

LAFCO

Santa Barbara Local Agency Formation Commission

105 East Anapamu Street ♦ Santa Barbara CA 93101

805/568-3391 ♦ FAX 805/647-7647

www.sblafco.org ♦ lafco@sblafco.org

November 3, 2011 (Agenda)

Local Agency Formation Commission

105 East Anapamu Street

Santa Barbara CA 93101

**Continued Discussion – CALAFCO-proposed amendments to
Section 56133 regarding out-of-agency service agreements**

Dear Members of the Commission:

RECOMMENDATION

It is recommended the Commission receive this report, accept all testimony from public agencies and the public and determine its position regarding CALAFCO-proposed amendments to Government Code Section 56133.

DISCUSSION

Introduction

LAFCO's enabling statute is the Cortese-Knox-Hertzberg Local Government Reorganization Act. It includes Government Code Section 56133 regulating under what circumstances cities and special districts are allowed to provide services outside of their boundaries.

The California Association of LAFCOs (CALAFCO) Legislative Committee has considered possible changes to this section. Three changes as discussed in this report are supported by the CALAFCO Board of Directors.

Napa LAFCO Executive Officer Keene Simonds chaired the subcommittee that evaluated changes in Section 56133. He will attend the November 3 Commission meeting to explain CALAFCO's support of these amendments to Section 56133.

History of Government Code Section 56133

Since they were created in 1963 LAFCOs have been charged with discouraging urban sprawl and encouraging the orderly formation and development of local agencies. To implement these goals they have authority to approve or deny changes in the boundaries of cities and special districts.

Commissioners: Janet Wolf, Chair ♦ Lupe Alvarez ♦ Doreen Farr ♦ Jeff Moorhouse ♦ Bob Orach ♦ Cathy Schlottmann
Bob Short ♦ Joe Armendariz ♦ John Fox ♦ Steve Lavagnino ♦ Roger Welt
Executive Officer: Bob Braitman

AGENDA ITEM NO. 7

Due to situations where local agencies extended services to properties outside their boundaries – after LAFCO had denied the annexation of that property to the agency - the law was amended in 1993 to restrict cities and special districts from providing services outside their jurisdictional boundaries until they first request and receive written approval from LAFCO.

This restriction does not apply to certain situations such as (a) contracts or agreements solely involving two or more public agencies where the service to be provided is an alternative to public services already being provided, (b) contracts for the transfer of nonpotable or nontreated water, (c) contracts solely involving providing surplus water to agricultural lands and facilities or (d) services that a city or district was providing before January 1, 2001.

Section 56133 limits the circumstances in which LAFCO may allow a city or district to provide or extend extra-territorial services. With only one exception, any services provided outside the local agency boundaries must be within that agency's sphere of influence and be in anticipation of a later change of organization.

The only exception to that rule authorizes LAFCO to allow a city or district to provide services outside its sphere of influence if in response to a threat to public health or safety of the residents of the affected area. In that instance there must be documentation of the threat provided by the affected agency and LAFCO must notify any alternate service provider that has filed a map and statement of its service capabilities with the Commission.

The authority to allow cities and special districts to provide services outside their boundaries has been exercised from time to time by the Santa Barbara LAFCO.

Proposed Changes in Section 56133

Changes being proposed by CALAFCO would expand the circumstances under which a LAFCO may authorize a city or special district to provide services outside its sphere of influence.

In addition to the current exception related to a threat to public health, new exceptions would be to support existing or planned uses involving public or private properties subject to *all* the following determinations:

- The extension of service or service deficiency was identified and evaluated in a municipal service review prepared by the Commission pursuant to section 56430.
- The extension of service would not result in adverse impacts on open space or agricultural lands or result in adverse growth inducing impacts.

- A later annexation involving the property and affected agency is not feasible or desirable based on the adopted LAFCO policies.

In staff's view these proposed new exceptions to the requirement that land to receive services be located within the local agency's sphere of influence appear to be reasonable.

Delegation of Authority to Executive Officer

The existing statute allows the Commission to delegate to the Executive Officer the authority to approve out-of-agency service requests. Section 56133 (d) states:

When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of those requests to the executive officer. (Emphasis added)

The proposed amendment adds the following language about delegating authority to the LAFCO staff to the opening paragraph, 56133 (a):

(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional ~~boundaries~~ boundary only if it first requests and receives written approval from the commission in the affected county. The commission may delegate approval of requests made pursuant to subdivisions (b) and (c) (1) below to the Executive Officer.

In both cases the wording that allows LAFCOs to delegate authority to approve out-of-agency service requests is entirely permissive, with individual Commissions deciding whether they wish to delegate authority to staff.

The Montecito Water District in September 23 letter to Commission Chair Janet Wolf states, "The proposed amendment appears to be an attempt to extend the authority of the LAFCO Executive Director (sic) without considering the consequences to the Commission, special districts and utility services offered by cities."

Again, the authority to delegate authority to the staff - in both existing law and prospective law - is entirely optional. The Santa Barbara LAFCO may choose not to delegate authority to its staff but LAFCOs in other counties may find this to be a desirable option.

Conclusion

Letters received from local agencies prior to distribution of the meeting packet are enclosed with staff responses where appropriate. Any other letters will be distributed prior to or at the meeting.

We recommend the Commission receive a report from Keene Simonds on behalf of CALAFCO, accept all other public testimony and determine the extent of its support for any or all of the proposed amendments to Government Code Section 56133.

Please contact the LAFCO staff if you have any questions.

Sincerely,



BOB BRAITMAN
Executive Officer

Attachment – Section 56133 showing proposed changes

Enclosures – Letters from local agencies and staff responses

Montecito Water District (September 23) and staff response (October 12)

City of Santa Barbara (October 7); no staff response

Goleta Water District (October 12) and staff response (October 20)

Government Code 56133 (Proposed Changes)

(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundary boundaries only if it first requests and receives written approval from the commission ~~in the affected county~~. The commission may delegate approval of requests made pursuant to subdivision (b) and (c) (1) below to the executive officer.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary boundaries but within its sphere of influence in anticipation of a later change of organization.

(c) If consistent with adopted policy the commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary boundaries and outside its sphere of influence under any of the following circumstances:

(1) To respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:

(A) The entity applying for ~~the contract~~ approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(B) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(2) To support existing or planned uses involving public or private properties subject to approval at a noticed public hearing that includes all of the following determinations:

(A) The extension of service or service deficiency was identified and evaluated in a municipal service review prepared by the commission pursuant to section 56430.

(B) The effect of the extension of service would not result in adverse impacts on open space or agricultural lands or result in adverse growth inducing impacts.

(C) A later change of organization involving the subject property and the affected agency is not feasible or desirable based on the adopted policies of the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district ~~of a contract~~ to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer

shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete.

When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of ~~these requests~~ made under this section to the executive officer.

The commission or executive officer shall approve, disapprove, or approve with conditions the ~~contract for~~ extended services.

If the extended services area contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to ~~contracts or agreements solely involving~~ two or more public agencies where the commission determines the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.

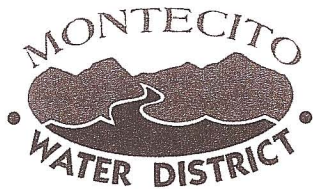
(f) This section does not apply to ~~contracts for~~ the transfer of nonpotable or nontreated water.

(g) This section does not apply to ~~contracts or agreements solely involving~~ the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county.

(h) This section does not apply to an extended service that a city or district was providing on or before January 1, 2001.

(i) This section does not apply to a local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries.

(j) The application of this section rests solely within the jurisdiction of the commission in the county in which the extension of service is proposed.



September 23, 2011

Commissioner Janet Wolf, Chair
Santa Barbara Local Agency Formation Commission
105 East Anapamu Street
Santa Barbara, CA 93101

Re: Proposed Amendment to Government Code Section 56133

Dear Commissioner Wolf,

Board of Directors

President
Samuel Frye

Vice President
W. Douglas Morgan

Jan E. Abel
Darlene Bierig
Richard Shaikewitz

General Manager
and Secretary

Thomas R. Mosby

Montecito Water District, a California special district, is responding to the recent receipt of a LAFCO memorandum prepared by SB LAFCO Executive Officer, Bob Braitman dated September 12, 2011 regarding proposed amendments to Government Code Section 56133. A cursory review of the proposed amendment indicates that it does not consider special inter-agency temporary agreements that occur from time to time to ensure the delivery of potable water to established communities that may not be within the adjoining district or city's service area.

The proposed amendment appears to be an attempt to extend the authority of the LAFCO Executive Director without considering the consequences to the Commission, special districts and utility services offered by cities. Special districts were formed to provide essential health and safety services to communities they serve. Within the function of special districts and cities there are mutual aid arrangements that provide redundancy in providing utility services to an "out of agency" service area. The proposed amendment ties the hands of the utility provider in arranging temporary service to adjoining areas outside of its service boundaries.

MWD takes exception to the proposed increase in oversight and authority by the LAFCO Executive Officer which in essence is a one person organization administrator that does not recognize the immediate health and safety needs of the communities that we serve. MWD has had numerous agreements with other, adjoining, water service providers where potable water is provided from one agency to another through distribution system interties when a failure or temporary condition disrupts the utility service to a particular area. It would appear that the proposed legislation would not permit continuing mutual aid responses between neighboring service areas that are needed from time to time for the health and safety of the communities that we serve.

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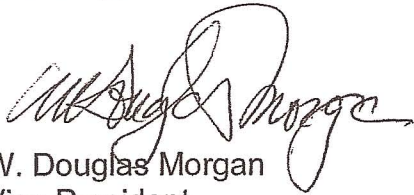
SEP 23 2011

AND PLANT OPERATIONS

MWD opposes the proposed amendment because it will have far-reaching unintended impacts well beyond its proposed purpose and scope. In addition, the proposed amendment appears to give authority and power to the Executive Officer that formerly resided with the Commission. MWD believes the Commission is the proper legislative body to oversee important matters such as this and that the dilution of Commissioners' powers is unwarranted and dangerous.

The proposed amendment is flawed and should be voted down by the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Douglas Morgan". The signature is fluid and cursive, with a large loop at the end.

W. Douglas Morgan
Vice President

LAFCO

Santa Barbara Local Agency Formation Commission

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October 12, 2011

W. Douglas Morgan
Vice President
Montecito Water District
583 San Ysidro Road
Santa Barbara CA 93108-2424

Proposed amendment to Government Code Section 56133

Dear Mr. Morgan:

Your letter of September 23 addressed to Chair Janet Wolf was distributed to all members of the Commission. In addition, your letter and this response will be included in the packet of materials provided to the Commission when it considers proposed changes in Government Code Section 56133 at its meeting on Thursday, November 3.

Having carefully read your letter I thought I should bring to your attention exemptions that are already contained in Section 56133 and would not be changed by the proposed legislation. Portions of your letter state:

A cursory review of the proposed amendment indicates that it does not consider special inter-agency temporary agreements that occur from time to time to ensure the delivery of potable water to established communities that may not be within the adjoining district or city's service area.

Within the function of special districts and cities there are mutual aid arrangements that provide redundancy in providing utility services to an "out of agency" service area. The proposed amendment ties the hands of the utility provider in arranging temporary service to adjoining areas outside its service boundaries.

It would appear that the proposed legislation would not permit continuing mutual aid responses between neighboring service areas that are needed from time to time for the health and safety of the communities we serve.

Please note the existing statute includes the following exemptions from the requirement for local agencies to obtain LAFCO consent before providing services outside of their boundaries:

Section 56133 (e) This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.

This section does not apply to contracts for the transfer of nonpotable or nontreated water.

This section does not apply to contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county.

This section does not apply to an extended service that a city or district was providing on or before January 1, 2001.

Moreover, after reviewing your letter I thought I would bring to your attention the fact the statute already allows the Commission to delegate to the Executive Officer the authority to approve out-of-agency service requests. Section 56133 (d) currently states:

When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of those requests to the executive officer. (Emphasis added)

The proposed change adds the following more explicit language about delegating authority to the LAFCO staff but it would not increase the Commission's existing authority:

56133 (a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional ~~boundaries~~ boundary only if it first requests and receives written approval from the commission in the affected county. The commission may delegate approval of requests made pursuant to subdivisions (b) and (c) (1) below to the Executive Officer.

I am bringing this to your attention since three paragraphs in your letter express concern with extending authority to the LAFCO staff, as shown by the following underlined wording:

W. Douglas Morgan
October 12, 2011
Page 3

The proposed amendment appears to be an attempt to extend the authority of the LAFCO Executive Director without considering the consequences to the Commission, special districts and utility services offered by cities.

MWD takes exception to the proposed increase in oversight and authority by the LAFCO Executive Officer which in essence is a one person organization administrator that does not recognize immediate health and safety needs of the communities that we serve.

In addition, the proposed amendment appears to give authority and power to the Executive Officer that formerly resided with the Commission.

In both existing law and the proposed change, the power of LAFCO to delegate authority to its staff to approve out-of-agency service requests is entirely permissive. Individual Commissions decide whether to delegate such authority.

Last, based on my reading of your letter it seems advisable to note that Section 56133 does not presently, nor would it as proposed, dilute the Commission's authority. The proposed changes would, however, increase the circumstances under which LAFCO could authorize a local agency to provide out-of-agency service extensions.

I would be pleased to discuss this matter at your request.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Braitman", followed by a long horizontal flourish line.

BOB BRAITMAN
Executive Officer

cc: Each Member of the Commission

Attachment – Section 56133 showing proposed changes



City of Santa Barbara

Public Works Department

www.SantaBarbaraCA.gov

October 7, 2011

Main Office

630 Garden Street
P.O. Box 1990
Santa Barbara, CA
93102-1990

Administration

Tel: 805.564.5377
Fax: 805.897.2613

Engineering

Tel: 805.564.5363
Fax: 805.564.5467

Facilities

Tel: 805.564.5415
Fax: 805.897.2577

Street Maintenance

Tel: 805.564.5413
Fax: 805.897.1991

Transportation

Tel: 805.564.5385
Fax: 805.564.5467

Water Resources

Tel: 805.564.5387
Fax: 805.897.2613

Mr. Bob Braitman, Executive Officer
Santa Barbara Local Agency Formation Commission
105 E Anapamu Street
Santa Barbara, CA 93101

**SUBJECT: PROPOSED AMENDMENTS TO GOVERNMENT CODE SECTION
56133**

Dear Mr. Braitman:

Thank you for the opportunity to comment on the proposed amendments to Section 56133 of the Government Code. On behalf of the City of Santa Barbara, I would like to submit the following comments on two key points:

- We expect that delegation of authority to the Executive Officer will allow most approvals to be processed with greater efficiency and reduced cost to citizens and agencies. With that in mind, the City concurs with and supports the proposed change to allow delegation.
- The intended scope of the removal of language related to "contracts and agreements" is unclear, since Section 56133(a) retains this reference, and it is stricken elsewhere. At any rate, we are concerned that the removal of these references would result in an expansion of LAFCO jurisdiction, with attendant increased costs to citizens and agencies for processing service requests. Under the current legislation, we typically initiate water service to out-of-City areas that are a recognized part of our service area (such as Mission Canyon) without applying for LAFCO approval, which is appropriate. We interpret removal of the qualifying references to "contracts and agreements" as increasing the scope and related costs of this requirement. We urge your consideration of this point.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca Bjork".

Rebecca Bjork
Water Resources Manager

BF/TL/mh



4699 HOLLISTER AVENUE

GOLETA, CALIFORNIA 93110-1999

PHONE 805-964-6761

October 12, 2011

Hon. Commissioner Janet Wolf, Chair
Santa Barbara Local Agency Formation Commission
105 East Anapamu Street
Santa Barbara, CA 93101

RE: Proposed Amendments to Government Code Section 56133

Dear Commissioner Wolf,

Thank you for the opportunity to provide the Santa Barbara Local Agency Formation Commission (SB LAFCO) with comments on proposed draft amendments to Government Code Section 56133. As the largest special district in the region, Goleta Water District (GWD) recognizes the vital role we play in delivering essential services to over 85,000 members of the community. Any change in state law that would erode the legislative authority of the GWD to manage its operations, maintain critical inter-agency agreements, or guarantee its fiscal sustainability is highly likely to have a negative impact on the delivery of these essential services to our constituents and is therefore wholly unacceptable.

As drafted, the amendments to Government Code Section 56133 raise serious issues. First, the proposed amendments would effectively limit a special district's ability to enter into mutual-aid agreements with adjoining community service providers. Whether technical, practical, or temporary in nature, these mutual-aid agreements provide service assurance via complex system inter-ties in the event of unforeseen circumstances potentially impacting public health and safety. Compromising a special district's ability to ensure the uninterrupted provision of lifeline services is clearly not in the best public interest. Given the specialized nature of these agreements, contracting authority is best left to district experts rather than to a broad agency like LAFCO. This is especially true given the proposed transfer of oversight authority from the Commission to the LAFCO Executive Officer on these matters. Ceding de-facto legislative power to administrative staff effectively deprives the public of a forum designed to ensure transparent, informed decision-making. The role of the LAFCO Executive Officer is simply to implement the Commission's direction, not to make decisions that could impact the immediate health and safety of our community.

The Goleta Water District is opposed to this flawed approach to amending Government Code Section 56133 and encourages the members of the Commission to vigorously oppose the proposed amendments. Protecting our community resources and preserving the continuity of government in Santa Barbara County requires tremendous coordination and cooperation among all public agencies. As a vested member in that cooperative leadership framework, GWD thanks you for this opportunity to provide comments and looks forward to working with the Commission on other important legislative matters.

Very truly yours,

WILLIAM C. ROSEN
President

LAFCO

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October 20, 2011

William C. Rosen, President
Goleta Water District
4699 Hollister Avenue
Goleta CA 93110-1999

Proposed amendments to Government Code Section 56133

Dear Mr. Rosen:

Your October 12 letter addressed to Chair Janet Wolf has been distributed to all members of the Commission. In addition, your letter and this response will be included in the packet of materials provided to the Commission when it considers proposed changes in Government Code Section 56133 at its meeting on Thursday, November 3.

Having reviewed your letter I thought I should bring to your attention the exemptions contained in Section 56133 that would not be changed by the proposed legislation. Your letter states

“First, the proposed amendments would effectively limit a special district’s ability to enter mutual-aid agreements with adjoining community service providers” and “Given the specialized nature of these agreements, contracting authority is best left to district experts rather than to a broad agency like LAFCO.”

Please note the existing statute contains the following exemptions from the requirement for local agencies to obtain LAFCO consent before providing services outside of their boundaries:

Section 56133 (e) This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.

This section does not apply to contracts for the transfer of nonpotable or nontreated water. This section does not apply to contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support

William C. Rosen
October 13, 2011
Page 2

or induce development, the city or district shall first request and receive written approval from the commission in the affected county.

This section does not apply to an extended service that a city or district was providing on or before January 1, 2001.

Moving onto another subject, your letter expresses concern about “. . . the proposed transfer of oversight authority from the Commission to the LAFCO Executive Officer on these matters.”

The statute already allows the Commission to delegate to the Executive Officer the authority to approve out-of-agency service requests. Section 56133 (d) currently reads:

When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of those requests to the executive officer. (Emphasis added)

The proposed change adds the following more explicit language about delegating authority to the LAFCO staff but it would not increase the Commission’s existing authority:

56133 (a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional ~~boundaries~~ boundary only if it first requests and receives written approval from the commission in the affected county. The commission may delegate approval of requests made pursuant to subdivisions (b) and (c) (1) below to the Executive Officer.

In both existing law and the proposed change, the power of LAFCO to delegate authority to its staff to approve out-of-agency service requests is entirely permissive. Individual Commissions decide whether to delegate such authority.

I would be pleased to discuss this matter at your request.

Sincerely,



BOB BRAITMAN
Executive Officer

cc: Each Member of the Commission

Attachment – Section 56133 showing proposed changes