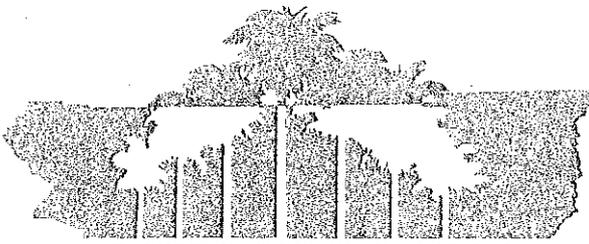


**July 28, 2011 Staff Report Riverside
LAFCO with Draft MOU**

Attachment 1



RIVERSIDE LAFCO

9.
7/28/2011

TO: Local Agency Formation Commission
FROM: George J. Spiliotis, Executive Officer

**SUBJECT: MEMORANDUM OF UNDERSTANDING WITH SAN BERNARDINO LAFCO:
TRANSFER OF JURISDICTION FOR SPHERE OF INFLUENCE CHANGES**

Government Code Section 56123 provides that the LAFCO of the principal county, that is, the county that contains all or the greater portion of the assessed value of a subject district, has jurisdiction over proposals that affect two or more LAFCOs. This general rule applies regardless of the county in which the proposal lies. The Act also provides an alternative to this default jurisdiction. Section 56124 lays out a process to transfer exclusive jurisdiction from the LAFCO of the principal county to another affected commission. As written, these statutes are applicable to changes of organization and reorganizations, not sphere of influence amendments.

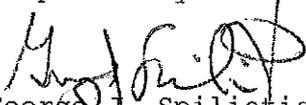
In regards to SOI proposals that cross county boundaries, the past practice of the Riverside and San Bernardino LAFCOs has been that the LAFCO of the county where the affected territory is located has processed the SOI request. The reasoning behind this approach is that the Commission where the affected territory is located has greater knowledge of local service providers within and adjacent to the proposal and a better understanding of local land use plans and patterns. Once the threshold decision of the appropriate service provider (SOI) has been made, the commission of the principal county is better able to evaluate subsequent annexation proposals. This cooperative shared responsibility has served both LAFCOs well.

In 2006, a northern California Appellate Court expanded the interpretation of Section 56123 to apply to sphere of influence changes. That is, the commission of the principal county would have exclusive jurisdiction over both the sphere of influence and annexation decisions, leaving the other affected commission with no authority over service provision in its own county.

Fortunately, Section 56375 authorizes a LAFCO to enter into agreements with LAFCOs in adjacent counties in order to determine procedures for processing proposals involving multi-county agencies. The proposed MOU, which is attached, formalizes the past practice of our two Commissions.

It is recommended that the Commission authorize the Executive Officer to execute the MOU with San Bernardino LAFCO.

Respectfully submitted,


George J. Spiliotis
Executive Officer

**MEMORANDUM OF UNDERSTANDING
FOR EXCHANGE OF PRINCIPAL COUNTY
STATUS FOR SPHERE OF INFLUENCE CHANGES
LOCAL AGENCY FORMATION COMMISSION FOR SAN
BERNARDINO COUNTY
AND
RIVERSIDE LOCAL AGENCY FORMATION COMMISSION**

THIS **MEMORANDUM OF UNDERSTANDING** (MOU) IS MADE THIS ___
DAY OF _____, 20__ BY AND BETWEEN THE LOCAL AGENCY FORMATION
COMMISSION FOR SAN BERNARDINO COUNTY (hereinafter **SBLAFCO**) and
RIVERSIDE LOCAL AGENCY FORMATION COMMISSION (hereinafter
RLAFCO).

RECITALS

The following recitals are a substantive part of this MOU:

1. In January 2006 in the Third Appellate District of the Court of Appeal for the State of California a decision was rendered, identified commonly as the "Truckee Decision", which applied the California Government Code Section 56066 definition of "principal county" to determinations for spheres of influence under the provision of Government Code Section 56425 et seq.

2. Principal County is defined in the California Government Code at Section 56066 which reads as follows: "Principal County" means the county having all or the greater portion of the entire assessed value, as shown on the last equalized assessment roll of the county or counties, of all taxable property within a district or districts for which a change of organization or reorganization is proposed".

3. Government Code Sections 56123 and 56124 allow for the transfer of exclusive jurisdiction from the principal county to the affected county LAFCO if all of the following determinations are made:

- a. The commission of the principal county approves of having exclusive jurisdiction vested in another affected county;
- b. The commission of the principal county designates the affected county to assume exclusive jurisdiction; and,
- c. The commission of the affected county so designated agrees to assume exclusive jurisdiction.

4. The SBLAFCO and RLAFCO have numerous entities which abut, and in several instances cross over county boundary lines. It has been the practice of SBLAFCO and RLAFCO that the county within which the territory is situated would be the county determining the sphere of influence, having the knowledge of underlying service providers, affected agencies within and surrounding the entity within the affected county, and understanding the development standards and vision within the affected county. This memorandum of understanding is intended to set forth these prior understandings in a formal manner and to identify that as allowed by Government Code Section 56375(q) the LAFCOs have agreed to transfer authority for processing of sphere of influence applications.

5. This MOU between SBLAFCO and RLAFCO is to establish the terms and conditions for the vesting of exclusive jurisdiction in the matters of sphere of influence determinations to the Commission of the affected county from the Commission of the principal county.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS AND PROMISES CONTAINED HEREIN, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Sphere of influence Transfer Determinations:

- a. When a proposal is contemplated to extend a special district's sphere of influence into the adjacent county, the SBLAFCO or RLAFCO acting as principal County does hereby approve the transfer of exclusive jurisdiction for those determinations to the affected county;
- b. This MOU identifies that the transfers shall be to the affected county within which the territory considered for sphere of influence expansion or reduction lies; and,
- c. Acting as the affected County, the SBLAFCO or RLAFCO agree to assume the exclusive jurisdiction for sphere of influence determinations within their respective county territory.

2. Term of MOU

The term of this MOU shall commence upon execution of this agreement by both LAFCOs and shall remain in effect until this MOU is terminated in accordance with Section 6 or otherwise modified to include a termination date in accordance with Section 5 herein. This MOU constitutes the entire agreement and understanding between the Parties with respect to

the subject matter hereof and is executed without reliance upon any representations or promises not contained herein.

3. Responsibilities for complying with transfer of exclusive jurisdiction:

Each LAFCO shall advise applicant(s) seeking the expansion of a sphere of influence in the adjacent county of a special district for which they are designated "principal county" that the applicant(s) shall submit said request to the affected county LAFCO. The application requirements, including fees and processing costs, of the LAFCO vested with exclusive jurisdiction shall apply. The LAFCO with exclusive jurisdiction shall include the principal county LAFCO in all notices, provision of staff reports and resolutions related to the sphere of influence consideration process. Nothing in this MOU shall be construed to limit in any way the provision of State Law governing the consideration process for a sphere of influence change.

4. Compliance with Government Code Section 56430

The policies and procedures of the LAFCO vested with exclusive jurisdiction by this MOU shall apply to the processing of any sphere of influence change with regard to Government Code Section 56430. Nothing in this section would preclude the LAFCO vested with jurisdiction from using the service review data and/or determinations prepared by the principal LAFCO for the affected agency.

5. Modification

This MOU constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This MOU may be modified only by subsequent mutual written agreement executed by SBLAFCO and RLAFCO and will not be effective until signed by all parties.

6. Termination

This MOU may be terminated by either party by giving a 60-day notice in writing following action of the requesting Commission.

7. California Law

This MOU shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the Superior Court of the affected County. The MOU shall be construed as though jointly drafted by the Parties with the assistance of independent legal counsel.

8. Indemnification

SBLAFCO or RLAFCO each agree to indemnify, defend at their own expense, including attorneys fees, and hold each other harmless from and against all claims, costs, penalties, causes of action, demands, losses and liability of any nature, whatsoever, including but not limited to liability for bodily injury, sickness, disease or death, property damage (including loss of use) or violation of law, caused by or arising out of or related to any negligent act or willful misconduct of that party, its officers or employees or any other agent acting pursuant to its control and performing under this agreement.

9. Notices

All notices shall be personally delivered or mailed, via first-class mail to the below listed addresses:

- (a) Local Agency Formation Commission for San Bernardino
County

215 North D Street, Suite 204
San Bernardino, CA 92415-0490
Attn: Executive Officer
Kathleen Rollings-McDonald

- (b) Riverside Local Agency Formation Commission

3850 Vine Street, Suite 110
Riverside, CA 92507-4277
Attn: Executive Officer
George Spiliotis

9. Preservation of Agreement

Should a provision of this MOU be found invalid or unenforceable, the decision shall effect only the provision interpreted, and all remaining provisions shall remain enforceable.

IN WITNESS WHEREOF, these parties have executed this Agreement on the day and year shown above.

APPROVED AS TO FORM:

LOCAL AGENCY FORMATION COMMISSION
FOR SAN BERNARDINO COUNTY:

General Counsel
Local Agency Formation
Commission For San Bernardino
County

By: _____
BRAD MITZELFELT
CHAIRMAN

APPROVED AS TO FORM:

RIVERSIDE LOCAL AGENCY FORMATION
COMMISSION:

Legal Counsel,
Riverside Local Agency
Formation Commission

By: _____
STEPHEN TOMANELLI
CHAIRMAN

DRAFT