

**October 12, 2011 Staff Report Orange
LAFCO with signed MOU**

Attachment 3



October 12, 2011

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TO: Local Agency Formation Commission

FROM: Executive Officer
Policy Analyst II

SUBJECT: Proposed Memorandum of Understanding for Multi-County Special Districts

CHAIR
JOHN MOORLACH
Supervisor
2nd District

VICE CHAIR
CHARLEY WILSON
Director
Santa Margarita
Water District

PAT BATES
Supervisor
5th District

JOE CARCHIO
Councilmember
City of Huntington Beach

PETER HERZOG
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City of Lake Forest

SUSAN WILSON
Representative of
General Public

JOHN WITHERS
Director
Irvine Ranch Water District

ALTERNATE
BILL CAMPBELL
Supervisor
3rd District

ALTERNATE
JAMES FISLER
Director
Mesa Consolidated
Water District

ALTERNATE
DEREK J. MCGREGOR
Representative of
General Public

ALTERNATE
BOB RING
Councilmember
City of Laguna Woods

JOYCE CROSTHWAITE
Executive Officer

Background

In accordance with State statute, the boundaries of cities are not allowed to transcend county boundaries. However, the boundaries of special districts can encompass more than one county. Encouraging logical boundaries is one of LAFCOs primary goals and the Cortese-Knox-Hertzberg Act identifies the LAFCO responsible for processing proposals involving multi-county special districts. The Act also allows the responsibility to be transferred to another affected LAFCO.

Discussion

Due to a prior miscommunication with Kern LAFCO regarding a multi-county special district, San Bernardino LAFCO has asked that each of their neighboring LAFCOs approve the attached Memorandum of Understanding (MOU). The draft MOU transfers responsibility for processing a proposal to the LAFCO in the affected county. While there are no special districts in both Orange and San Bernardino Counties, adoption of the attached MOU would provide clear jurisdictional responsibility for any future special district proposals involving both Counties.

While the attached MOU only includes Orange and San Bernardino Counties, there is an opportunity to increase collaboration through the Coalition of California LAFCOs (CCL) and address the issue of multi-county special districts with other neighboring LAFCOs in the southern region.

Recommendations:

1. Adopt the Attached Draft Memorandum of Understanding for Multi-County Special Districts with San Bernardino LAFCO.
2. Direct staff to discuss the development of a "joint" Memorandum of Understanding for Multi-County Special Districts involving the six Southern California LAFCOs with the CCL Board of Directors.

Respectfully submitted,

JOYCE CROSTHWAITE

BENJAMIN LEGBANDT

Attachment A: Draft Memorandum of Understanding

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

AND

ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION

THIS **MEMORANDUM OF UNDERSTANDING** (MOU) IS MADE THIS 12TH DAY OF OCTOBER, 2011 BY AND BETWEEN THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY (hereinafter **SBLAFCO**) and ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION (hereinafter **OCLAFCO**).

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 Section 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 OCLAFCO have numerous entities which abut, and which may in the future cross over county boundary lines. It has been the practice of SBLAFCO and OCLAFCO 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 OCLAFCO 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 OCLAFCO 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 OCLAFCO agrees 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 specific action is taken to rescind it in its entirety or to modify the MOU. 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 for 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 OCLAFCO 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 OCLAFCO 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) Orange County Local Agency Formation Commission
12 Civic Center Plaza, Rm. 235
Santa Ana, CA 92701
Attn: Executive Officer
Joyce Crosthwaite

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:

ORANGE COUNTY LOCAL AGENCY
FORMATION COMMISSION:



Legal Counsel,
Orange County Local Agency
Formation Commission

By: 

JOHN MOORLACH
CHAIRMAN