with a net 30-day payment term. If payment is not received by HDWD within the allotted 30-day period, water service under this Agreement shall be terminated and the provision of notices under Section 13 will not be required. If HDWD is able to demonstrate expenses that exceed the base rate amount determined in a given year and expenses represent reasonable charges incurred by HDWD in exchanging water with CSA 70 W-4 under this Agreement, including: capital, operational maintenance, administration and replacement costs, increased cost from any necessitated purchase of supplemental power (including reasonable credit for any offsetting benefit for the use of the conveyance system), and any other proper charge (see Water Code, section 1811(c)), CSA 70 W-4 shall reimburse HDWD for those incurred expenses. In such cases, HDWD is to provide an itemized listing of all expenses and their corresponding need to demonstrate representative cost incurred exceeding the base charge and invoice CSA 70 W-4 annually for such expenses that exceed the base charge.
9. CSA 70 W-4 Duty to Maintain Minimum Groundwater Credits: As a party to the Ames/Reche Agreement and the August 7, 2014 Amended Judgment in the case entitled *Bighorn Mountains Water Agency v. Hi-Desert Water District* (Riverside Superior Court Case No. 211504), CSA 70 W-4 has groundwater rights and a groundwater storage account in the Ames/Reche Basin. The volume of water in the storage account is maintained by the Mojave Water Agency, which tracks groundwater entitlements arising from each party's: Annual Baseline Amount; carryover credits; and any purchased/transferred credits. CSA 70 W-4 shall take all measures necessary to ensure that its storage account is never depleted or diminished to the extent that it would interfere with the intended purposes of this Agreement. Should supplies within the Ames/Reche Basin be depleted, Section 13 of the Agreement will be triggered.

10. Purchase of Supplemental Water Supplies: CSA 70 W-4 shall be responsible for purchasing, as required by the Ames/Reche Agreement, all supplemental water required to allow HDWD to extract the exchanged water from the Ames/Reche Basin. Should supplies within the Ames/Reche Basin become exhausted or otherwise inaccessible by HDWD's Mainstream Well, HDWD may coordinate, at its discretion and at a cost borne by CSA 70 W-4, the purchase of supplemental water supplies from the Mojave Water Agency for the benefit of CSA 70 W-4. Such supplies would be recharged to the Warren Valley Subbasin and all costs associated with such transactions, including those required by HDWD to complete such a transaction, shall be borne by CSA 70 W-4 and promptly paid upon request by HDWD.
11. Environmental Review: CSA 70 W-4 is the lead agency for the Project's / Project / Interconnection facilities' current California Environmental Quality Act (CEQA) compliance document, which has already been released for public comment. CSA 70 W-4 prepared an initial study and CEQA checklist for the Project complete with all technical surveys and submitted it for public review through the State Clearinghouse along with mailed notices for the required notification area. Comments were received and addressed, including comments from the HDWD. On September 1, 2015 the County Board of Supervisors Adopted a Mitigated Negative Declaration for the Pioneertown Water System Improvements Project and a Notice of Determination has been filed along with the Mitigated Negative Declaration. CSA 70 W-4 shall be the lead agency for any further CEQA compliance that may be needed for the Project, the Project/Interconnection facilities or this Agreement.
12. Term of Agreement: This Agreement shall remain in effect for 20 years from the date of the last signature below, or until such shorter time as both Parties agree, in writing, to revise or repeal this Agreement. This Agreement shall automatically renew for an additional ten years unless any Party provides written notice of its intent to terminate the Agreement 180 days prior to expiration of the original 20-year term. This Agreement shall continue to renew in ten-year increments thereafter and on the terms described herein.
13. Termination: Either Party may terminate this Agreement for cause, including but not limited to, if the General Manager of HDWD determines that there is no longer available capacity to meet the terms of this Agreement within the HDWD system, the Warren Subbasin, the Ames/Reche Basin or HDWD's Mainstream Well, upon ninety (90) days written notice to the other Party. Should the non-terminating party wish to continue the terms of the Agreement or propose an alternative arrangement, the Parties agree to meet within 30 days of a written request for such meeting delivered to the terminating party.
14. Cost of the Agreement: CSA 70 W-4 shall pay all costs associated with the preparation, review and approval of the Agreement by both Parties.
15. Assignment: No Party may assign or transfer its rights or obligations under this Agreement without the express written consent of the other Party, which shall not be unreasonably withheld except that this Agreement shall inure to the benefit of, and be binding upon, the lawful successors in interest of each Party.
16. Insurance: CSA 70 W-4 and HDWD are self-insured public entities for purposes of Automobile Liability, General Liability, and Workers' Compensation. CSA 70 W-4 and HDWD warrant that through their programs of self-insurance, they have adequate Automobile Liability, General Liability and Workers' Compensation to provide coverage for liabilities arising out of each Party's performance of this Agreement.
17. Indemnification: CSA 70 W-4 shall indemnify, defend, and hold HDWD, the Warren Valley Basin Watermaster, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts or omissions or willful misconduct of CSA 70 W-4, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with this Agreement, including without limitation the payment of all consequential damages and reasonable attorney's fees and other related costs and expenses.
18. Employers Responsibilities to Employee(s) and Others: Each Party agrees to maintain its required insurance(s), including but not limited to Worker's Compensation Insurance, to protect itself while each Parties' employee(s) are performing tasks related to the terms within this Agreement from any and all claims of any kind or nature for damage to property or personal injury, including death, that may arise from activities performed or facilitated by this Agreement, whether these activities are performed by its employees, agents, or anyone directly engaged or employed by that Party or its agents.
19. Entire Agreement: This writing constitutes the entire Agreement between the Parties with respect to the subject matter hereof, and supersedes all oral or written representations or written agreements, which may have been entered into between the Parties prior to the execution of this Agreement.

-J. Counterparts: This Agreement may be executed in counterparts, each of which shall be an original and all of which when taken together shall constitute one and the same instrument.

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COUNTY SERVICE AREA 70 W4 (Pioneertown)

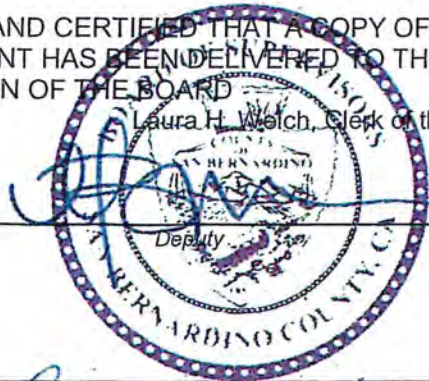
▶ Robert A. Lovingood
Robert A. Lovingood, Board Chairman

Dated: OCT 31 2017

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Laura H. Welch, Clerk of the Board

By _____



Hi-Desert Water District

(Print or type name of corporation, company, contractor, etc.)

By ▶ _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address _____

Reviewed as to Legal Form

▶ Dawn Martin
Counsel - Dawn Martin

Date 10/23/17

Reviewed by Contract Compliance

Division Manager - Tim Millington,

Date _____


Presented to Board for Signature

▶ Jeffrey O. Rigner
Director - Jeffrey O. Rigner

Date 10-23-17

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE : FEBRUARY 14, 2018 
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM 10: LEGISLATIVE REPORT

RECOMMENDATION:

Staff recommends that the Commission:

1. Accept the Legislative Report;
2. Indicate its support for the Omnibus Bill; and,
3. Provide direction to staff on legislation of interest or future actions, if any.

BACKGROUND:

The 2018 Legislative Session has begun and the CALAFCO Legislative Committee has met to review positions on pending legislation and the sponsorship of legislation for the upcoming year. Attachment #1 is the current CALAFCO Daily Legislative Report which indicates a "Watch" position for the eight bills shown as a Priority 1 and Priority 3 (there are no Priority 2 bills at this time).

The legislative cycle requires that bills must be introduced by no later than February 16, 2018 in order to be heard. So, the Annual Assembly Local Government Committee Omnibus bill, which provides for non-substantive, technical changes/corrections to the Cortese-Knox Hertzberg Local Government Reorganization Act, needs to be published by this date. The CALAFCO Board of Directors and Legislative Committee have supported the inclusion of seven items in the Omnibus Bill for 2018. Four of these proposals have generated no feedback in their preliminary review at the State level:

1. Change to Govt. Code Section 56046 and the addition of Govt. Code Section 56079.5– Clarification of the definition of "inhabited territory" and to eliminate confusion by adding a definition for "uninhabited territory";

56046. "Inhabited territory" means territory within which there reside 12 or more registered voters. The number of registered voters, as determined by the

elections officer, shall be established as ~~of~~ the date a certificate of filing is issued by the executive officer.

56079.5. "Uninhabited territory" means territory within which there reside fewer than 12 registered voters. The number of registered voters, as determined by the elections officer, shall be established as the date a certificate of filing is issued by the executive officer.

2. Change to Govt. Code Section 56157 – Clarification of the notice requirements for protest proceedings clearly identifying that they apply to only those within the boundary to eliminate potential for confusion. Language of proposed change included as Attachment #2.
3. Change to 56375(o) – Clarification as to the requirement for property tax determination for disincorporation. The proposed language is:

56375 (o) If the proposal includes the incorporation of a city, as defined in Section 56043, or the formation of a district, as defined in Section 2215 of the Revenue and Taxation Code, the commission shall determine the property tax revenue to be exchanged by the affected local agencies pursuant to Section 56810. *If the proposal includes the disincorporation of a city, as defined in Section 56034, the commission shall determine the property tax revenue to be exchanged by the affected local agencies pursuant to Section 56813.*

4. Change to Govt. Code Section 56668(a) –Removal of “per capita” from the statute.

56668. Factors to be considered in the review of a proposal shall include, but not be limited to, all of the following:

(a) Population and population density; land area and land use; ~~per capita~~ assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.

Three proposed elements of the Omnibus Bill have required additional discussion by the Legislative Committee and members of the Assembly Local Government Staff. They are:

1. Change to Govt. Code Section 56015 – Clarification of the definition of “affected territory” to clearly include the various types of applications the Commission receives. The revised language is shown in italics below:

56015. “Affected Territory” means any territory for which a change of organization, reorganization, or sphere of influence change, is proposed or ordered, *or any territory to which services are proposed to be provided pursuant to sections 56133, 56133.5 and 56134.*

2. Change to Govt. Section 56325 through 56335 – Clarification of the provisions related to seating of Commissioners to eliminate confusion for special seats on the Los Angeles, Sacramento, Santa Clara, San Diego, and Kern LAFCOs and an internal reorganization to make for easier reading. A copy of the proposed language is included as Attachment #3 but it has no impact on San Bernardino LAFCO.
3. Change to Govt. Code Section 56332 – These are changes proposed to the Special Districts Selection Committee process to fill in voids that have occurred in the real world processing of the elections for Special District seats on the Commission. Attachment #4 to this report includes the proposed language.

At the CALAFCO Legislative Committee meeting on January 13, 2018, the CALAFCO Executive Director identified several potential bills that could impact LAFCOs as well as several potential items that may become bills by the February 16 deadline. The ones with the potential for processing this year are:

1. The Eastern Municipal Water District (EMWD) is contemplating legislation which will give to the State Water Resources Control Board the ability to form new public water districts by reorganizing existing public, private and mutual water providers (which can be non-contiguous). A subcommittee from the CALAFCO Legislative Committee has been convened to work with EMWD on this developing legislation.
2. Senator Hertzberg is contemplating amendments to his SB 778 related to consolidations and extension of services for both water and wastewater services to be handled in an expedited process by the State Water Resources Board. A subcommittee has been approved by the CALAFCO Legislative Committee to work with the Executive Director on responses to any proposed amendments.

In addition, the efforts of the Legislature looking at Special Districts, their numbers and their governance and financial structures continues. The League of California Cities is contemplating an effort this Legislative Year to address the potential return of the per capita revenues for inhabited annexations and/or incorporations. A subcommittee of the CALAFCO Legislative Committee has been formed to work with the League when and if they chose to move forward.

If there are other pieces of legislation that Commissioners are aware of that should be brought to the attention of CALAFCO or you wish staff to review in more detail, please provide the bill number reference and we will be happy to comply. Staff will be happy to answer any questions prior to or at the hearing.

KRM

Attachments:

1. CALAFCO Daily Legislative Report – Dated February 12, 2018
2. Omnibus Bill Proposed Changes to Government Code Section 56157
3. Omnibus Bill Proposed Changes to Government Code Section 56325 to 56335
4. Omnibus Bill Proposed Changes to Government Code Section 56332

**CALAFCO Daily Legislative
Report –
Dated February 12, 2018**

Attachment 1

CALAFCO Daily Legislative Report as of Monday, February 12, 2018

1

AB 2050 (Caballero D) Small System Water Authority Act of 2018.

Current Text: Introduced: 2/6/2018 [html](#) [pdf](#)

Introduced: 2/6/2018

Status: 2/7/2018-From printer. May be heard in committee March 9.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary:

Would create the Small System Water Authority Act of 2018 and state legislative findings and declarations relating to authorizing the creation of small system water authorities that will have powers to absorb, improve, and competently operate noncompliant public water systems. The bill would define various terms and require a change in organization to be carried out as set forth in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

Position: Watch

Subject: LAFCo Administration, Municipal Services, Water

CALAFCO Comments: This bill is sponsored by Eastern Municipal Water District and the CA Municipal Utilities Assoc. The intent is to give the State Water Resources Control Board (SWRCB) authority to mandate the dissolution of existing drinking water systems (public, mutual and private) and authorize the formation of a new public water system. The focus is on non contiguous systems. The SWRCB already has the authority to mandate consolidation of these systems, this will add the authority to mandate dissolution and formation of new public agencies.

CALAFCO met with the sponsors several times and they indicate a desire to work with LAFCOs on creating a process that works. However, it is our understanding that LAFCOs will lack any discretion in the dissolution of any public water agency mandated by the SWRCB and the formation of a new entity as mandated by the SWRCB. CALAFCO will continue to work with the sponsors and author.

SB 778 (Hertzberg D) Water systems: consolidations: administrative and managerial services.

Current Text: Amended: 7/13/2017 [html](#) [pdf](#)

Introduced: 2/17/2017

Last Amended: 7/13/2017

Status: 9/1/2017-Failed Deadline pursuant to Rule 61(a)(12). (Last location was APPR. on 8/23/2017)(May be acted upon Jan 2018)

Desk	Policy	Fiscal	Floor	Desk	Policy	2 year	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary:

Would require, on or before March 1, 2018, and regularly thereafter, as specified, the State Water Resources Control Board to track and publish on its Internet Web site an analysis of all voluntary and ordered consolidations of water systems that have occurred on or after July 1, 2014. The bill would require the published information to include the resulting outcomes of the consolidations and whether the consolidations have succeeded or failed in providing an adequate supply of safe drinking water to the communities served by the consolidated water systems.

Position: Watch
Subject: Municipal Services

3

AB 1889 (Caballero D) Santa Clara Valley Water District.

Current Text: Introduced: 1/18/2018 [html](#) [pdf](#)

Introduced: 1/18/2018

Status: 2/5/2018-Referred to Com. on L. GOV.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary:

The Santa Clara Valley Water District Act authorizes the district to impose special taxes at minimum rates according to land use category and size. The district act authorizes the district to provide an exemption from these taxes for residential parcels owned and occupied by one or more taxpayers who are at least 65 years of age, or who qualify as totally disabled, if the household income is less than an amount approved by the voters of the district. This bill would authorize the district to require a taxpayer seeking an exemption from these special taxes to verify his or her age, disability status, or household income, as prescribed. The bill would authorize the board of directors of the district to provide the exemption.

Position: Watch

AB 2019 (Aguiar-Curry D) Health care districts.

Current Text: Introduced: 2/5/2018 [html](#) [pdf](#)

Introduced: 2/5/2018

Status: 2/6/2018-From printer. May be heard in committee March 8.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary:

Current law authorizes local health care districts to exercise specified powers, including purchasing and using property for the benefit of the district and exercising the power of eminent domain to acquire real or personal property necessary to the exercise of the district's powers. Current law authorizes a district to include incorporated or unincorporated territory, or both, or territory in one or more counties, subject to specified limitations. This bill would make technical, nonsubstantive changes to a provision of the Local Health Care District Law.

Position: Watch

CALAFCO Comments: This is a spot bill.

SB 522 (Glazer D) West Contra Costa Healthcare District.

Current Text: Amended: 1/3/2018 [html](#) [pdf](#)

Introduced: 2/16/2017

Last Amended: 1/3/2018

Status: 1/30/2018-In Assembly. Read first time. Held at Desk.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary:

Current law provides for the formation of local health care districts and specifies district powers. Under existing law, the elective officers of a local health care district consist of a board of hospital directors consisting of 5 members, each of whom is required to be a registered voter residing in the district and whose term shall be 4 years, except as specified. This bill would dissolve the existing elected board of directors of the West

Contra Costa Healthcare District, effective January 1, 2019, and would require the Board of Supervisors of the County of Contra Costa, at its election, to either serve as the district board or appoint a district board, as specified.

Position: Watch

Subject: Special Districts Governance

SB 561 (Gaines R) Fallen Leaf Lake Community Services District: elections.

Current Text: Amended: 1/23/2018 [html](#) [pdf](#)

Introduced: 2/17/2017

Last Amended: 1/23/2018

Status: 1/30/2018-Read third time. Passed. (Ayes 36. Noes 0.) Ordered to the Assembly. In Assembly. Read first time. Held at Desk.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary:

Under current law, the Fallen Leaf Lake Community Services District is a resident voting district. This bill, notwithstanding existing law, would provide that voters who are residents of the district, and voters who are not residents but either own a real property interest in the district or have been designated by the owner of a real property interest to cast the vote for that property, may vote in a district election in the Fallen Leaf Lake Community Services District.

Position: Watch

Subject: Special Districts Governance

SB 623 (Monning D) Water quality: Safe and Affordable Drinking Water Fund.

Current Text: Amended: 8/21/2017 [html](#) [pdf](#)

Introduced: 2/17/2017

Last Amended: 8/21/2017

Status: 9/1/2017-From committee: Without recommendation. (Ayes 11. Noes 0.) (September 1) Re-referred to Com. on RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary:

Would establish the Safe and Affordable Drinking Water Fund in the State Treasury and would provide that moneys in the fund are continuously appropriated to the State Water Resources Control Board. The bill would require the board to administer the fund to secure access to safe drinking water for all Californians, while also ensuring the long-term sustainability of drinking water service and infrastructure. The bill would authorize the state board to provide for the deposit into the fund of federal contributions, voluntary contributions, gifts, grants, bequests, and settlements from parties responsible for contamination of drinking water supplies.

Position: Watch

Subject: Water

SB 922 (Nguyen R) Local government: planning.

Current Text: Introduced: 1/23/2018 [html](#) [pdf](#)

Introduced: 1/23/2018

Status: 2/1/2018-Referred to Com. on RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary:

Current law, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, makes certain findings and declarations relating to local government organizations,

including, among other things, the encouragement of orderly growth and development, and the logical formation and modification of the boundaries of local agencies, as specified. This bill would make nonsubstantive changes to these findings and declarations.

Position: Watch

Subject: LAFCo Administration

CALAFCO Comments: This is a spot bill. CALAFCO will watch.

Total Measures: 8

Total Tracking Forms: 8

2015-10-14 AM

**Omnibus Bill Proposed
Changes to Government
Code Section 56157**

Attachment 2

**Proposed code revision(s)
Red/strikethrough/underlined format**

56157.

When mailed notice is required to be given to:

(d) Landowners within the affected territory, it shall be addressed to each person to whom land is assessed, as shown upon the most recent assessment roll being prepared by the county at the time the proponent adopts a resolution of application pursuant to Section 56654 or files a notice of intention to circulate a petition with the executive officer pursuant to subdivision (a) of Section 56700.4, at the address shown upon the assessment roll and, in the case of Commission proceedings as defined in Section 56028, to all landowners within 300 feet of the exterior boundary of the property that is the subject of the hearing at least 21 days prior to the hearing. This requirement may be waived if proof satisfactory to the commission is presented that shows that individual notices to landowners have already been provided by the initiating agency. Notice also shall be either posted or published in accordance with Section 56153 in a newspaper of general circulation that is circulated within the affected territory 21 days prior to the hearing.

(f) ~~To all r~~Registered voters within the affected territory, to the address as shown on the most recent index of affidavits prepared by the county elections official at the time the proponent adopts a resolution of application pursuant to Section 56654 or files a notice of intention to circulate a petition with the executive officer pursuant to subdivision (a) of Section 56700.4 and, in the case of Commission proceedings as defined in Section 56028, to all registered voters within 300 feet of the exterior boundary of the property that is the subject of the hearing at least 21 days prior to the hearing. This requirement may be waived if proof satisfactory to the commission is presented that shows that individual notices to registered voters have already been provided by the initiating agency. Notice shall also either be posted or published in accordance with Section 56153 in a newspaper of general circulation that is circulated within the affected territory 21 days prior to the hearing.

**Omnibus Bill Proposed
Changes to Government
Code Section 56325 to 56335**

Attachment 3

Proposed code revision(s)
“Clean” format

56325. There is hereby continued in existence in each county a local agency formation commission. The commission shall consist of members appointed as follows:

(a) County members shall be appointed to the commission pursuant to this subdivision.

(1) If there are one or more cities in the county, two members appointed by the board of supervisors from its own membership. The board of supervisors shall appoint a third supervisor who shall be an alternate member of the commission. The alternate member may serve and vote in place of any supervisor on the commission who is absent or who disqualifies himself or herself from participating in a meeting of the commission.

(2) If there is no city in the county, members shall be appointed as follows:

(A) Three members, appointed by the county board of supervisors from its own membership;

(B) One alternate member, appointed by the county board of supervisors from its own membership;

(3) If the office of a regular county member becomes vacant, the alternate member may serve and vote in place of the former regular county member until the appointment and qualification of a regular county member to fill the vacancy.

(b) City members shall be appointed to the commission pursuant to this subdivision.

(1) If there are one or more cities in the county, two members appointed by the city or cities in the county, each of whom shall be a mayor or council member, appointed by the city selection committee pursuant to Section 56335. The city selection committee shall also appoint one alternate member who shall also be a mayor or council member and shall be appointed and serve pursuant to Section 56335.

(2) City members shall be appointed to each commission specified below as follows:

(A) In Kern County, and in addition to the two city members and one alternate city member identified in paragraph (1), one member of the legislative body of the city in the county having the largest population of the county, appointed by the legislative body of the city. The legislative body shall also appoint an alternate member who is a member of the legislative body of the city.

(B) In Los Angeles County, and in addition to the two city members and one alternate city member identified in paragraph (1), one member of the legislative body of the city in the county having a population in excess of 30 percent of the total population of the county, appointed by the presiding officer of the legislative body of the city. The presiding officer of the legislative body

shall also appoint an alternate member who is a member of the legislative body of the city.

(C) In San Diego County, and in addition to the two city members and one alternate city member identified in paragraph (1), one member of the legislative body of the city in the county having the largest population of the county, appointed by the legislative body of the city. The legislative body shall also appoint an alternate member who is a member of the legislative body of the city.

(D) In Sacramento County, the commission shall consist of seven members, and in place of the two city members and one alternate city member identified in paragraph (1):

- i. One member, who is a mayor or council member, appointed by the city selection committee in the county, excepting the City of Sacramento;
- ii. One alternate member, who is a mayor or council member, appointed by the city selection committee in the county, excepting the City of Sacramento;
- iii. One member, who is a member of the Sacramento City Council, appointed by the Mayor of Sacramento and confirmed by the Sacramento City Council; and
- iv. One alternate member, who is a member of the Sacramento City Council, appointed by the Mayor of Sacramento and confirmed by the Sacramento City Council.

(E) In Santa Clara County, and in place of the city members identified in paragraph (1):

- i. One member, who is a mayor or council member, appointed by the city selection committee in the county;
- ii. One alternate member, who is a mayor or council member, appointed by the city selection committee in the county;
- iii. One member, who is a member of the legislative body of the city in the county having the largest population of the county, appointed by the legislative body of the city;
- iv. One alternate member, who is a member of the legislative body of the city in the county having the largest population of the county, appointed by the legislative body of the city.

(c) For commissions with special district representation consistent with Sections 56332, 56332.5 or 56821 through 56824.7, inclusive, two presiding officers or members of legislative bodies of independent special districts appointed by the independent special district selection committee pursuant to Section 56332. The independent special district selection committee shall also appoint one alternate member who shall be a presiding officer or member of the legislative body of an independent special district who shall be appointed and serve pursuant to Section 56332.

This subdivision shall not apply to commissions which do not have special district representation consistent with Sections 56332, 56332.5 or 56821 through 56824.7, inclusive.

(d) Public members shall be appointed to the commission pursuant to this subdivision.

(1) One member representing the general public appointed by the other members of the commission. The other members of the commission shall also appoint one alternate member who may serve and vote in place of a regular public member who is absent or who disqualifies himself or herself from participating in a meeting of the commission.

(2) If there is no city in the county, two members representing the general public, appointed by the three county members appointed pursuant to paragraph (2) of subdivision (a) and, if applicable, the two special district members appointed pursuant to subdivision (c); and one alternate member representing the general public, appointed by the three county members appointed pursuant to paragraph (2) of subdivision (a) and, if applicable, the two special district members appointed pursuant to subdivision (c).

(3) Public members shall be appointed to each commission specified below as follows:

(A) In Los Angeles County, and in addition to the one public member and alternate public member identified in paragraph (1), one member appointed by the Los Angeles County Board of Supervisors, who shall be a resident of the San Fernando Valley Statistical Area, as defined in subdivision (c) of Section 11093, and who shall not be a member of the Los Angeles County Board of Supervisors. The Los Angeles County Board of Supervisors shall also appoint an alternate member who shall be a resident of the San Fernando Valley Statistical Area, as defined in subdivision (c) of Section 11093, and who shall not be a member of the Los Angeles County Board of Supervisors.

(B) In Kern County, and in addition to the one public member and one alternate member identified in (d), above, one member appointed by the four members of the commission appointed by the Kern County Board of Supervisors and the Independent Special District Selection Committee, who shall not be a member of the governing body of any local agency. The four members of the commission appointed by the Kern County Board of Supervisors and the

independent special district selection committee shall appoint an alternate public member, who shall not be a member of the governing body of any local agency.

(4) The public member and the alternate public member shall be residents of the county of the appointing commission. If the office of a regular public member becomes vacant, the alternate member may serve and vote in place of the former regular public member until the appointment and qualification of a regular public member to fill the vacancy.

No person appointed as a public member or alternate public member pursuant to this chapter shall be an officer or employee of the county or any city or district with territory in the county, provided, however, that any officer or employee serving on January 1, 1994, may complete the term for which he or she was appointed.

(5) Except as otherwise specified in paragraph (3), appointment of the public member and alternate public member shall be subject to the affirmative vote of at least one of the members appointed by each of the other appointing authorities. Whenever a vacancy occurs in the public member or alternate public member position, the commission shall cause a notice of vacancy to be posted as provided in Section 56158. A copy of this notice shall be sent to the clerk or secretary of the legislative body of each local agency within the county. Final appointment to fill the vacancy may not be made for at least 21 days after the posting of the notice.

56331.3. If one or more members are absent or disqualify themselves from participating in a meeting of the commission, any alternate member who is authorized to serve and vote in the place of a member appointed by the same appointing authority shall have only one vote.

56331.4. While serving on the commission, all commission members shall exercise their independent judgment on behalf of the interests of residents, property owners, and the public as a whole in furthering the purposes of this division. Any member appointed on behalf of local agencies shall represent the interests of the public as a whole and not solely the interests of the appointing authority. This section does not require the abstention of any member on any matter, nor does it create a right of action in any person.

56332. (a) The independent special district selection committee shall consist of the presiding officer of the legislative body of each independent special district. However, if the presiding officer of an independent special district is unable to participate in a meeting or election of the independent special district selection committee, the legislative body of the district may appoint one of its members as an alternate to participate in the selection committee in the presiding officer's place. Those districts shall include districts located wholly within the county and those containing territory within the county representing 50 percent or more of the assessed value of taxable property of the district, as shown on the last equalized county assessment roll. Each member of the committee shall be entitled to one vote for each independent special

district of which he or she is the presiding officer or his or her alternate as designated by the governing body. Members representing a majority of the eligible districts shall constitute a quorum.

(b) The executive officer shall call and give written notice of all meetings of the members of the selection committee. A meeting shall be called and held under one of the following circumstances:

(1) Whenever the executive officer anticipates that a vacancy will occur within the next 90 days among the members or alternate member representing independent special districts on the commission.

(2) Whenever a vacancy exists among the members or alternate member representing independent special districts upon the commission.

(3) Upon receipt of a written request by one or more members of the selection committee representing districts having 10 percent or more of the assessed value of taxable property within the county, as shown on the last equalized county assessment roll.

(4) Upon the adoption of a resolution of intention pursuant to Section 56332.5

(5) Upon receipt of a written request by one or more members of the selection committee notifying the executive officer of the need to appoint of member representing independent special districts on an oversight board pursuant to paragraph (3) of subdivision (j) of Section 34179 of the Health and Safety Code.

(c) The selection committee shall appoint two regular members and one alternate member to the commission. The members so appointed shall be elected or appointed members of the legislative body of an independent special district residing within the county but shall not be members of the legislative body of a city or county. If one of the regular district members is absent from a commission meeting or disqualifies himself or herself from participating in a meeting, the alternate district member may serve and vote in place of the regular district member for that meeting. Service on the commission by a district member shall not disqualify, or be cause for disqualification of, the member from acting on proposals affecting the special district on whose legislative body the member serves. The special district selection committee may, at the time it appoints a member or alternate, provide that the member or alternate is disqualified from voting on proposals affecting the district on whose legislative body the member serves.

(d) If the office of a regular district member becomes vacant, the alternate member may serve and vote in place of the former regular district member until the appointment and qualification of a regular district member to fill the vacancy.

(e) A majority of the independent special district selection committee may determine to conduct the committee's business by mail, including holding all elections by mailed ballot, pursuant to subdivision (f).

(f) If the independent special district selection committee has determined to conduct the committee's business by mail or if the executive officer determines that a meeting of the special district selection committee is not feasible, the executive officer shall conduct the business of the committee by mail. Elections by mail shall be conducted as provided in this subdivision.

(1) The executive officer shall prepare and deliver a call for nominations to each eligible district. The presiding officer, or his or her alternate as designated by the governing body, may respond in writing by the date specified in the call for nominations, which date shall be at least 30 days from the date on which the executive officer mailed the call for nominations to the eligible district.

(2) At the end of the nominating period, if only one candidate is nominated for a vacant seat, that candidate shall be deemed appointed. If two or more candidates are nominated, the executive officer shall prepare and deliver one ballot and voting instructions to each eligible district. The ballot shall include the names of all nominees and the office for which each was nominated. Each presiding officer, or his or her alternate as designated by the governing body, shall return the ballot to the executive officer by the date specified in the voting instructions, which date shall be at least 30 days from the date on which the executive officer mailed the ballot to the eligible district.

(3) The call for nominations, ballot, and voting instructions shall be delivered by certified mail to each eligible district. As an alternative to the delivery by certified mail, the executive officer, with prior concurrence of the presiding officer or his or her alternate as designated by the governing body, may transmit materials by electronic mail.

(4) If the executive officer has transmitted the call for nominations or ballot by electronic mail, the presiding officer, or his or her alternate as designated by the governing body, may respond to the executive officer by electronic mail.

(5) Each returned nomination and ballot shall be signed by the presiding officer or his or her alternate as designated by the governing body of the eligible district.

(6) For an election to be valid, at least a quorum of the special districts must submit valid ballots. The candidate receiving the most votes shall be elected, unless another procedure has been adopted by the selection committee. Any nomination and ballot received by the executive officer after the date specified is invalid, provided, however, that if a quorum of ballots is not received by that date, the executive officer shall extend the date to submit ballots by 60 days and notify all districts of the extension. The executive officer shall announce the results of the election within seven days of the date specified.

(7) For a vote on special district representation to be valid, at least a quorum of the special districts must submit valid ballots. By a majority vote of those district representatives voting on the issue, the selection committee shall either accept or deny representation.

(8) All election materials shall be retained by the executive officer for a period of at least six months after the announcement of the election results.

(g) For purposes of this section, "executive officer" means the executive officer or designee as authorized by the commission.

(h) The independent special district selection committee is encouraged to appoint members to fairly represent the diversity of the independent special districts in the county, with respect to population and geography.

56333. When a commission is enlarged to seven members as provided in Section 56332, the public members appointed pursuant to Sections 56325 shall thereafter be appointed by members of the commission representing cities, counties and special districts. Those appointments shall be made at the times and in the manner provided in Section 56334.

56335. In each county containing one or more cities, regular and alternate city members to the commission shall be appointed by the city selection committee organized in the county pursuant to and in the manner provided in Article 11 (commencing with Section 50270) of Chapter 1 of Part 1 of Division 1. Regular members of the commission shall be appointed by the city selection committee pursuant to Section 56325.

The city selection committee shall appoint one alternate member to the commission in the same manner as it appoints a regular member. If one of the regular city members is absent from a commission meeting, or disqualifies himself or herself from participating in a meeting, the alternate member may serve and vote in place of that regular city member for that meeting.

Except in the case of a member appointed pursuant to subparagraph (B) of paragraph (2) of subdivision (b) of Section 56325 and clauses (iii) and (iv) of subparagraph (E) of paragraph (2) of subdivision (b) of Section 56325, a city selection committee, may, at the time it appoints a member or alternate, provide that the member or alternate is disqualified from voting on proposals affecting the city which the member or alternate represents.

If the office of a regular city member becomes vacant, the alternate member may serve and vote in place of the former regular city member until the appointment and qualification of a regular city member to fill the vacancy.

The city selection committee is encouraged to appoint members to fairly represent the diversity of the cities in the county, with respect to population and geography.

**Omnibus Bill Proposed
Changes to Government
Code Section 56332**

Attachment 4

Proposed code revision(s)
Red/strikethrough/underlined format

56332. (a) The independent special district selection committee shall consist of the presiding officer of the legislative body of each independent special district. However, if the presiding officer of an independent special district is unable to participate in a meeting or election of the independent special district selection committee, the legislative body of the district may appoint one of its members as an alternate to participate in the selection committee in the presiding officer's place. Those districts shall include districts located wholly within the county and those containing territory within the county representing 50 percent or more of the assessed value of taxable property of the district, as shown on the last equalized county assessment roll. Each member of the committee shall be entitled to one vote for each independent special district of which he or she is the presiding officer or his or her alternate as designated by the governing body. Members representing a majority of the eligible districts shall constitute a quorum.

(b) The executive officer shall call and give written notice of all meetings of the members of the selection committee. A meeting shall be called and held under one of the following circumstances:

(1) Whenever the executive officer anticipates that a vacancy will occur within the next 90 days among the members or alternate member representing independent special districts on the commission.

(2) Whenever a vacancy exists among the members or alternate member representing independent special districts upon the commission.

(3) Upon receipt of a written request by one or more members of the selection committee representing districts having 10 percent or more of the assessed value of taxable property within the county, as shown on the last equalized county assessment roll.

(4) Upon the adoption of a resolution of intention pursuant to Section 56332.5.

(5) Upon receipt of a written request by one or more members of the selection committee notifying the executive officer of the need to appoint a member representing independent special districts on an oversight board pursuant to paragraph (3) of subdivision (j) of Section 34179 of the Health and Safety Code.

(c) The selection committee shall appoint two regular members and one alternate member to the commission. The members so appointed shall be elected or appointed members of the legislative body of an independent special district residing within the county but shall not be members of the legislative body of a city or county. If one of the regular district members is absent from a commission meeting or disqualifies himself or herself from participating in a

meeting, the alternate district member may serve and vote in place of the regular district member for that meeting. Service on the commission by a regular district member shall not disqualify, or be cause for disqualification of, the member from acting on proposals affecting the special district on whose legislative body the member serves. The special district selection committee may, at the time it appoints a member or alternate, provide that the member or alternate is disqualified from voting on proposals affecting the district on whose legislative body the member serves.

(1) The executive officer may prepare and deliver a call for nominations to each eligible district. The presiding officer, or his or her alternate as designated by the governing body, may respond in writing by the date specified in the call for nominations, which date shall be at least 30 days from the date on which the executive officer mailed the call for nominations to the eligible district.

(2) At the end of the nominating period, if only one candidate is nominated for a vacant seat, that candidate shall be deemed appointed. This paragraph shall be effective only if the written notice of the meeting provided pursuant to subdivision (b) discloses that if nominations are received for only one candidate by the end of the nominating period, that candidate shall be deemed appointed and the meeting may be cancelled.

(d) If the office of a regular district member becomes vacant, the alternate member may serve and vote in place of the former regular district member until the appointment and qualification of a regular district member to fill the vacancy.

(e) A majority of the independent special district selection committee may determine to conduct the committee's business by mail, including holding all elections by mailed ballot, pursuant to subdivision (f).

(f) If the independent special district selection committee has determined to conduct the committee's business by mail or if the executive officer determines that a meeting of the special district selection committee is not feasible, the executive officer shall conduct the business of the committee by mail. Elections by mail shall be conducted as provided in this subdivision.

(1) The executive officer shall prepare and deliver a call for nominations to each eligible district. The presiding officer, or his or her alternate as designated by the governing body, may respond in writing by the date specified in the call for nominations, which date shall be at least 30 days from the date on which the executive officer mailed the call for nominations to the eligible district.

(2) At the end of the nominating period, if only one candidate is nominated for a vacant seat, that candidate shall be deemed appointed. If two or more candidates are nominated, the

executive officer shall prepare and deliver one ballot and voting instructions to each eligible district. The ballot shall include the names of all nominees and the office for which each was nominated. Each presiding officer, or his or her alternate as designated by the governing body, shall return the ballot to the executive officer by the date specified in the voting instructions, which date shall be at least 30 days from the date on which the executive officer mailed the ballot to the eligible district.

(3) The call for nominations, ballot, and voting instructions shall be delivered by certified mail to each eligible district. As an alternative to the delivery by certified mail, the executive officer, ~~with prior concurrence of the presiding officer or his or her alternate as designated by the governing body,~~ may transmit materials by electronic mail. All notices and election materials shall be addressed to the presiding officer, care of the clerk of the district.

(4) ~~If the executive officer has transmitted the call for nominations or ballot by electronic mail, the presiding officer, or his or her alternate as designated by the governing body, may respond.~~ Nominations and ballots may be returned to the executive officer by electronic mail.

(5) Each returned nomination and ballot shall be signed by the presiding officer or his or her alternate as designated by the governing body of the eligible district.

(6) Except as otherwise provided in this paragraph, ~~For~~ for an election to be valid, at least a quorum of the special districts must submit valid ballots. The candidate receiving the most votes shall be elected, unless another procedure has been adopted by the selection committee. Any nomination and ballot received by the executive officer after the date specified is invalid, provided, however, that if a quorum of ballots is not received by that date, the executive officer shall extend the date to submit ballots by 60 days and notify all districts of the extension. If ballots from a quorum of the districts have not been received at the end of the 60-day extension period, the candidate receiving the most votes at the end of that extension period shall be elected, unless another procedure has been adopted by the selection committee. The executive officer shall announce the results of the election within seven days of the date specified.

(7) For a vote on special district representation to be valid, at least a quorum of the special districts must submit valid ballots. By majority vote of those district representatives voting on the issue, the selection committee shall either accept or deny representation.

(8) All election materials shall be retained by the executive officer for a period of at least six months after the announcement of the election results.

(g) For purposes of this section, "executive officer" means the executive officer or designee as authorized by the commission.