LAFCO
San Diego Local Agency Formation Commission

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Website: www.sdlafco.org

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Michael D. Ott

Counsel

Thomas Bosworth

AGENDA
SPECIAL DISTRICTS ADVISORY COMMITTEE
FRIDAY, November 15, 2013, 9:30 A.M.

Note: Location at
The San Diego County Water Authority Administration Facility
4677 Overland Avenue
San Diego, CA 92123
The location is near Clairemont Mesa Blvd and Ruffin Road (east of I-15)

Agenda Item:		Recommended Action:
1.	**Welcome and Roll Call**	
2.	**Approval of Minutes of Meeting held August 16, 2013**	**Approve**
3.	**Consultant's Recommended Agenda Revisions**	**Receive**
4.	**Committee Member / Consultant's Announcements**	**Information**
5.	**Public Comment** Opportunity for persons to speak to the Committee on any subject within the Committee's jurisdiction, but not an item on today's agenda. Each speaker's presentation may not exceed 3 minutes.	
6.	**Update on "Meadowood Reorganization" (Valley Center Municipal Water District) Ref. Nos. RO12-11; SA12-11(a); SA12-11(b); and SA12-11(c)**	**Discussion/ Comment**
7.	**Review of Pending Legislation Impacting LAFCOs***	**Discussion**
8.	**Update on current LAFCO and Special Districts Projects**	**Discussion Item**
9.	**Adjournment to the December 20, 2013 Meeting Date if necessary**	**Adjourn**

Refer to Attached Report

LOCAL AGENCY FORMATION COMMISSION
SPECIAL DISTRICTS ADVISORY COMMITTEE
AUGUST 16, 2013 MEETING

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There being a quorum present, the meeting was convened at 9:30 a.m., by Chairman Tom Pocklington (Bonita-Sunnyside FPD). Attending were: **Committee Members** – Gary Arant (Valley Center MWD), Jim Archer (Alpine FPD), Brian Brady (Rainbow MWD), Judy Hanson (Leucadia WD), Bill Haynor (Whispering Palms CSD), Jon Lorenz (Lakeside FPD) (arrived at 9:36 a.m.), John Pastore (Rancho Santa Fe CSD) (arrived at 9:32 a.m.), Janine Sarti (Palomar Health), Augie Scalzitti (Padre Dam MWD), Dennis Shepard (North County Cemetery District), Terry Thomas (South Bay ID) and Kimberly Thorner (Olivenhain MWD). Absent were: **Committee Members:** Tom Bumgardner (Valley Center Parks & Recreation District), Gary Croucher (Otay Water District), and Margarette Morgan (Vista FPD), Others Attending: Michael Ott, LAFCO Executive Officer, Harry Ehrlich, LAFCO Consultant and Ingrid Hansen, LAFCO Chief, Governmental Services.

Item 2
Approval of Minutes of April 19, 2013

ON MOTION of Jim Archer, seconded by Terry Thomas, and approved by the Committee members, with the exception of Brian Brady (new committee member) and Tom Pocklington (not present at the last meeting) requesting to abstain, the Committee dispensed with reading the April 19, 2013 amended minutes and approved said minutes

Item 3
Consultant's Recommended Agenda Revisions

Harry Ehrlich indicated there are no revisions to the Agenda Items presented at today's meeting.

Item 4
Committee Member / Consultant Announcements

Brian Brady, new committee member, provided some background information about his experience and general information regarding the recently formed JPA with the Fallbrook PUD and Rainbow MWD agencies.

Item 5
Public Comment

There were no members of the public requesting to speak.

Item 6
Review and Comment on LAFCOs Procedures Guide

Michael Ott, Executive Officer provided a presentation to the committee on the most recent updates to the LAFCO Procedures Guide and requested any comments or suggestions from the committee members.

Item 7
Review of Pending Legislation Impacting LAFCO's

Mr. Ehrlich provided a brief update to the committee members regarding recent legislative activity on the following bills: SB594; AB453; SB772; AB1427 and AB473.

Item 8
Other Current LAFCO and Special Districts Projects

During a roundtable discussion, all committee members present provided current projects and activities within their districts.

There being no further business to come before the Special Districts Advisory Committee, it was noted that the next meeting is tentatively planned for October 18, 2013, if a meeting is to be held. The meeting was adjourned at 11:00 a.m.

Ruth Arellano
Administrative Assistant

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November 15, 2013

TO: Special Districts Advisory Committee

FROM: Chief, Governmental Services

RE: Adoption of Amendments to the Spheres of Influence for Valley Center Municipal Water District (SA12-11[a]); San Diego County Water Authority (SA12-11[b]); Metropolitan Water District of Southern California (SA12-11[c])

SUBJECT: Proposed "Meadowood Reorganization" (Valley Center Municipal Water District) (RO12-11)

Background

In January, 2013, your Committee received an update of these proposals. As a statutory requirement, the proposed reorganization had appeared for informational purposes on LAFCO's December 2012 agenda because the proposal involves annexation to multiple districts. State Law mandates that the item be presented to the Commission to serve as notification to those agencies that there is a 60-day period in which to adopt and submit a resolution requesting termination of proceedings. No resolution was received prior to the expiration date of February 1, 2013.

The proposed reorganization involves annexation to the Valley Center Municipal Water District (MWD), the San Diego County Water Authority (CWA), the Metropolitan Water District of Southern California (MET), and the North County Fire Protection District (FPD) with concurrent detachment from the San Luis Rey MWD and divestiture (removal) from the structural fire protection and emergency medical services zone of County Service Area (CSA) No. 135. The detachment and divestiture will avoid an overlap of service responsibility among the districts.

The County approved a Vesting Tentative Map and Major Use Permit that propose the construction of 355 single-family homes, 164 detached condominiums, and 325 townhomes in addition to a park and recreation center, an elementary school, and a wastewater treatment facility; approximately 50 acres will be retained for agricultural usage. Conditions for final approval of the development plan include: (1) annexation to the North County FPD in order to provide a higher level of fire protection services to the structures proposed for construction; and (2) annexation to secure water and sewer services. The County prepared a Water Supply Assessment and Verification Report that identified Valley Center MWD as the agency to provide water and sewer services for the Meadowood Project.

Currently, the project footprint is primarily vacant with some active citrus and avocado groves surrounded by annual grasslands and native vegetation, as well as pasture land and natural open space. Scattered throughout are four single-family homes, sheds associated with agricultural uses, and other miscellaneous structures. The property is considered uninhabited by the definition contained in Government Code Section 56046 (i.e., fewer than 12 registered voters).

While the ownership totals 390± acres, the area proposed for development encompasses 267± acres. The remaining property (123± acres) consists of natural open space, will not be developed, and will not require water and sewer services. Therefore, only the 267-acre area will be annexed to the Valley Center MWD, San Diego CWA, and MET. Also, the detachment from the San Luis Rey MWD consists of only 243± acres, which represents that portion of the project

site located within that agency. However, the original proposal has been modified so that the entire ownership will be annexed to the North County FPD and removed from the structural fire protection and emergency medical services zone of CSA No. 135.

Even though the proposed reorganization area is not contiguous to Valley Center MWD, the District has provided "will serve" letters indicating that water and sewer services can be provided to the site. Capacity is available to deliver water service via connection to a San Diego CWA pipeline. An interim wastewater treatment facility will serve the initial development phases while a permanent regional facility is being planned and constructed. All treated effluent will be recycled for other uses that will result in the reduction in demand for imported water.

Each subject agency can submit terms and conditions pertaining to the reorganization. Both the San Diego CWA and MET impose terms and conditions when a proposal involves annexation to a member agency. It should be noted that both the CWA and MET have finalized terms and conditions pertaining to the Meadowood Reorganization. In addition, the divestiture from CSA No. 135's fire zone will be contingent on annexation to North County FPD.

Although the property is in the North County FPD's sphere of influence, it is not in Valley Center MWD's sphere. Spheres for the San Diego CWA and MET parallel the spheres of the member agencies. Completion of a Municipal Service Review (MSR) and concurrent Sphere of Influence (SOI) Update is required prior to Commission consideration of this reorganization.

A draft of the MSR/SOI Update that includes Rainbow, San Luis Rey, and Valley Center MWDs was distributed to the affected districts for comment. Currently, the draft report suggests changing the existing coterminous sphere for San Luis Rey MWD to a transitional/zero sphere, and placing portions of the District's service area into the spheres for Rainbow and Valley Center MWDs. Since San Luis Rey MWD does not provide water or sewer services, this action acknowledges that those services eventually would be provided by the other two districts and would facilitate future reorganizations when development plans were approved.

Responses to Draft MSR/SOI Update

Rainbow MWD responded that it would not oppose the reorganization based on existing agreements between Valley Center MWD and the property owner. However, Rainbow MWD staff stated that the District has available capacity and the ability to provide services to the Meadowood Project site. Also, the District now appears to be amenable to expanding its sphere to include additional territory – in particular the non-contiguous portion of San Luis Rey MWD.

San Luis Rey MWD submitted terms and conditions along with comments pertaining to the draft report. The District strongly opposes the designation of a transitional/zero sphere because: (1) District territory will continue to consist primarily of agricultural pursuits that require the services the District provides (groundwater protection and landowner advocacy); and (2) a designation to facilitate future reorganizations could engender growth, which is not currently anticipated.

Issues

- *Terms and Conditions*

As mentioned, one aspect of the reorganization is detachment from the San Luis Rey MWD. On April 1, 2013, San Luis Rey MWD submitted terms and conditions. LAFCO replied on May 28, that the terms and conditions San Luis Rey MWD requested could not be imposed. However, the District continues to propose those terms and conditions, which are contained in correspondence dated July 9, 2013 (see attached letter). LAFCO's response letter of October 1, 2013 also is attached. LAFCO staff believes that most of what San Luis Rey MWD has requested involves regulation of land use, or is not enforceable by LAFCO, or unnecessary since it pertains to future activation of latent powers and recognition of property owner's water rights.

Questions: Should the San Luis Rey MWD's requested terms and conditions be imposed? Does the District have sufficient justification to receive a detachment fee based on loss of both property tax revenue and the existing stand-by fee?

- *San Luis Rey MWD Sphere*

Currently, the draft MSR/SOI Update report proposes adoption of a transitional/zero sphere for San Luis Rey MWD. However, the District has expressed opposition to this designation because the service area is primarily agricultural and, thus, will not be developed to the level where urban services will be required. In addition, other services that are critical to the agricultural nature of the District are provided. Therefore, San Luis Rey MWD has requested a coterminous sphere with the possible exception of its non-contiguous area that is surrounded by Rainbow MWD. Some property owners in the non-contiguous portion of San Luis Rey MWD have signed agreements that designate Rainbow MWD as the future water and sewer service provider for proposed development.

Questions: Should San Luis Rey be assigned a transitional/zero sphere? If not, should the District have a coterminous sphere with the exception of the non-contiguous area? Or, should a coterminous sphere be adopted for the entire District?

- *Annexation for Park and Recreation Service*

During the Advisory Committee meeting in January, one member questioned why the project site was not being annexed to Valley Center Community Services District (CSD). The project consultant reported that the County Park and Recreation Department would oversee those services, and that the topic was discussed during the planning stage. The Meadowood Project is approximately 2½ to 3 miles from the nearest boundary of the Valley Center CSD (refer to Map C).

Questions: While a CSD can annex non-contiguous territory, can the District support service provision in the Meadowood Project? If so, should the property be annexed to the Valley Center CSD?

Respectfully submitted,

Ingrid E. Hansen

INGRID E. HANSEN
Chief, Governmental Services

IEH:ra

Attachments: San Luis Rey Letter of July 9, 2013
LAFCO Letter of October 1, 2013
Map A: Meadowood: Water and Sewer Service
Map B: Meadowood: Fire Service
Map C: Meadowood: Valley Center CSD

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July 9, 2013

Via Overnight Mail and Electronic Mail (Ingrid.Hansen@sdcounty.ca.gov)

Ingrid E. Hansen, Chief, Governmental Services
San Diego Local Agency Formation Commission
9335 Hazard Way, Suite 200
San Diego, California 92123

Re: Meadowood Reorganization (Valley Center Municipal Water District) & Supplemental Municipal Service Review & Sphere of Influence Update for Bonsall and Pala Hydrologic Subareas of the San Luis Rey River Watershed San Diego Local Agency Formation Commission ("LAFCO") Ref. Nos. R012-11; SA12-11(a); SA12-11(b); SA12-11(c)

Dear Ms. Hansen:

On behalf of the San Luis Rey Municipal Water District ("San Luis Rey"), thank you for your ongoing attention to the above-referenced matters, referred to below individually as the "Meadowood Reorganization" and the "Sphere of Influence Update," and collectively as the "LAFCO Matters." This letter serves to provide an update on discussions with Valley Center Municipal Water District ("Valley Center") and Pardee Homes ("Pardee") regarding the LAFCO Matters as well as to reply to your letter dated May 28, 2013 and our subsequent telephonic conversation regarding the same.

Update On Discussions With Valley Center And Pardee

Recently, San Luis Rey and Valley Center representatives resumed discussions, which have been positive and productive. Efforts are underway between the two districts to reach formal agreement(s) involving a number of San Luis Rey's terms and conditions related to the Meadowood Reorganization.

Pardee, however, has elected to date not to engage in any discussions with San Luis Rey, though San Luis Rey has invited Pardee multiple times to discuss these matters. Pardee has indicated that it does not see a need for such discussions based upon the May 28, 2013 letter, despite: (i) Pardee's project being a triggering cause to the LAFCO Matters, and, (ii) Valley Center's Resolution 2012-05 underlying its Application for Reorganization for Pardee's project specifically stating that Valley Center: "...requests that the proposed Reorganization be subject to the following terms and conditions...Pardee Homes shall pay all costs and fees associated

with the proposed Reorganization including but not limited to the following (Government Code section 56886 (v))...*All San Luis Rey Municipal Water District detachment and processing fees and charges...*"[1] Also, Valley Center's Resolution 2012-05 states that the "...proposed Reorganization shall be subject to additional terms and conditions required by SLRMWD...(Government Code section 56886 (v).)"[2] As such, Pardee should fully participate in this process given that both Valley Center's Resolution 2012-05 and San Luis Rey's Ordinance No. 2009-02 set forth terms and conditions bearing precisely upon the LAFCO Matters, with these matters occurring because of Pardee's project.[3] Pardee's continuing refusal to participate is inconsistent with its legal counsel's statement nearly four (4) months ago during San Luis Rey's March 2013 Regular Meeting, wherein counsel stated he was present to "help ensure things move along." San Luis Rey's invitation for discussions with Pardee still stands, but if Pardee continues to choose not to join the table for discussions, then LAFCO will need to render decisions on the terms and conditions for the Meadowood Reorganization at least to the extent terms and conditions are not satisfied by formal agreement between San Luis Rey and Valley Center.

LAFCO has the authority to grant the requested terms and conditions identified above in Valley Center's Resolution 2012-05 as well as set forth in San Luis Rey's Ordinance No. 2009-02 and April 1, 2013 letter (some of which are modified below), based upon the legal authorities identified in each of those documents and herein.[4] Absent formal agreement, San Luis Rey is compelled to continue with the administrative process for the LAFCO Matters. Accordingly, San Luis Rey provides additional information that supports the requested terms and conditions, and, preservation of a sphere of influence coterminous with its boundaries.[5]

Terms And Conditions Regarding The Meadowood Reorganization

I appreciate learning from you during a telephonic conversation following receipt of the May 28, 2013 letter that County Counsel has not reviewed the requested terms and conditions and that additional information from San Luis Rey may assist with LAFCO's and legal counsel's evaluations. I also appreciate learning of concerns with some of San Luis Rey's requested terms

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[1] Valley Center's Resolution 2012-05, page 2, Term & Condition No. 2 (b) [emphasis added].
[2] *Ibid.* at page 4, Term and Condition No. 7.
[3] San Luis Rey's Ordinance No. 2009-02 relates to San Luis Rey's policy and conditions for detachment/deannexation of property from San Luis Rey. Ordinance No. 2009-02 is attached as "Attachment 1" to San Luis Rey's April 1, 2013 letter on file with LAFCO.
[4] For clarification given the May 28, 2013 letter on page 1 stating that it appears San Luis Rey may understand that LAFCO may be unable to impose suggested terms and conditions, San Luis Rey's position is that LAFCO has authority to grant San Luis Rey's terms and conditions, but San Luis Rey is open to working toward agreements with Valley Center and Pardee to satisfy those terms and conditions.
[5] San Luis Rey reserves its rights to provide additional information - whether factual or legal - for the administrative record in the LAFCO Matters.

and conditions. As such, the information set forth below is provided for those purposes, with information first provided as to all terms and conditions followed by information specific to particular terms and conditions. The collective body of legal authorities and the relevant circumstances establish San Luis Rey's terms and conditions indeed have merit.

1. Consent From Stakeholders Is Not Required.

Government Code section 56122 states in pertinent part: "Section 56886 and any term and condition provided by, or made pursuant to, that section shall be enforceable by, between, among, and against any public agency or agencies designated in the term and condition..." Nothing in that language requires consent; in fact, the statutory language of enforceable "against" supports San Luis Rey's position that LAFCO can enforce a term or condition without the affected agency's consent. Also, the Attorney General has opined broadly that LAFCO can impose many conditions for guidelines with respect to the detachment itself. (61 Op. Atty. Gen. 497, 11-17-78.)

Demonstrating by way of analogy that LAFCO can impose terms and conditions without consent of affected stakeholders, Government Code section 56855(b) states in pertinent part: "the district may request and the commission shall impose, as a term and condition, a requirement that the legislative body of the city shall enter into a contract with the district. The contract shall require: (1) That the affected territory shall remain part of the district for a period of at least 10 years. (2) That the city shall pay the cost of services provided by the district. This payment shall be in amounts and on terms specified in the contract. (3) Any other conditions to which the city and the district mutually agree." Though Section 56855 relates to fire protection services, this Section demonstrates that LAFCO may impose a term or condition without consent from all affected stakeholders.

Ultimately, the foregoing authorities establish that LAFCO can impose terms and conditions without consent of affected stakeholders, thereby refuting what appeared to be a belief that consent is required for imposing a term or condition.

2. LAFCO Is Statutorily Authorized To Make Decisions On Direct And Indirect Land Use Terms And Conditions.

While LAFCO cannot impose "...conditions that would *directly* regulate land use *density or intensity*, *property development*, or *subdivision requirements*...,"[6] San Luis Rey's terms and conditions do not fall within the scope of this limitation, as set forth in Section 4 below.

An all-encompassing limitation against LAFCO rendering decisions on land use does not exist. Instead, LAFCOs are said to make *indirect* land use decisions: "LAFCOs control the timing and location of land use because they control the boundaries of those local governments

[6] Government Code section 56375(a)(6) [emphasis added].

that make land use decisions and provide services for development."[7] In addition, "'The biggest challenge for California water resources management remains making sure that water is in the right places at the right time.'"[8] LAFCO is required to review the timely availability of adequate water supplies.[9] "Adequate water supply is an issue with most LAFCos...LAFCos will play a key role in facing the challenges of water supply management in California."[10]

This sentiment has proven true many times, including as recently as June 5, 2013, when the Superior Court of California for the County of San Luis Obispo denied a Petition For Writ Of Mandate by upholding San Luis Obispo LAFCO's ("SLO LAFCO") decision to deny annexation on the basis that water supply demand had been underestimated. (*Central Coast Development Company v. San Luis Obispo Local Agency Formation Commission* (Case No. CV 120279)("SLO LAFCO".) The Court noted that "We are a thirsty State with limited supplies of water." (SLO LAFCO, p. 3, line 6.) The Court also stated that "It was a reasonable decision by the Commissioners (indeed one could say, insightful) to take into account the unreliability of future water from the State Water Project..." (SLO LAFCO, p. 20, lines 11-12.)

Ultimately, the foregoing authorities and specific subsections of Government Code section 56886 demonstrate that LAFCO has authority to render decisions that bear upon land use.

3. Decision-Making Process And Evaluation Of The Evidence.

LAFCO is required to evaluate evidence for and against a particular proposal and to make its own independent decision or determination approving or disapproving a proposal, and unless the Commission has affirmatively fulfilled this duty, any further steps to effectuate a particular change of organization is prohibited. (*San Mateo County Harbor Dist. v. Board of Supervisors of San Mateo County* (1969) 273 Cal.App.2d 165 [applying Government Code section 56375.].)

Here, the "evidence" presented to date as it relates to San Luis Rey's terms and conditions consists of that set forth in San Luis Rey's April 1, 2013 letter and herein, which are items necessary to preserve San Luis Rey's rights and long-standing practices and are supported by sufficient legal authority for which San Luis Rey has provided numerous citations.

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[7] *It's Time to Draw the Line* (May 2003) Tami Bui & Bill Ihrke.

[8] *Water Rights: Supply Issues for Local Agency Formation Commissions* (2005 CALAFCo Annual Conference), presented by Marsha A. Burch, p.2, *citing to*, Public Review Draft of the *California Water Plan* (Update 2005).

[9] Government Code section 56668(k).

[10] *Water Rights: Supply Issues for Local Agency Formation Commissions* (2005 CALAFCo Annual Conference), presented by Marsha A. Burch, p. 4.

To that end, denial of any requested term and condition needs to be sufficiently evaluated to overcome the existing evidence as well as the legal authority provided in support of San Luis Rey's terms and conditions. As part of that process, San Luis Rey requests that LAFCO inform San Luis Rey with specificity of a particular term and condition that appears vague or otherwise beyond the legal authorities cited to by San Luis Rey in its April 1, 2013 letter and herein.

4. San Luis Rey's Terms And Conditions Are Proper For LAFCO Approval.

San Luis Rey's terms and conditions (whether deemed to be "direct" regulation other than those prohibited by Section 56375(a)(6) or "indirect" regulation) are specifically allowed pursuant to one of the guiding authorities to a LAFCO - Government Code section 56886, for which San Luis Rey's April 1, 2013 letter cites to specific subsections (among other legal authorities) for each and every term and condition. Specifically:

(1) **Items 1 through 5.b** all cite to specific statutory authorities that explicitly support San Luis Rey's requests that essentially call for "official" acknowledgment of San Luis Rey's and its landowners' rights. In response to the May 28, 2013 letter's comments on page 2, the SLO LAFCO decision by the Superior Court referenced above in Section 2 serves various purposes applicable to the LAFCO Matters, with the most relevant point here being that San Luis Rey's terms and conditions fall in line with the type of "regulation" handed down by SLO LAFCO *and* affirmed by a court of law. Thus, LAFCO *currently* has authority to approve these items even if Valley Center *later* acquires jurisdiction over the Meadowood Property. Also, San Luis Rey is not requesting LAFCO to enforce compliance with San Diego County's Groundwater Ordinance *if at a later time there is non-compliance* but instead to approve the requested term recognizing that this Ordinance is an existing governing standard to be followed.

(2) **Items 5.c through 5.i and 8 and 9** all cite to specific statutory authorities that explicitly support San Luis Rey's requests which are further supported by the SLO LAFCO Opinion discussed above and attached hereto as Attachment 1, contrary to the May 28, 2013 letter's comment on page 2 that certain land use issues should have been "addressed and resolved during the development plan process." Even if that is true, the SLO LAFCO Opinion demonstrates it is not "too late" as the comment suggests.

Further supporting San Luis Rey in light of local conditions and circumstances, Government Code section 56301 states a "purpose" of the Commission" includes "discouraging urban sprawl, *preserving open-space and prime agricultural lands*, efficiently providing government services, and encouraging the orderly formation and *development of local agencies based upon local conditions and circumstances*..." (Emphasis added.) Consistent with this fundamental standard, and as LAFCO is well aware, much of San Luis Rey is agricultural and open-

space lands, entitling these lands to certain protections including those provided at page 6 of San Luis Rey's April 1, 2013 letter. In furtherance of protecting these types of lands are various authorities, including Government Code section 56377 (also part of the Cortese-Knox-Hertzberg Act of 2000), which states:

> "In reviewing and approving or disapproving proposals which could reasonably be expected to induce, facilitate, or lead to the conversion of existing open-space lands to uses other than open-space uses, the commission shall consider all of the following policies and priorities: (a) Development or use of land for other than open-space uses shall be guided away from existing prime agricultural lands in open-space use toward areas containing nonprime agricultural lands, unless that action would not promote the planned, orderly, efficient development of an area. (b) Development of existing vacant or nonprime agricultural lands for urban uses within the existing jurisdiction of a local agency or within the sphere of influence of a local agency should be encouraged before any proposal is approved which would allow for or lead to the development of existing open-space lands for non-open-space uses which are outside of the existing jurisdiction of the local agency or outside of the existing sphere of influence of the local agency."

(3) **Items 6 and 7** all cite to specific statutory authorities that explicitly support San Luis Rey's requests to preserve its fiscal integrity that would otherwise be adversely affected by the Meadowood Reorganization. Inherent inequity exists to the detaching district to lose part of its fiscal base when another benefits from the detachment and subsequent annexation to another district without paying the losses resulting from detachment. That is to say, the property owner (i.e. Pardee) may develop its property in accordance with appropriate and necessary entitlements, permits, and other approvals, however, it has to pay to do so, pursuant to the specific authority cited in the April 1, 2013 letter, San Luis Rey's Ordinance 2009-02, and Valley Center's Resolution 2012-05.

Also, Government Code section 56815(d) states: "Nothing in this section is intended to change the distribution of growth on the revenues within the affected territory unless otherwise provided in the agreement or agreements specified in paragraph (2) of subdivision (c)." Paragraph 2 of subdivision (c) states that: "*...the commission may approve a proposal that includes an incorporation* ***if it finds the negative fiscal effect has been adequately mitigated*** *by tax sharing agreements,* ***lump-sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to Section 56886.***" (Emphasis added.)

> This statutory language validates the legitimacy of San Luis Rey's terms and conditions seeking fiscal compensation on a fixed one-time basis *and* an "ongoing" basis subject to a fixed period of time such as that proposed in the April 1, 2013 letter or such other time period agreeable to LAFCO, San Luis Rey, and/or affected stakeholders. This statutory language also demonstrates that LAFCO should approve the San Luis Rey's fiscal terms and conditions, *or,* deny the Meadowood Reorganization application if these fiscal terms and conditions are not satisfied. Also, as for loss of property tax revenue, Revenue and Taxation Code section 99(e)(1) shall be followed. If property tax exchanges cannot be agreed to, an impasse will stall or could terminate the process. (*Greenwood Addition Homeowners Association v. City of San Marino* (1993) 14 Cal.App.4th 1360.)

To date in the LAFCO Matters, a legal basis for denying the numerous legal authorities cited to for each term and condition has not been established or explained, all the while each term and condition seeks to protect San Luis Rey's and its landowners' water rights and supplies, and the quality of those supplies. Ultimately, the foregoing authorities (and others) establish that LAFCO has authority to approve San Luis Rey's requested terms and conditions, and that LAFCO should do so.

Comments Regarding The Sphere Of Influence Update

San Luis Rey is pleased that the May 28, 2013 letter shows inclination to preserving a coterminous sphere with San Luis Rey's boundaries absent the Meadowood Property. San Luis Rey, however, does not believe that the other properties referenced in the letter that may be developed and serviced by Rainbow MWD should be removed from San Luis Rey's sphere at this time. To do so at such an early pre-development stage and without a pending application for reorganization is growth inducing, which is contrary to LAFCO's purpose and guidelines (set forth in detail in the April 1, 2013 letter). Thus, the pending Meadowood Reorganization should not result in a change to San Luis Rey's Sphere of Influence, or alternatively, if its Sphere of Influence is to be reduced, such reduction should only be for those parcels that are part of the Meadowood Reorganization (*and only if* all of San Luis Rey's terms and conditions set forth below are satisfied).

Ultimately, San Luis Rey enjoys a proud history of protecting the surface water and groundwater rights of its landowners, among other functions. For these reasons and those set forth above and in the April 1, 2013 letter, San Luis Rey seeks the requested terms and conditions, as well as the coterminous sphere of influence with its boundaries. Maintaining San Luis Rey's "status quo" is appropriate and necessary under the circumstances and applicable legal authorities, with LAFCO having the jurisdictions to do so. Should LAFCO be inclined to deny any of these requests, San Luis Rey requests LAFCO to identify the basis for any such denial.

Please feel free to contact me with any questions or comments. We look forward to your response. Thank you for your continuing attention to these matters.

Very truly yours,

ALESHIRE & WYNDER, LLP

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Enclosure

cc: San Luis Rey Municipal Water District, President and Members of the Board of Directors
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FILED

JUN 05 2013

SAN LUIS OBISPO SUPERIOR COURT

BY _____

L. Vetley, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

CENTRAL COAST DEVELOPMENT COMPANY, Plaintiff and Petitioner, v. SAN LUIS OBISPO LOCAL AGENCY FORMATION COMMISSION and DOES 1 to 50, inclusive, Defendants and Respondents.	Case No.: CV 120279 **RULING AND ORDER DENYING PETITION FOR WRIT OF MANDATE**
CITY OF PISMO BEACH; COASTAL CHRISTIAN SCHOOL, and ROES 1 to 50, inclusive, Real Party in Interest.	

I. INTRODUCTION AND SUMMARY

The forces at work in this lawsuit are long-standing. The fragility of the existing water supply on California's Central Coast is an enduring, knotty problem that has often bumped up against the engines of development and economic growth.

In the present case, Petitioner Central Coast Development Company, doing business as Los Robles Del Mar (hereinafter "Los Robles" or "LRDM") and the City of Pismo Beach (hereinafter "Pismo Beach," "Pismo," or "City"), have brought suit against the San Luis Obispo Local Agency Formation Commission (hereinafter "SLO LAFCo") over its decision to deny Pismo's annexation of a 182-acre parcel in an area northeast edge of Pismo's existing City limits.

Los Robles is an ambitious project that would entail the construction of approximately 240 "low density," "estate," and "custom" homes, as well as a school. The controversy is over whether the City of Pismo Beach has adequate and realistic water resources to support this new development.

Local agency formation commissions, commonly referred to as LAFCos, are entrusted with quasi-legislative powers to approve or deny municipal annexations. Comprised of elected officials from the surrounding region, LAFCos are chartered with controlling orderly municipal expansion according to broad criteria in the public interest. As this case illustrates, they are often called upon to answer the policy-driven and difficult question of where and when to allow municipal expansion. Under the law, they are endowed with substantial discretion and subject to deferential and limited judicial review.

In support of the annexation, Pismo Beach and Los Robles assert that Pismo's existing water supplies are adequate, that Los Robles has "purchased" adequate water from another developer, and that new sources of water are on the immediate horizon. They point to a planned water recycling facility and the availability of additional water from the State Water Project, which is a critical source of water for the entire State of California.

SLO LAFCo denied the annexation on the basis that Los Robles and Pismo Beach had underestimated the water demand of the residential project, that the amount "purchased"

by Los Robles was insufficient to offset demand, and that the realistic future water supply of Pismo Beach had been overestimated. According to SLO LAFCo, the City and Los Robles are relying on sources of water that are hypothetical and contingent in that Pismo Beach has not allocated funding for its recycled water project, and has not yet begun the lengthy, complex process of securing additional rights from the State Water Project.

We are a thirsty State with limited supplies of water. The State Water Project, one of our main supply sources, remains fluctuating and unpredictable, especially due to the vagaries of drought, reduced snowfall and rainfall levels, climate change, levee failures, volatile regulatory efforts, and multiple and competing sources of demand. Whether sufficient additional water from the State Water Project will be available to Pismo Beach in the near term is an open and yet-unanswered question.

The uncertainty of water from the State Water Project is not diminished or rendered less ominous by Pismo's ability to pump groundwater, which has been suggested as another source of supply. Regional groundwater basins, known as aquifers, today are in delicate balance and at significant risk of destruction through overdraft and salt water intrusion. There are many competing users who critically depend on groundwater, most notably the cities of Arroyo Grande and Grover Beach. It is uncertain whether the health of the aquifers will be sustainable going forward in light of conflicting and increasing demands, drought, global warming, and rising sea levels.

Water conservation and recycling are also raised by Los Robles and Pismo Beach as a genuine solution that should suffice for purposes of allowing this annexation to proceed. Although water conservation is vitally necessary, and while recycling has immense technological promise, Pismo Beach is simply not yet capable of using recycling in sufficient quantities to recharge groundwater. There has been considerable discussion about a tertiary wastewater treatment plant, but as yet no action has been taken to implement any concrete plans. Significant water recycling is something that remains to be done in the future; it is not available now.

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Too often in the past, local agencies have approved substantial development projects notwithstanding grave, gnawing doubts about the availability and level of public services that would actually be needed to sustain and integrate new development over the long haul. For example, in this case SLO LAFCo's staff recommended that approval be granted but conditioned upon *later* documenting a solution to the water problem.

Sometimes this sort of hope has been rewarded; often, however, it has led to substantial and expensive problems later being placed at the feet of future leaders, as well as the taxpaying populace. We can no longer afford to use these methods as a basis for long-term land use planning. To put it another way, as Albert Einstein once said: "We cannot solve problems with the same thinking we used when we created them."

In light of legitimate and significant concerns about the adequacy of water resources that will be needed for the Los Robles project, if annexed into the City of Pismo Beach, SLO LAFCo was not required to base its decision on optimistic estimates of supply and demand. It is not only SLO LAFCo's prerogative to be prudent, it is its duty. Under the law, it was entitled to, and did, rely upon more conservative estimates from other credible sources.

In its entirety, the 4,140-page Administrative Record demonstrates that SLO LAFCo took to heart its role as warden of orderly development, while considering the potential harms to the public interest that might occur if the City's and developer's assumptions and predictions about water supply should not come to pass. That is to say, in legal jargon, substantial evidence supports SLO LAFCo's decision to deny the annexation.

SLO LAFCo also satisfied any obligations it had under the California Environmental Quality Act ("CEQA"). Although it does not appear that disapproved projects are even subject to the requirements of CEQA, SLO LAFCo did fulfill any duties as a responsible agency by taking into account and considering Pismo's CEQA documents.

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II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Overview of the Water Dilemma

With nearly seven miles of beachfront along the Pacific Ocean, Pismo Beach illustrates the challenge of providing a reliable water supply to an arid Central Coast community, which also serves as a prime tourist destination. (Administrative Record ("AR"), Vol. XXVI, Tab 165A, p. 5548.) Pismo Beach's permanent population of 7,676 in 2010 is expected to nearly double by 2035. (*Id.* at p. 5554, 5556–57.) During the tourist season, its population doubles or even triples. (*Id.* at p. 5548.)

As is the case in many other localities, Pismo's water supply is a labyrinth. However, at the risk of oversimplification, it can be said that there are three principal water sources: (1) the State Water Project; (2) Lopez Lake; and (3) groundwater. (*Id.* at p. 5586.)

The California Department of Water Resources operates the State Water Project (*Id.* at p. 5589) and contracts with the San Luis Obispo County Flood Control and Water Conservation Flood District (the "Flood District") to deliver water from the State Water Project to Pismo Beach. (*Ibid.*; See, e.g., AR, Vol. XXV, Tab 163, p. 5441.)

Pismo Beach's total allocation of "paper water" from the State Water Project is 1,240 AFY.[1] (AR, Vol. XXVI, Tab 165A, p. 5589.) In June 2011, the owner of 140 AFY, Pismo 98 LLC, sold its rights to 100 AFY to Los Robles, conditioned on SLO LAFCo's approval of the annexation at issue in this lawsuit. (AR, Vol. XXVIII, Tab 168, p. 5958-5960.) In other words, depending on whether this annexation goes through as planned, Pismo's State Water Project "paper water" supply totals 1,200 AFY, or 1,100 AFY.

Pismo Beach's *actual* allocation of State Water Project water, in any given year, is extremely variable. A plethora of factors come into play, including "the [statewide] demand for the supply, amount of rainfall, snowpack, runoff, water in storage, pumping capacity from the [Sacramento-San Joaquin] Delta, and legal constraints on State Water Project operation."

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[1] "Paper water" refers to a water-rights-holder's nominal allocation from a natural water source. As the amount of water from any source varies from year to year depending on weather, the amount of water actually delivered in any given year is typically less, often significantly less. Accordingly, discussion of water supplies necessary distinguishes between "paper water" and "wet water." AFY means acre-feet per-year, which equates with 325,851 gallons.

(AR, Vol. XXXI, Tab 174, p. 6446.) On average, only 60% of the paper allocations are delivered, equating with 720 AFY for Pismo Beach in an "average" year. (AR, Vol. XXXI, Tab 174, p. 6470.)

To offset this inherent variability, Pismo Beach has purchased a 1,240 AFY "drought buffer." (AR, Vol. XXVI, Tab 165A, p. 5590.) A drought buffer is not a separate water supply but rather a larger holding of "paper water" rights, which increases the likelihood that sufficient water will actually be delivered during drought years. (AR, Vol. XXVI, Tab 165A, pp. 5589–5590.) The Flood District provides this "buffer" by agreeing to leave a significant portion of its own "paper water" rights "unallocated" so that it can provide Pismo Beach's entire water entitlement, even when the State Water Project delivers substantially less actual water in a given year than suggested by Pismo's paper entitlement.[2]

Pismo Beach also holds rights to water in Lopez Lake, an impoundment of Arroyo Grande Creek, six miles upstream from the City of Arroyo Grande. (AR, Vol. XXV, Tab 163, p. 5438; Vol. XXIX, Tab 172, p. 6193.) Pismo Beach owns 896 AFY of "paper water" from Lopez Lake. (AR, Vol. XXVI, Tab 165A, p. 5589.) The Flood District delivers Pismo Beach's Lopez Lake supply through the same pipeline that it delivers its State Water Project water. (AR, Vol. XXV, Tab 163, pp. 5439, 5441; Vol. XXVI, Tab 165A, p. 5589; Vol. XXX, Tab 173, p. 6263.)

Pismo Beach also pumps groundwater from the Tri-Cities Mesa Sub-Basin (the "Sub-Basin") of the Santa Maria Valley Groundwater Basin, an adjudicated basin. (AR, Vol. XXVI, Tab 165A, pp. 5588, 5592.) As is true with Pismo Beach's other water sources, the situation regarding groundwater availability is complex.

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[2] It can readily be seen that the mathematics of reasonably estimating water supply deliveries can be complicated. By holding twice the "paper water" rights as it has allocated to Pismo Beach, the Flood District can deliver 100% of Pismo's "paper water" allocation in any year in which the State Water Project delivers 50% or more of its total "paper water" allocation. (AR, Vol. XIII, Tab 70, p. 2404.)When State Water Project deliveries fall below 50%, the drought buffer provides water equal to the amount the State Water Project delivers, effectively doubling the amount of "wet water" from the State Water Project. (AR, Vol. XXVI, Tab 165A, p. 5590.) For instance, when drought causes State Water Project deliveries to fall to 40% of contracted amounts, Pismo Beach would receive 480 AFY of water without a drought buffer. With the drought buffer, Pismo Beach receives an additional 40% from the Flood District, so it receives 976 AFY of water. (*Id.* at p. 5590.)

In 2008, the Santa Clara Superior Court entered judgment allocating the Sub-Basin's groundwater based on a 2002 settlement agreement among the Cities of Arroyo Grande, Grover Beach, and Pismo Beach and the Oceano Community Services Flood District ("Oceano CSD"), various landlords and other parties. (AR, Vol. XXVIII, Tab 167, p. 5905.) The 2008 judgment limits Pismo Beach to 700 AFY. (*Id.* at p. 5914.)

Arroyo Grande and Grover Beach are more dependent on groundwater than Pismo Beach because they do not receive State Water Project water. (AR, Vol. XXIX, Tab 170, pp. 6035–6036; Vol. XXXII, Tab 177, pp. 6696–6697.)[3] While reducing the quantity and quality of groundwater would be problematic for Pismo Beach, it would be catastrophic for Grover Beach and Arroyo Grande.

To complicate matters even more, the Sub-Basin faces a significant risk of seawater intrusion—when groundwater levels fall below sea level, salt water can permanently contaminate fresh groundwater supplies and eliminate them as a source of drinking water. (AR, Vol. XXVI, Tab 165A, pp. 5594–5595; Vol. XXVIII, Tab 167, p. 5928.)

In 2008, studies of the Sub-Basin showed groundwater levels had fallen to as much as ten feet below sea level, a ripe condition for fatal seawater intrusion. (AR, Vol. XXVI, Tab 165A, p. 5594.) Such low groundwater elevations persisted for as long as two years, an event unmatched in the historical record. (AR, Vol. XXVIII, Tab 167, p. 5928.) The risk of seawater intrusion prompted the Basin's "municipal water users [to] reduce[] ground water use between 25 and 90 percent between 2007 and 2010." (*Id.* at p. 5929.)

Arroyo Grande and Grover Beach, which rely more heavily on groundwater, were unable to reduce their groundwater use as much as Pismo Beach and the Oceano CSD, which could rely on the State Water Project. (*Ibid.*) Accordingly, Pismo Beach reduced its groundwater use by nearly 90% (to as little as 96 AFY) by 2010. (AR, Vol. XXVI, Tab 165A, pp. 5596–5597.)

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[3] Groundwater makes up 21% to 35% of Arroyo Grande's supply, and Arroyo Grande recently contracted with Oceano CSD for additional water (AR, Vol. XXIX, Tab 170, pp. 6041, 6048). Groundwater makes up about 63% of Grover Beach's supply[3] (AR, Vol. XXXII, Tab 177, p. 6697). These cities' remaining water supplies comes primarily from Lopez Lake. (AR, Vol. XXIX, Tab 170, p. 6036; Vol. XXXII, Tab 177, p. 6697.)

Although recharge and pumping from the Basin were roughly in equilibrium by 2010, the Sub-Basin remains at significant risk of overdraft. (AR, Vol. XXVIII, Tab 167, pp. 5928–5929; Vol. XXVI, Tab 165A, pp. 5594–5596.) It is open to doubt whether multiple groundwater pumpers from different jurisdictions can maintain the Sub-Basin's water balance given the pressures of development, global warming, natural drought and "regulatory drought" caused by restrictions on water exports via the Sacramento River Delta. (See AR, Vol. XXVIII, Tab 167, p. 5927; Vol. XXIV, Tab 162, p. 5280.)

B. Procedural History of the Los Robles Project

As stated, the Legislature created 58 separate state agencies throughout California under the Cortese-Knox-Hertzberg Act ("Cortese-Knox Act"), commonly known as LAFCos, whose governing body is made up of a Commission consisting of two members of the County Board of Supervisors, two members of City Councils within the county, two members from local special districts, and one public member. (Gov. Code, §56325.)

The primary purpose of a LAFCo is to encourage orderly formation of local government agencies, preserve agricultural land and discourage urban sprawl. (Gov. Code, §§56001, 56301.) Among other duties, LAFCos approve changes in local governmental boundaries, conduct special studies to streamline government, adopt spheres of influence for cities and special districts, and approve or deny merger and/or expansion of cities and special districts. (Gov. Code, §§56100, 56301, 56378, 56425, 56375.) Each LAFCo must adopt written policies and procedures. (Gov. Code, §56300(a).)

In 2004, Pismo Beach adopted a resolution requesting SLO LAFCo to consider its annexation of the Los Robles site, which was denominated at the time as Annexation No. 14. (AR, Vol. I, Tab 12; Vol. II, Tab 27, p. 260.)

On January 17, 2008, SLO LAFCo conducted a hearing on Annexation No. 14 and later denied this request. (See AR, Vol. II, Tab 28, p. 263; Vol. XII, Tab 68, pp. 2244–2245.) Similar to the current case, SLO LAFCo's earlier findings explained that Annexation No. 14 was inconsistent with SLO LAFCo's Policy 17 (now denominated as Policy 16), which requires applicants to "demonstrate the availability of an adequate, reliable and sustainable

supply of water." (AR, Vol. XII, Tab 68, p. 2249-2252.)

In 2011, SLO LAFCo conducted a municipal service review to evaluate possible changes to Pismo Beach's Sphere of Influence. (AR, Vol. XXIV, Tab 162, p. 5211.) In addition to the Los Robles project, Pismo Beach also has plans in process for the Spanish Springs, a.k.a. Price Canyon, project, which, at the time, was proposed to include over 500 homes, a 360-unit senior housing project, a hotel, vineyards, orchards, a park, and a golf course. (AR, Vol. XXVI, Tab. 165A, pp. 5558–5559.)

After reviewing Pismo Beach's water supply and demand in light of the land uses permitted by its General Plan, SLO LAFCo determined "[t]he City currently has an adequate water supply to serve the anticipated build-out under its current General Plan to serve the area within the city limits." (AR, Vol. XXIV, Tab 162, p. 5317.) However, SLO LAFCo also cautioned that additional sources of adequate, reliable and sustainable water would be needed for build-out beyond the city limits. (*Id.* at p. 5237; see also AR, Vol. XVIII, Tab 89, p. 3649 [mitigation measures to ensure water supply].)

In August 2011, Los Robles and Pismo Beach again applied for annexation of Los Robles' property, this time through an application identified as Annexation No. 15. (See AR, Vol. XIII, Tab 70.) As stated, by the date of this new application, Los Robles had purchased 100 AFY of State Water Project "paper water" from Pismo 98 LLC, conditioned upon SLO LAFCo's approval of the annexation. (AR, Vol. XXVIII, Tab 168, pp. 5958–5960.)

The Los Robles project would urbanize vacant land at the City's northeast edge. (AR, Vol. XIII, Tab 82, p. 2481; Vol. XIII, Tab 70, pp. 2272, 2276.) Its project covers two parcels totaling 182 acres. (AR, Vol. XIII, Tab 82, p. 2481.) Los Robles owns 154 acres and Coastal Christian School owns the remaining 28 acres. (*Ibid.*; AR, Vol. XIII, Tab 70, p. 2276.)

In addition to a school on Coastal Christian's property, Los Robles proposed: (1) 99 "low density" homes on 5,000 sq. ft. lots; (2) 104 "estate" homes on lots of 6,000 to 10,000

sq. ft; and (3) 40 "custom" homes on lots of 10,000 to 20,000 sq. ft. (AR, Vol. XIII, Tab 82, p. 2481.)[4]

The application for Annexation No. 15 estimated that water demand generated by the Los Robles project would be far less than previous estimates. (Compare AR, Vol. VIII, Tab 38, p. 1288 with AR, Vol. XIII, Tab 70, p. 2402.) Among other things, Los Robles claimed that water conservation measures would significantly reduce projected demand. (AR, Vol. XIII, Tab 70, p. 2402.) Los Robles projected a residential demand of approximately 92.8 AFY, roughly equivalent to the "paper water" it had purchased from Pismo 98 LLC. (*Id.* at p. 2308.)

On January 19, 2012, SLO LAFCo held a public hearing on Annexation No. 15. (See AR, Vol. XIII, Tab 79.) The staff report recommended approval of Annexation No. 15 conditioned "in part, to ensure compliance with the Sphere of Influence conditions and SLO LAFCo policies." (*Id.* at p. 2480-2483.) The primary Sphere of Influence conditions provided: "As a condition of an annexation application being filed with LAFCO, the City shall document with a water supply analysis that an adequate, reliable, and sustainable water supply is available and deliverable to serve the areas proposed for annexation." (*Id.* at p. 2491.)

Among other things, the staff report asked SLO LAFCo to conclude that Pismo Beach's water supply was "adequate, reliable, and sustainable." (*Id.* at p. 2484.) However, during the hearing, in light of questions raised about adequate water supply, the SLO LAFCo Commissioners continued the hearing and requested additional information from its staff. (*Id.* at pp. 6862–6863; pp. 6853–6856.)

As a result, SLO LAFCo's Executive Officer hired hydrologist Robert Shibatani to analyze these water supply concerns. (See AR, Vol. XX, Tab 128.) LAFCo asked that "this review be prepared by an unbiased consultant." (*Id.* at p. 4491.) Pismo Beach paid for the Shibatani study as well as a traffic study prepared by another consultant. (See AR, Vol. XX,

[4] In that there are 43,560 square feet per acre, the housing densities vary from almost nine units per acre (5,000 sq. ft. lots) to two units per acre (20,000 sq. ft. lots).

Tab 126, p. 4477.) SLO LAFCo gave the City an opportunity to review the initial findings of the water and traffic studies. (AR, Vol. XXI, Tab 143, p. 4629.) The FINAL Technical Memorandum prepared by the Shibatani Group, Inc., was approximately 35 pages long, including its appendix. (AR, Vol. XIXB, Tab 119, pp. 4153 – 4188.)

On April 19, 2012, after a further hearing, SLO LAFCo denied Annexation No. 15 through Resolution 2012-01, principally based on two findings about the adequacy, reliability and sustainability of Pismo's water supply.

Finding 5 reads, in relevant part, as follows:

> The future availability, reliability, and sustainability of the City's water supply, including the Tri-Cities Groundwater Basin, Lopez Reservoir, and State Water Project (SWP) is uncertain due to identified stresses and potential risks regarding the water supply. These potentially constrain sources would significantly reduce the city's available water supply and limit the city's ability to provide services to existing as well as new residence. The stresses and risks include:
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> - A drought situation, saltwater intrusion, or other water supply disruptions that would adversely affect the city's ability to provide water service in both the short and long-term;
> - State Water availability in the long term will be uncertain due to various factors, including climate change, drought frequency and intensity in the overall health of the Delta;
> - The continued availability of the Tri-Cities Mesa Groundwater Basin will depend on the active management of this resource by the jurisdictions and the levels of precipitation/recharge within the Basin;
> - The City does not yet have the capability to provide recycled water that could be used in the future to recharge the Tri-Cities Groundwater Basin.
> - Other stresses and risks documented in the record.

Finding 6 reads, in relevant part, as follows:

> The Water Demand for the proposal is projected to be between 100-120 AFY. The 89 AFY was found to be at the very lowest end of the potential demand. The City's policy is that an annexation must bring a water supply that is equal to the water demand of the project. (AR, Vol. XXI, Tab 136, at p.4565-4566.)

On May 8, 2012, Los Robles filed its Verified Petition and Request for Preparation of Administrative Record.

On August 9, 2012, the initial Administrative Record was certified and lodged.

On September 10 and 11, 2012, SLO LAFCo and Pismo Beach filed their Answers to the Verified Petition.

Between October 1 and November 14, 2012, the parties engaged in substantial briefing of the issues.

On February 21, 2013, this Court heard oral argument and ordered supplemental briefing to be completed by March 7, 2013. Following the submission of the last brief, the matter was taken under submission.

III. DISCUSSION OF LEGAL ISSUES

A. Standard of Review

The Cortese-Knox Act establishes a deferential standard of judicial review of local agency formation commission decisions: "In any action or proceeding to attack, review, set aside, void, or annul a determination by a commission on grounds of noncompliance with this division, any inquiry shall extend only to whether there was fraud or a prejudicial abuse of discretion." (Gov. Code, §56107(c).) It defines "prejudicial abuse of discretion" to mean a decision is "not supported by substantial evidence in light of the whole record." (*Ibid.*) Thus, courts review LAFCo decisions using the substantial evidence standard. (*San Joaquin LAFCo v. Superior Court* (2008) 162 Cal.App.4th 159, 167.)

Substantial evidence means limited judicial review, which is deemed appropriate because the Legislature endowed LAFCos with "large discretionary powers," including the

authority to approve or deny annexations. (*Bozung v. Local Agency Formation Comm.* (1975) 13 Cal.3d 263, 288.) LAFCOs' annexation decisions are legislative. (*Voices for Rural Living v. El Dorado Irr. Dist.* (2012) 147 Cal.Rptr.3d 480, 495.) Accordingly, courts review exercise of that discretion with the deference due the legislative branch in such policy-making. (*McBail & Co. v. Solano County LAFCo* (1998) 62 Cal.App.4th 1223, 1227 [judicial review of LAFCo decisions limited due to separation of powers].)

As directed by our Supreme Court, we engage in a two-step process in conducting a writ review under the substantial evidence test. We first determine whether substantial evidence supports SLO LAFCo's findings. Then we examine whether its findings are adequate "to bridge the analytic gap between the raw evidence and ultimate decision" and to show the "analytic route the administrative agency traveled from evidence to action." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 510 and 515; *Environmental Protection & Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, *(EPIC)*; *Reddell v. California Commission* (2009) 180 Cal.App.4th 956, 970; *Great Oaks Water Co. v. Santa Clara Valley Water Dist.* (2009) 170 Cal.App.4th 956, 970-971.)

Los Robles carries the burden of establishing that SLO LAFCo's findings are unsupported by substantial evidence. (*City of Livermore v. Local Agency Formation Com.* (1986) 184 Cal.App.3d 531, 543–544) There is a presumption of correctness in SLO LAFCo's determinations. (*Ibid.*).

In searching for substantial evidence, a reviewing court should not substitute its policy judgment for the agency's in the absence of arbitrary action. (*Western Oil & Gas Ass'n v. Air Resources Board* (1984) 37 Cal.3d 502, 509; *Carrancho v. California Air Resources Bd.* (2003) 111 Cal.App.4th 1255, 1265.) Nor should the reviewing court not set aside an agency's determination on the ground that an opposite conclusion would have been equally or more reasonable. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.) "When two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for

those of the trial court." (*Green Trees Enterprises, Inc. v. Palm Springs Alpine Estates, Inc.* (1967) 66 Cal.2d 782, 784-85.)

The policy standard embodied in SLO LAFCo Policy No. 16 (formerly Policy 17), which requires an "adequate, reliable and sustainable supply of water," must be interpreted in harmony with SLO LAFCo's understanding, unless such an interpretation would be "unauthorized or clearly erroneous." (*Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1107; *No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 249, 242.) This is particularly true where, as here, interpretation of the standard is heavily weighted with policy choices. (*American Coatings Assn., Inc. v. South Coast Air Quality District* (2012) 54 Cal.4th at 446, 461.)

The large residential development contemplated in Application No. 15 would require the construction of 240 homes, along with significant infrastructure, including streets, conduits, pipelines utilities, and other improvements that would exist for a long time. SLO LAFCo concluded that any water supply for the proposed annexation should be sustainable over the long term. (*See e.g.,* (AR, Vol. XXI, Tab 136, at p.4565-4566; Chairman Gibson's commentary at AR, Vol. XIXB; Tab 118; p. 4122.)

Given that Los Robles has presented no argument or legal authority contradicting the need for long-term sustainability, we defer to SLO LAFCo's interpretation. (*American Coatings Assn., Inc.,* 54 Cal.4th at 446, 461; *California Bldg. Industry Ass'n. v. San Joaquin Valley Air Pollution Control District* (2009) 178 Cal.App.4th at 120, 137.)

Under CEQA, we review SLO LAFCo's decision for abuse of discretion, which is "established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (Pub. Resources Code, §21168.5.)

B. The SLO LAFCo Findings Are Supported by Substantial Evidence

Using 15 statutory factors, the SLO LAFCo Commissioners are required to exercise independent judgment in deciding whether to approve an annexation. (See Gov. Code,

§§56668, 56325.1.) Among other things, they must consider the "[t]imely availability of water supplies adequate for projected needs ...." (Gov. Code, §56668(k).)

Relatedly, Commissioners must consider local policies adopted under Government Code §56300(a). Perhaps most relevant for purposes of a case involving constrained water resources, they must consider Policy 2.1.16, which reads as follows:

> In any proposal requiring water service, the Commission requires that the agency to which the annexation is proposed should demonstrate the availability of an adequate, reliable and sustainable supply of water. In cases where a phased development is proposed, the agency should demonstrate that adequate service capacity will be provided as needed for each phase. In cases where a proposed annexation will be served by an onsite water source, the proponent should demonstrate its adequacy. (Declaration of Clerk Donna J. Bloyd ("Bloyd Decl."), Exh. A, p. 10.) [5]

Distilled to its essence, Los Robles asks this Court to find that *no* evidence exists in the record for the proposition that adequate, reliable, and sustainable water for the proposed development is *un*available. Phrased somewhat differently, Los Robles claims that the Administrative Record uniformly and overwhelmingly demonstrates the existence of an adequate, reliable and sustainable water supply for its project. However, in light of the limited standard of judicial review and ample evidence to the contrary, Los Robles has an insurmountable evidentiary mountain to climb.

A careful review of the entire Record establishes that periodic, severe drought is to be an ever-increasing reality in California. The *State Water Project Delivery Reliability Report 2009* chronicles significant areas of uncertainty regarding the delivery of water from the State Water Project. The Department of Water Resources foresees climate change, uncertain rainfall/snowpack, rising sea levels, vulnerable delta levees, protective Endangered Species Act rules, and other legal restraints significantly and negatively affecting overall reliability

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[5] Relatedly, Water Condition (a) of SLO LAFCo's Sphere of Influence Update emphasizes that Pismo must adopt a water supply analysis with an adequate, reliable and sustainable water supply that is available and deliverable to the areas proposed for annexation. (AR, Vol. XXIV, Tab 162, p. 5237.)

and operations of the State Water Project. (*See, e.g.,* AR, Vol. XXXI, Tab 174, pp. 6428-6566).

With or without Annexation No. 15, Pismo Beach will be forced to rely heavily on water from the State Water Project. During drought years, when runoff from the Sierra mountain range is diminished and/or there is an insufficient overall state supply for the other listed reasons, Pismo Beach may very well be unable to meet the needs of its residents, including those who would be living in the Los Robles development.

Nor will certainty of water supply come from groundwater sources. The Sub-Basin today remains at significant risk of overdraft, and it is highly uncertain whether the region's water balance will be maintainable given the combined pressures of drought, global warming, rising sea levels and regulatory restrictions (AR, Vol. XXVIII, Tab 167, pp. 5927–5929; Vol. XXVI, Tab 165A, pp. 5594–5596; Vol. XXIV, Tab 162, p. 5280.)

David Church, AICP Executive Officer, stated in his report to the Commission that "[t]he long term water supply (2030-2035) would need to be supplemented for Pismo Beach to meet Los Robles' demands, plus build-out and maintain a reliable, sustainable and adequate water supply." (AR, Vol. XIXB, Tab 119, p.4143)

Pismo Beach's 2004 Water Master Plan acknowledges this uncertainty as follows:

> "As shown in Table 6-4, the future demand within the current City limits can be met with current water supplies. However, the projected demand is close to exceeding the City's current supply. This future demand surplus would also not be within the recommended 10 percent buffer stipulated by the Facilities Element, Policy F-36 of the General Plan. The demand for developments outside the City limits, but within the Sphere of Influence, will exceed the future supply available to the City." (AR, Vol. XXIII, Tab 161, page 5048, at pages 5102-3.)

This is but some of the evidence supporting SLO LAFCo's assessment that the future availability, reliability and sustainability of Pismo Beach's water supply are highly uncertain, and therefore, inconsistent with the SLO LAFCo's policies. Thus, substantial evidence supports the Commission's determination and we can adequately discern the analytic route that this agency traveled in denying Application No. 15. (*Topanga Assn.*, 11 Cal.3d at 515;

EPIC, 44 Cal.4th at 516-517; *Great Oaks Water Co.,* 170 Cal.App.4th at 970-971; *Reddell,* 180 Cal.App.4th 956, 970; *Sierra Club v. California Coastal Com.* (1993) 19 Cal.App.4th 547, 557.)

1. Four Specific Factual Conclusions in Finding 5 Are Supported by Substantial Evidence and Show the Route Traveled by the Commission from Evidence to Action

Because it is Los Robles' burden to show the total *absence* of substantial evidence supporting SLO LAFCo's decision, we will now address, seriatim, the specific factual findings made by SLO LAFCo, as well as the location of substantial evidence in the record supporting the severe stresses upon, and significant risks to, the water supply of Pismo Beach.

a. Drought, salt water intrusion or other supply disruptions would adversely affect Pismo Beach's ability to provide water service in the long and short term.

The issues of drought, salt water intrusion, and potential disruptions to Pismo Beach's water supply are well-documented. As recently as 2009, there was a period of significant drought. (See AR, Vol. XXVI, Tab 165, p. 5590.) Between 1969 and 1971, and then again in 1989, drought conditions also existed. (See AR, Vol. XXVI, Tab 165 at pp. 5627-5628 (historical data on drought years).)

The FINAL Technical Memorandum (AR, Vol. XIXB, Tab 119, pp. 4153-4188), prepared by the Shibatani Group, Inc., and included in a report of further information prepared by Executive Officer David Church, contains detailed information regarding drought frequency and intensity. Mr. Shibatani specifically reported that, "[u]nder a projected 2-year drought scenario, a 1,240 AFY drought buffer would still fall short in meeting demands in 2015 and continuing through 2035 ranging from a 364 AFY to 878 AFY shortfall, respectively." (AR, Vol. XIXB, Tab 119, p. 4153.)[6]

[6] Robert Shibatani's testimony at the hearing on April 19, 2012, is derided by Los Robles. At the urging of Los Robles, we have reviewed the video testimony of Mr. Shibitani, as well as his written work. We acknowledge that his oral testimony was, at times, conflicting or seemingly contradictory. Nevertheless, we have reviewed the entire record and find substantial evidence from various sources sufficiently buttressing Shibatani's oral and written analysis. Further, Shibatani's written FINAL Technical Memorandum is reasonable, credible, and of solid evidentiary value. It was within SLO LAFCo's purview

Mr. Shibatani's conclusions are supported in Executive Officer Church's report dated March 15, 2012, stating that "[a] drought situation, salt water intrusion, or other water supply disruptions would adversely affect Pismo Beach's ability to provide water service in both the short and long term." (AR, Vol. XIXB, Tab 119, p. 4143). Evidence of recent saline intrusion is also present. (See AR, Vol. XIXB, Tab 119, pp. 4180-4183 (discussing groundwater elevation data and water quality sampling).)

It cannot reasonably be debated that the probability of drought must play an important factor when planning for further development on the Central Coast of California. This specific finding is supported by substantial evidence, and the analytical route traveled from evidence to action is apparent.[7]

b. State water availability in the long term will be uncertain because of various factors, including climate change, drought frequency and intensity, and the overall health of the Delta.

The FINAL Technical Memorandum prepared by the Shibatani Group, Inc. explores the "health" of the Sacramento River Delta, including the effect of a rise in sea level, which

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to rely on portions of his report and testimony, while disregarding other portions. (*Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 863 ("An administrative agency may choose between differing expert opinions.").) LAFCo must exercise its independent judgment on the evidence. (See Gov. Code, §56325.1.) This Court does not re-weigh the evidence. (*Green Trees Enterprises,* 66 Cal.2d at pp. 784–785; see also Judicial Council of California Civil Jury Instructions, No. 107 "[i]f you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.")

[7] In its Reply Brief (at p. 16), Los Robles faults SLO LAFCo for incorrectly assuming that Pismo Beach lacks 1,240 AFY in drought buffers. However, there is nothing in SLO LAFCo's findings about a specific drought buffer limitation, and we have looked for, but failed to find, any reference to this assumption as a reason for denying Annexation No. 15. To the contrary, Carollo Engineers' witness, Tim Lopez, testified that "the City's Drought Buffer Program . . . the amount of water they have available is 1,240 Acre Feet per year . . . ." We have no reason to believe that this evidence was not accepted.

As far as we can tell, the issue may have arisen because of two sentences from one page in the Appendix to the 36-page Final Technical Memorandum. (AR, Vol. XIXB, Tab 119, p 4169.) However, this evidentiary fragment exploring future water needs was "just to illustrate one potential scenario." It cannot serve as a basis for invalidating LAFCo's water supply determination. Our job is to focus on the actual findings, not a hypothetical assumption that may or may not have played any role. (*Topanga Assn,* 11 Cal.3^{d} at pp. 515-519.)

will require a release of more fresh water to maintain water quality standards. These releases will translate into less water for the State Water Project to deliver to Pismo Beach and other localities. These, and other natural and regulatory restrictions, are addressed in great detail. (AR, Vol. XIXB, Tab 119, pp. 4153-4188.)

SLO LAFCo staff specifically concluded as follows:

> "State water supplies are/will continually be the most volatile and at-risk supplies for the City; [d]rought buffers provide some cushion in meeting future demands, but will fall short in a worst case and prolonged future droughts." (AR, Vol. XIXB, Tab 119, p. 4144)

SLO LAFCo Commissioners may rely upon the statements and conclusions of their staff because of staff's knowledge and experience in the field of municipal annexation, including water supply and related land-use planning areas. (See, e.g., *Stanislaus Audubon Society Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 153-156 (acknowledging expertise of regulatory staff and planning commissioners); *Architectural Heritage Association v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1115 (recognizing expertise of agency staff); *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1379 -1380 (same).) The staff's knowledge is the type of evidence on which responsible commissioners are accustomed to rely in the conduct of their office. (*Id.*)

SLO LAFCo's staff's opinion is supported by the Administrative Record, including not only the work prepared by the Shibatani Group, Inc., but also by *The State Water Project Delivery Reliability Report 2009*, prepared by the State Department of Water Resources. As already discussed, the 2009 Report chronicles multiple areas of uncertainty for delivery of water from the State Water Project, including climate change, sea level rise, vulnerability of delta levees to failure and restrictive rules adopted under the Endangered Species Act due to decreasing populations of endangered fish species. (See AR, Vol. XXXI, Tab 174, pp. 6428-6566).

It may well be true that Pismo Beach is working towards, and hoping to obtain, an additional 500 AFY of water from the State Water Project, plus an additional buffer of 500

AFY from the Flood District. While this possibility may come to fruition in the future, there are several significant challenges to be met before such water could become a reality. (See, e.g., Sphere of Influence Update of Pismo Beach's Municipal Service Review, dated October 20, 2011, in AR, Vol. XXIV, Tab 162, pp. 005280 & 005281.)

Given the demonstrated uncertainty of water from the State Water Project, SLO LAFCo could reasonably discount the possibility of such water when it considered Annexation No. 15 on April 19, 2012. Not only is this informed judgment entrusted to SLO LAFCo, but its conclusion is consistent with the Sphere of Influence update (AR, Vol. XXIV, Tab 162, p. 5237), which requires, in Water Condition (a), that "the water supply be available and deliverable." That is not the situation now and it may never come to fruition.

It was a reasonable decision by the Commissioners (indeed one could say, insightful) to take into account the unreliability of future water from the State Water Project due to climate change, rising sea levels, drought frequency, and the overall health of the Sacramento River Delta. This specific finding is supported by substantial evidence and the analytical route from evidence to action is apparent as well.

c. Continued availability of water from the Tri-Cities Mesa Groundwater Basin will depend on the active management of this resource by the jurisdictions and the levels of precipitation/recharge within the basin.

As discussed, Pismo Beach draws groundwater from the fragile Tri-Cities Mesa Sub-Basin of the Santa Maria Valley Groundwater Basin. The Department of Water Resources has identified the Sub-Basin to be in a state of overdraft. (See Pismo's 2010 Urban Water Management Plan, submitted by Carollo Engineers to Pismo Beach in September 2011, AR, Vol. XXVI, Tab 165, p. 5528, et seq., and especially at p. 5595).

Commendably, Pismo Beach decreased its groundwater pumping by 86% between 2006 and 2010 by increasing reliance on surface water in lieu of groundwater. Indeed, Pismo Beach decreased its total groundwater pumping to 96 AFY in 2010. (AR, Vol. XXVI, Tab 165, p. 5596)

Although the Department of Water Resources expects the overdraft problem to decline as Pismo Beach shifts more in the direction of water from the State Water Project, the validity of this proposition critically depends not only upon the actual availability of additional water from the State Water Project, but also on the active and judicious management of Sub-Basin groundwater resources by multiple jurisdictions and entities, over which Pismo Beach has little control. The viability of continued groundwater use also depends critically upon levels of precipitation/recharge occurring within the Sub-Basin.

There is substantial evidence that the continued availability of the Tri-Cities Mesa Groundwater Sub-Basin as a water resource for Pismo Beach will depend on the active management of this resource by multiple jurisdictions, as well as by the levels of precipitation/recharge within the Sub-Basin. Based upon this evidence, the analytical route taken by the Commission in denying Application No. 15 is apparent as well.[8]

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[8] In its Reply Brief (at p. 16), Los Robles also claims that SLO LAFCo critically erred by relying upon an incorrect assumption that "the City's 700 AFY (acre feet a year) of groundwater rights had been reduced to 200 AFY." However, there is nothing in SLO LAFCo's findings about 200 AFY or any other specific amount of ground water limitation. Although Hydrologist Shibatani mentioned that, in Pismo's 2010 Urban Water Management Plan, the City had made a commitment to voluntarily cap groundwater withdrawal at "200 acre feet per year" (AR, Vol. XIXB, Tab 118, p. 4057), he later testified he did not know whether it was a permanent cap. (AR, Vol. XIXB, Tab 118, p. 4059)

Contrary evidence exists in the record as well. Pismo's 2010 Urban Water Management Plan (AR, Vol. XXVI, Tab 165) does not allege a commitment to reduce groundwater extraction to 200 AFY. Gary Meyerhofer, an engineer with Carollo Engineers who developed the 2010 Urban Water Management Plan, testified that Pismo Beach "has not taken any action voluntarily to reduce its groundwater pumping capacity. They have the ability to pump 700 acre feet per year." (AR, Vol. XIXB, Tab 118, p. 4076) Although Pismo pumped only 177 AFY in 2009 and 96 AFY in 2010, this was due to the cost of electricity, a desire to prevent seawater intrusion, and a desire to leave more for other pumpers. (AR, Vol. XXVI, Tab 165, p. 5596-7) Dwayne Chisam, Pismo's Director of Public Works/City Engineer, testified that Pismo has a right to extract the full 700 acre-feet, although it was unlikely to do so in the public interest. (AR, Vol. XXXIII, Tab 181, pp. 6773-6774.)

We have looked for, but failed to find, *any* reference to a "commitment" to limit pumping to 200 AFY as a reason for denying Annexation No. 15. Again, we must focus on the actual findings rather than assumptions put forward by a project proponent. (*Topanga Assn.*, 11 Cal.3[d] at 515-519.)

d. Pismo Beach does not yet have the capability to provide recycled water that could be used in the future to recharge the Tri-Cities Groundwater Basin.

Although Los Robles forcefully claims in its Reply Brief that Pismo's recycling water program will add 1,400 AFY of water in the foreseeable future (Reply at p. 5), this statement appears to be based more upon hope than current reality.

As Pismo's Public Works Director testified, "We have not secured the funds to actually build the [recycled water] facilities at the present time, but we are working towards those ends." (AR, Vol. XIXB, Tab 118, p. 4089.) Other testimony in the record emphasizes that, while significant recycling efforts may help the water supply situation in the future, they are not available now. (AR, Vol. XXVI, Tab 165, pp. 5604-5608.) And while there have been discussions about a tertiary wastewater treatment plan, no concrete action has yet been taken to implement tertiary treatment.

There is substantial evidence in the record for the finding that Pismo Beach is not yet capable of using recycling in sufficient quantities to recharge groundwater, and the route traveled by SLO LAFCo from evidence to denying annexation can be clearly seen.

2. Finding 6 is supported by Substantial Evidence

SLO LAFCo's Finding No. 6 is that the water demand for the proposed annexation will be between 100 and 120 AFY.

While in the latest go-round Los Robles optimistically represented that annual residential water demand would be just 89 AFY (AR, Vol. XIII, Tab 70, pp. 2404–2405), according to another expert this was "the lowest possible number that can be derived." (AR, Vol. XIXB, Tab 119, p. 4155.)

A more conservative estimate, between 100 and 120 AFY, was ultimately adopted by SLO LAFCo in its findings. (AR, Vol. XXI, Tab 136, p. 4566.) This conclusion is supported by prior historical projections for the Los Robles project, which have consistently been higher than even the 120 AFY range. Indeed, between 1996 and 2007, the annual water demand for the Los Robles residential project was estimated at between 134 AFY and 155 AFY. (AR, Vol. VIII, Tab 38, p. 1288; Vol. IX, Tab 39A, p. 1607; Vol. XXII, Tab 159, pp.

4962-4964 and 4967; Vol. XXIII, Tab 161, pp. 5094 and 5103-5104; Vol. I, Tab 9, p. 43; Vol. XI, Tab 41, p. 1922; Vol. XIII, Tab 70, at p. 2402.)

The amount of water that Los Robles residents will actually conserve at build-out is also highly debatable. "Estimates of water savings, therefore, typically overestimate actual realized savings since they tend to only focus on the engineered fixture usage changes." (AR, Vol. XIXB, Tab 119, p. 4185.) Moreover, system losses, including water loss due to leakage, faulty measurement devices, plan spills, and theft, account for approximately 157-197 AFY (AR, Vol. XIXB, Tab 119, p. 4161.)

At oral argument, Los Robles stressed that it was bringing with it 100 AFY water, and argued that 100AFY was enough. However, even this higher usage estimate critically depends upon a series of events that are far from certain, including: a) maintenance of a drought buffer by the County of San Luis Obispo and City of Pismo Beach; b) actual delivery by the State Water Project of at least 50% of Pismo's "paper water" entitlements; c) an absence of system losses due to leakage, spills, or theft; and, d) the accuracy of optimistic demand estimates.

SLO LAFCo's conclusions, both as to water demand and conservation, are fully supported by the FINAL Technical Memorandum. As we have said, to the extent that Mr. Shibatani testified inconsistently with something he wrote or testified to earlier, it was for SLO LAFCo, not this Court, to determine his credibility. (See *Williams v. General Insurance Co.* (1936) 8 Cal.2d 1, 4-5; *Vineyard Area Citizens*, 40 Cal.4th at p. 435; *Green Trees Enterprises*, 66 Cal.2d at 784-785; Judicial Council of California Civil Jury Instructions, No. 107 ("[i]f you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.")). Mr. Shibatani was qualified as an expert. He provided sufficient reasons for his conclusions: they were not inherently improbable.

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SLO LAFCo's finding of a need for 100-120 AFY to support annexation of this project into Pismo Beach is supported by substantial evidence, and the path traveled from evidence to denying Application No. 15 can be fairly discerned.[9]

a. SLO LAFCo Did Not Violate CEQA

SLO LAFCo's denial of the annexation cannot violate CEQA because its decision to disapprove a project is expressly exempt from that statute. (Pub. Resources Code, §21080(b)(5); see also Cal. Code Regs., tit. 14, §15270(a); *Main San Gabriel Basin Watermaster, et al. v. SWRCB* (1993) 12 Cal.App.4th 1371, 1382 ("[A]ll project disapprovals by a public agency are exempt from CEQA review.").) Because CEQA does not apply to projects that a public agency rejects or disapproves, the Petition for a Writ of Mandate as to the CEQA claim is moot.

In any event, SLO LAFCo did not exceed its authority as a responsible agency by contravening the City's Addendum. SLO LAFCo has a statutory duty to exercise independent judgment in deciding whether to approve or deny an annexation in light of all evidence before it. (See Gov. Code, §56325.1.)

CEQA, on the other hand, is primarily an informational document. It explicitly permits responsible agencies to *reject* a project despite the lead agency's certification of an EIR: "A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved." (Cal. Code Regs., tit. 14, §15096(a); see *Central Delta Water Agency v. SWRCB* (2004) 124 Cal.App.4th 245, 274 ("[A] responsible agency with permit authority does reach its own conclusions as to whether and how to approve the project, notwithstanding the lead agency's approval of the project.").)

The purpose of the City's CEQA review was to identify potential environmental impacts, their relative significance, and the means to mitigate them. By contrast, annexation

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[9] Los Robles also claims that its project falls within an urban service area such that SLO LAFCo was obligated to approve the annexation under Government Code §56375(a)(4)(B). However, there is no evidence that SLO LAFCo has ever adopted an "urban service area boundary" under Government Code §56080 or related provisions.

decisions examine, among other things, whether the City's water supply can support the project and projected build-out demands for the City as a whole in the short and long term.

Although the CEQA analysis may inform the LAFCo analysis, they are not identical. SLO LAFCo was obligated to and did consider evidence different from and broader than that reported in the City's Addendum. The record is replete with instances of SLO LAFCo considering the City's CEQA documents. (See, e.g. AR, Vols. XIII – XVIII; Vol. XXI, Tab. 142, p. 4594; Vol. XIII, Tab. 81, p. 2471.) That is all law requires. [10]

IV. CONCLUSION

A careful review of the entire 4,100- page Administrative Record establishes that periodic drought is now a reality in California, and the probability of drought must play an important factor when planning for further development on the Central Coast of California.

With or without the annexation, Pismo Beach will continue to rely on water from the State Water Project. During drought years, when runoff from the Sierra is diminished, when there a shortage of water in state reservoirs, and when drought results in reduced groundwater pumping, Pismo Beach may very well not be able to meet the needs of its residents. The challenge to us as a society is to come up with new solutions that will allow us to build and develop while preserving and expanding our precious water resources.

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[10] Pursuant to an agreement by the parties, the Court has taken judicial notice of all of SLO LAFCo's guidelines. It has included them in the Administrative Record. There is no need for pagination.

SLO LAFCo has requested that the Court take judicial notice of the judgment filed July 1, 2011 in *Pacific Harbor Homes, Inc. and Central Coast Development v. City of Pismo Beach*, Case No. CV 08-0491. The judgment was entered by stipulation, and we find no relevance to the issues in this case. 'Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (*Unruh-Haxton v. Regents of University of California* (2008) 162 Cal.App.4th 343, 364.) Only relevant evidence is admissible by judicial notice. (*Golden Gate Land Holdings LLC v. East Bay Regional Park District* (2013) 215 Cal.App.4th 353, 366 citing *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135, fn. 1.)

The motivation or veracity of any the persons or parties, if revealed in that document, has no relevance to this action. Los Robles' objection is sustained.

There is substantial evidence supporting the Commission's determination. We can discern the analytic route that the Commission traveled from evidence to action.

Accordingly, SLO LAFCo acted within the law when it denied the proposed annexation.

Los Robles' request for a peremptory writ of mandate is DENIED.

Counsel for SLO LAFCo shall prepare the appropriate judgment and circulate it for approval as to form. We encourage the parties to reach agreement on the form of the Writ of Mandate and Judgment and to submit them for signature. If agreement cannot be reached, a further Case Management Conference should be promptly scheduled with the clerk.

It is so ORDERED.

Dated: June 5, 2013

CHARLES S. CRANDALL
Judge of the Superior Court

CSC:jn

STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

Civil Division

CERTIFICATE OF MAILING

CENTRAL COAST DEVELOPMENT COMPANY VS. SLO LOCAL AGENCY	CV120279

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*
Attached Pleading:
Ruling & Order Denying Petition for Writ of Mandate, 6/5/13

Under penalty of perjury, I hereby certify that I deposited in the United States mail, at San Luis Obispo, California, first class postage prepaid, in a sealed envelope, a copy of the foregoing addressed to each of the above
OR
If counsel has a pickup box in the Courthouse that a copy was placed in said pickup box this date.

SUSAN MATHERLY, Court Executive Officer

by _____, Deputy Dated: 6/5/13
via email

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October 1, 2013

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SUBJECT: Supplemental Municipal Service Review/Sphere of Influence Update for the Bonsall and Pala Hydrologic Subareas of the San Luis Rey River Watershed, and Proposed Terms and Conditions for the "Meadowood Reorganization"

Dear Mr. Miliband,

The San Diego Local Agency Formation Commission (LAFCO) is in receipt of your letter dated July 9, 2013 on behalf of the San Luis Rey Municipal Water District (San Luis Rey). This reply serves to address the items raised in that letter as well as provide further explanation to support our remarks pertaining to the terms and conditions that were proposed in your April 1, 2013, letter. During the drafting of our response, additional questions arose, which are discussed in our overall responses.

We appreciate the update you provided pertaining to the ongoing discussions San Luis Rey is having with the Valley Center Municipal Water District (Valley Center) regarding the reorganization. You seem to assert, at least indirectly, in your letter of July 9th that Valley Center Resolution No. 2012-05 and San Luis Rey Ordinance No. 2009-02 compel the change of organization to include terms and conditions acceptable to San Luis Rey. Your letter of July 9th further indicates that Pardee Homes has elected not to engage in discussions with San Luis Rey regarding the terms and conditions, and that, consequently, "LAFCO will need to render decisions on the terms and conditions for the Meadowood Reorganization at least to the extent terms and conditions are not satisfied by formal agreement between the San Luis Rey and Valley Center MWDs."

We note that there is no requirement in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Government Code Section 56000, et seq. (Act) that Pardee Homes work with San Luis Rey to develop terms and conditions. We also note that the Act does not require an agreement between San Luis Rey and Valley Center as a condition of LAFCO's review

and conditioning of the proposed reorganization. Further, LAFCO is not bound by the terms of a resolution of application or agency ordinances regarding a proposal initiated by resolution and may approve the proposal with or without amendment. LAFCO retains authority to condition the reorganization in accordance with the discretion vested in it by the Act. It is, however, LAFCO's practice to encourage coordination and cooperation between agencies. We accordingly appreciate San Luis Rey brining its concerns regarding Pardee to our attention.

There appears to be a misunderstanding concerning LAFCO's authority in our letter to you dated May 28, 2013. Specifically, the statement on Page 3 of your July 9th letter to the effect that, "the foregoing authorities establish that LAFCO can impose terms and conditions without consent of affected stakeholders, thereby refuting what appeared to be a belief that consent is required for imposing a term or condition." It appears you may have misunderstood that LAFCO concluded that certain terms and conditions proposed by San Luis Rey could not be imposed without the consent of affected stakeholders. However, LAFCO would agree that there is no consent requirement to proceed with the reorganization. The issue for LAFCO was and remains the limits placed on LAFCO's authority by the Act to condition the change of organization in the manner requested by San Luis Rey.

While LAFCO does have the inherent power to approve, deny, or approve with conditions the reorganization, we disagree that the terms and conditions as outlined in your April 1, 2013, letter can be imposed. Per the request in your July 9th letter, LAFCO staff is providing supplemental information to support our previous conclusion, as contained in our May 28th letter. We also have incorporated, by reference, the issues regarding LAFCO authority in your July 9th letter, as applicable.

Proposed San Luis Rey Term and Condition No. 1: Latent Powers

1. *San Luis Rey's powers, both active and latent and as generally described above in the factual background, are not reduced or otherwise impaired by the LAFCO Matters, including reservation of the right to later seek activation of powers if it so desires.*

LAFCO Staff Response:

LAFCO currently is processing a reorganization application involving the Meadowood property that proposes to detach the Meadowood property from San Luis Rey and annex the site to Valley Center. State Law and the Act govern the scope of San Luis Rey's powers, both active and latent, and the right to seek activation of powers if the District so desires. San Luis Rey has the right under this Act to apply to LAFCO for activation of any latent power(s) in the future.

LAFCO, however, cannot take any action that restricts its ability to perform the functions delegated to it by the Act. For example, the Act grants LAFCO the sole authority to develop and determine the sphere of influence for each local government agency within the county, and imposes a mandate to, as necessary, review and update each sphere of

influence every five years.[1] San Luis Rey has the option to request amendments to the sphere of influence adopted by LAFCO.[2] LAFCO also was empowered to conduct municipal service reviews.

Proposed San Luis Rey Terms and Conditions Nos. 2 – 4: Water Rights

2. *San Luis Rey's landowners' water rights are recognized both in terms of groundwater and surface water supplies, specifically from the Bonsall and Pala hydrologic areas and the San Luis Rey River, based on historical consumption (based on common law, statutory law, and case authorities, ...)*

3. *San Luis Rey's landowners' rights to store water in groundwater basins, including the Bonsall and Pala hydrologic areas, (based on common law, statutory law, and case authorities, ...)*

4. *San Luis Rey's landowners' rights to sell, lease, or otherwise transfer such rights are not impaired in any way whatsoever now or in the future by the LAFCO Matters, (based on common law, statutory law, and case authorities, ...)*

LAFCO Staff Response:

LAFCO cannot properly use its authority to condition changes of organization to attempt to resolve disputes between private property owners that are not a party to the change of organization. LAFCO's authority is limited by its primary mission, which is to review and approve changes of organization. Resolution of disputes over private property rights is the responsibility of other State agencies. San Luis Rey's landowners are not a party to the reorganization proposal. LAFCO has no jurisdiction over these non-party landowners to adjudicate their water rights. The appropriate forums for such actions include the courts and the State Water Resources Control Board.

Moreover, LAFCO does not have authority to determine the water rights of private landowners. You cite statutes that either grant LAFCO general authority to make reorganization determinations or to statutes that do not apply. The statutes that grant LAFCO general powers to make reorganization determinations may grant LAFCO general powers to condition a reorganization; however, these powers do not extend to adjudicating private matters, such as water rights and the right to store water in a groundwater basin.

Similarly, Section 56886(j) of the Act does not grant LAFCO the power to adjudicate private water rights. It only grants LAFCO limited authority to fix and establish priorities

[1] Gov. Code Section 56425 (a) & (g).

[2] Any person or local agency may file a request for amendment to a sphere of influence (or urban service area) adopted by LAFCO per Gov. Code Section 56428.

of use, or right of use, of specified water rights held by the public. Section 56886(j) states:

> The fixing and establishment of priorities of use, or right of use, of water, or capacity rights in any public improvements or facilities or any other property, real or personal. However, none of the terms and conditions ordered pursuant to this subdivision shall modify priorities of use, or right of use, to water, or capacity rights in any public improvements or facilities that have been fixed and established by a court or an order of the State Water Resources Control Board.

This provision does not grant LAFCO authority to adjudicate private water rights for two reasons. First, this provision only grants LAFCO authority over public improvements and public facilities. It does not extend to rights held by private parties.

Second, water rights in this region have been fixed and established by the courts and by order of the State Water Resources Control Board. In fact, your April 1, 2013, letter claims that one of San Luis Rey's purposes is to monitor the San Luis Rey Indian Water Rights Settlement and State Water Resources Control Board proceedings on water rights applications filed along the San Luis Rey River. Under the statute cited, LAFCO does not have authority to modify priorities of use, or right of use, to water or capacity rights that have been fixed and established by a court or order of the State Water Resources Control Board.

Proposed San Luis Rey Term and Condition No. 5 (a – b): Groundwater Monitoring and Management

5a. *Use of native water (whether ground or surface water) on the Meadowood properties (those parcels that are part of the Meadowood Reorganization and located within San Luis Rey's boundaries) is limited (identified in part if not entirely in the Grant Deed recorded with the San Diego County Recorder's Office as Document Number 2007-0673087 on October 19, 2007) to: (i) the extent such rights exist for reasonable use of native water; (ii) on the property(s) (i.e., no export); and, (iii) only for beneficial irrigation uses, unless recycled water is available;*

LAFCO Staff Response:

If the Meadowood Reorganization is approved, the territory would be under the jurisdiction of Valley Center, which would have purview over water usage and priorities/rights of use of water resources. Thus, this condition is unnecessary.

Additionally, based on the grant deed between the private parties referenced, the use of native water on the Meadowood properties is a matter between private parties.

LAFCO's authority does not extend to determine the rights to use native water between private parties.

5b. *Compliance with the terms of San Diego County's Groundwater Ordinance, in conjunction with written e-mail and telephone notice to San Luis Rey's Board President and Legal Counsel of all meetings with the County regarding the Ordinance;*

LAFCO Staff Response:

The County's Groundwater Ordinance does not apply to the Meadowood project. The County's Groundwater Ordinance was evaluated as a project alternative in the Meadowood Project's Environmental Impact Report (EIR) and rejected by the Board of Supervisors as an infeasible alternative. Therefore, Meadowood need not comply with the County's Groundwater Ordinance.

In any event, LAFCO has no oversight regarding compliance with County Ordinances or communication between San Luis Rey and Valley Center. Hence, this condition cannot be imposed.

Proposed San Luis Rey Term and Condition No. 5 (c – e & g): Groundwater Monitoring

5c. *Development of a groundwater monitoring plan suitable to San Luis Rey and consistent with San Luis Rey's adopted groundwater plan;*

5d. *As part of the groundwater monitoring plan, all pumping undertaken from any pumping facility in existence or later installed on the Meadowood properties land is to be metered, with the meter installed and maintained at the property owner's expense, whether that be Pardee or its successors and assigns;*

5e. *A written power of attorney or letter of authorization or other suitable document granting San Luis Rey permission to verify with San Diego Gas and Electric, or its successor utility, all power and pumping records;*

5g. *Conveyance to San Luis Rey reasonable and appropriate easements for rights of access to test and read meters, to monitor groundwater elevations and to monitor groundwater production, which readings will take place during normal business hours, through a mutually-acceptable route to be determined by the parties but which is suitable for San Luis Rey's purposes;*

LAFCO Staff Response:

San Luis Rey is demanding that LAFCO condition approval of the proposed Meadowood Reorganization on the development of a groundwater monitoring plan to monitor the use of native water on the project site in order to enforce the agreement between

private parties referenced in your letter. LAFCO's authority does not extend to enforcing agreements between private parties. The negotiated use of water between private parties and how best to monitor the use of that water is a matter for the private parties to work out among themselves.

In any event, the intent of the reorganization is to detach the Meadowood site from San Luis Rey and annex the territory to Valley Center. Development of a groundwater monitoring plan authorizing San Luis Rey to monitor groundwater use on the Meadowood property to comply with the District's adopted groundwater plan would be inconsistent with detachment of that territory. Since the intent of the reorganization is to remove Meadowood's acreage from San Luis Rey's jurisdiction, LAFCO staff could not recommend that such a condition be imposed.

Furthermore, as noted in the April 1, 2013, letter, use of native water (whether ground or surface water) on the Meadowood site "is limited." Since use of native water is limited on the Meadowood property, there does not appear to be a need for a groundwater monitoring plan.

Proposed San Luis Rey Term and Condition No. 5 (f, h & i): Groundwater Monitoring and Infrastructure

5f. *Prior to issuance of the first grading permit for the Meadowood properties, granting to San Luis Rey a wellsite in a mutually-agreeable location suitable for San Luis Rey's monitoring purposes, together with reasonable and appropriate easements for access to and from the wellsite, to accommodate installation by San Luis Rey of an aquifer recovery well, for the recovery of any water stored by San Luis Rey and/or its landowners in the basin, with well and meter installation at San Luis Rey's expense.*

LAFCO Staff Response:

San Luis Rey is demanding the right to develop a groundwater bank and easements over the Meadowood site to pump stored groundwater. Currently, the District does not supply water and there is no indication that the District possesses the legitimate right to obtain any supply of water that could be stored in a groundwater bank. We, therefore, cannot identify any need to condition the reorganization on requiring the landowner to grant San Luis Rey the requested easement. Even if there was need, LAFCO cannot properly compel a private property owner to convey a property interest to a government agency as a condition of the approval of a change of organization. These kinds of exactions are more properly associated with the land use authority vested in cities and counties.

5h. *No pipeline system for pumped groundwater or for reclaimed or recycled water will be interconnected to any water system conveying water to or from the Meadowood properties;*

LAFCO Staff Response:

This term and condition covers an operational matter and is not under LAFCO's purview.

5i. *Augmentation of the Bonsall and Pala hydrologic areas and the San Luis Rey River with recharge from reclaimed water facilities anticipated to be part of the Meadowood project, subject to technical consultation for specifications;*

LAFCO Staff Response:

If approved, the reorganization would transfer the Meadowood property from San Luis Rey to Valley Center. Thus, reclaimed water facilities would be operated by Valley Center. Additionally, such operational issues are not within the scope of LAFCO purview.

Proposed San Luis Rey Term and Condition No. 6: Cost Reimbursement

6. *Reimbursement and payment to San Luis Rey for ongoing legal and technical (e.g., water supply and quality monitoring) expenses, fees, and costs arising from the Meadowood Reorganization and San Luis Rey's terms and conditions (see e.g., Cal. Gov. Code §§ 56375(a), (g), 56886(q), (v));*

LAFCO Staff Response:

There is no implied or express LAFCO authority to impose a condition requiring an on-going payment to San Luis Rey.

Proposed San Luis Rey Term and Condition No. 7: Detachment Payment

7. *Preservation of San Luis Rey's fiscal integrity by: (a) a one-time payment for 30 years of water standby assessments and (b) one-time payment for 30 years of loss of property tax revenue (see e.g., Cal. Gov. Code §§ 56375(a), (g), 56810, 56886(a), (b), (i), (q), (r), (t), (u), (v)):*

LAFCO Staff Response:

For authority to support the District's demand for payments, a number of statutes are cited that provide LAFCO with the generic power to approve or disapprove, and to condition, a proposal. However, none of the cited provisions require a private property owner to pay a local government agency for detachment of property.

Additional citations are provided in the July 9th letter, claiming that Government Code Sections 56810 and 56816(d) require such a payment. However, Sections 56810 and 56815(d) state:

> 56810. (a) (1) **If the proposal includes the incorporation of a city,** as defined in Section 56043, the commission shall determine the amount of property tax revenue to be exchanged by the affected local agency pursuant to this section and Section 56815. (emphasis added.)
>
> 56815. (a) It is the intent of the Legislature that **any proposal that includes an incorporation** should result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city, and other subject agencies. It is the further intent of the Legislature that incorporation should not occur primarily for financial reasons. (emphasis added.)

Sections 56810 and 56815 apply only to proposals that include "incorporation" of a city. "'Incorporation' means the creation or establishment of a city."[3] The proposed reorganization does not include the incorporation of a city. Thus, these sections do not apply. Section 56815 and related sections (including Section 56810) actually make the case that LAFCO has no authority to impose the payment demanded by San Luis Rey.

While San Luis Rey will lose $404.85 in annual property tax revenue associated with detachment, the District no longer will be responsible for providing service to the property. In cases where a district has entered into a contractual obligation involving debt payments, a condition could be imposed that requires reasonably proportional payments to retire that debt. However, there is no basis for financial compensation since San Luis Rey has no bonded indebtedness. Additionally, San Luis Rey did not submit a request to the Board of Supervisors to participate in the property tax exchange negotiation process.

The legality of San Luis Rey's collection of the standby assessment fee also has come into question because, according to Section 71630 of the Water Code, a water standby assessment or availability charge can be authorized where a district makes water available to users. An additional question is whether safeguarding groundwater is an appropriate and legal use of water standby charges particularly since the property owners have their own wells. We request that you conduct further research on this matter to determine whether San Luis Rey has complied with appropriate State laws.

Proposed San Luis Rey Term and Condition No. 8: Access/Easements

[3] Gov. Code Section 56043.

8. *Rights of access, easements, and other legal rights preserved, memorialized, or established through the Meadowood Reorganization are to be reduced to writing and recorded in the San Diego County Recorder's Office, binding on Pardee and its successors and assigns, and the benefits of these terms and conditions, including interests in real property and the terms of any agreement entered into, inuring to the benefit of San Luis Rey and its successors and assigns Cal. Gov. Code §§ 56375(a), (g), 56886(h), (q), (v)); and,*

LAFCO Staff Response:

LAFCO has no authority to enforce this condition. This condition, like a number of other conditions previously discussed, improperly attempts to use the LAFCO process to obtain and/or enforce property rights against a private non-party landowner. These matters could be subject to an agreement outside of the LAFCO process between the District and the landowner (Pardee).

Proposed San Luis Rey Term and Condition: No. 9: Indemnification

9. *San Luis Rey shall be indemnified at no expense to San Luis Rey, with counsel selected by the indemnifying entity subject to San Luis Rey's consent which shall not be unreasonably withheld, fully defend, indemnify and hold harmless San Luis Rey, its officials, officers, employees, and agents (collectively "Indemnified Parties") from and against all claims, lawsuits, causes of action, administrative proceedings or actions, fines, penalties, damages, injuries or losses, including attorneys' fees and costs (collectively "Liabilities"), arising from or in connection with the proposed or final Meadowood Reorganization, San Luis Rey's terms and conditions resulting from the proposed or final Meadowood Reorganization, the Sphere of Influence Update, or any actions or matters related thereto, directly or indirectly (see e.g., Government Code §§ 56375(a), (g), 56886(f), (v)).*

LAFCO Staff Response:

None of the authorities cited require LAFCO to condition approval of a reorganization on an indemnification of the San Luis Rey MWD.

Sphere of Influence Update

Page 7 of the July 9th letter cites concerns about possible changes to the San Luis Rey's current coterminous sphere of influence. In particular, the potential removal of the non-contiguous portion of the District in concert with placement of the area in the sphere for the Rainbow Municipal Water District (Rainbow MWD). As you know, that territory is completely surrounded by Rainbow MWD and is separated from the majority of San Luis Rey's service area. You state that, "[t]o do so at such an early pre-development stage and without a pending application for reorganization is growth inducing ...". We disagree with your assessment that

this action is premature. At this time, at least one property owner in that area has executed an agreement with Rainbow MWD for future service provision. Furthermore, removal of the territory from one water agency's sphere and placing the territory in another water agency's sphere does not change the area where services potentially can be provided. Since a sphere of influence is defined as a plan for the probable physical boundaries and service area of a local agency, proposing the inclusion of the territory in Rainbow MWD's sphere conforms to the intent of State Law.

We also disagree that this action is growth inducing. Growth inducing is characterized as actions that lead to an area experiencing greater than expected growth. In any case, the County is the land use authority whether the property is in the Rainbow MWD or San Luis Rey sphere. Moreover, the County has implemented a general plan with specific land use designations and zoning for that area, and has conducted environmental review associated with this general plan. As long as a project complies with the designation(s) for a proposed development project and does not develop at an accelerated speed, it is not considered growth inducing. There is no basis for conjecture that the territory would have accelerated growth if placed in Rainbow MWD's sphere as opposed to remaining in San Luis Rey's sphere.

Again, thank you for cooperation and assistance during this process and please contact Ingrid Hansen via email at ingrid.hansen@sdcounty.ca.gov or at 858-614-7755 should you have any questions or if LAFCO may be of any further assistance.

Sincerely,

MICHAEL D. OTT
Executive Officer

MDO:IEH:ieh

cc: Gary Arant, General Manager, Valley Center MWD
Brian Brady, General Manager, Rainbow MWD
Thomas Steinke, Esq., c/o Pardee Homes
Thomas Bosworth, Esq., LAFCO Legal Counsel

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Letter frm IH re Supplemental MSR/SOI for Bonsall/Pala Proposed Terms/Cond for the Meadowood Reorg (Ref nos: SA/RO 12-11[a, b, c])
Sent: 10/01/13 (RA)

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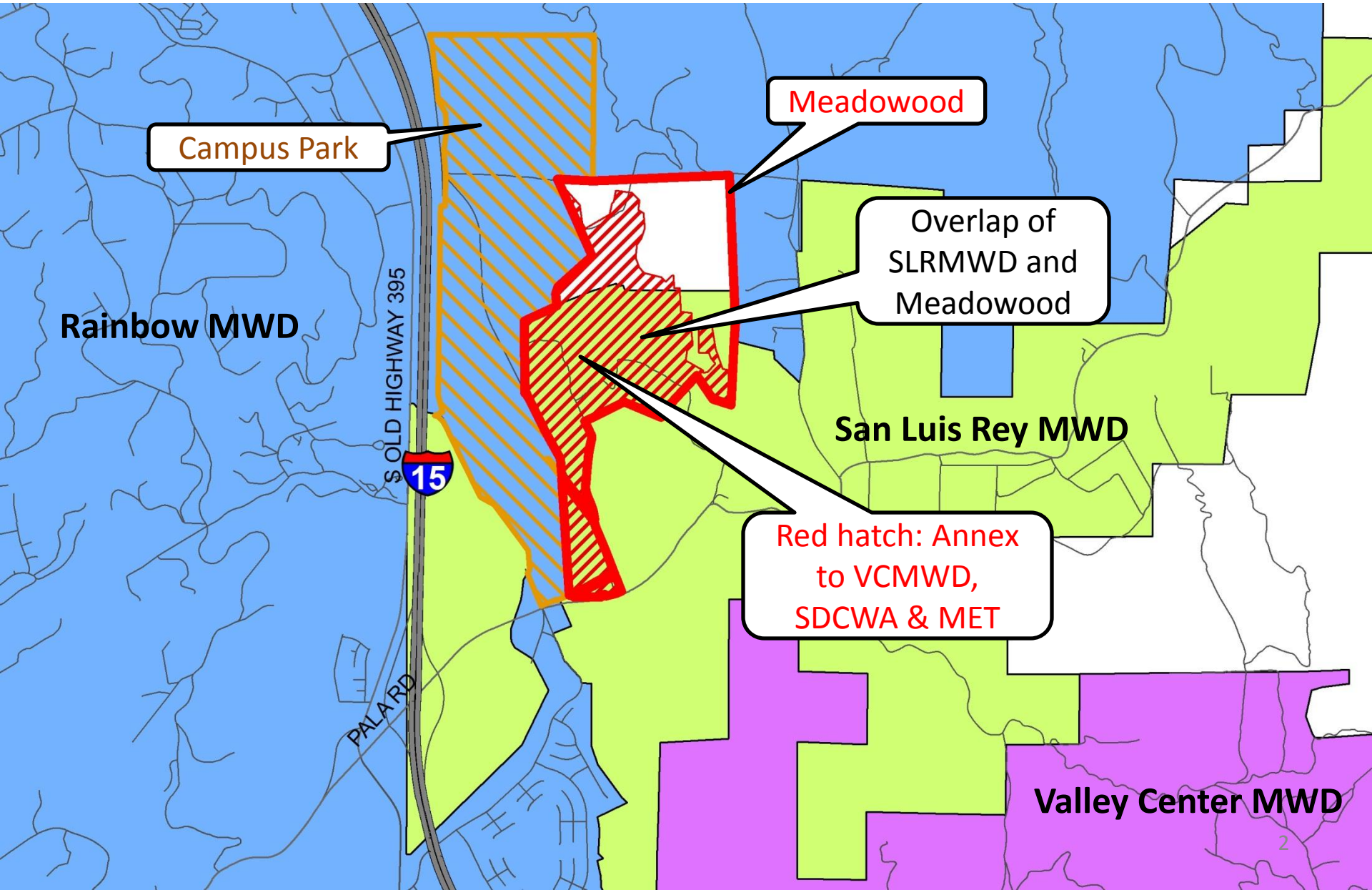
THOMAS STEINKE
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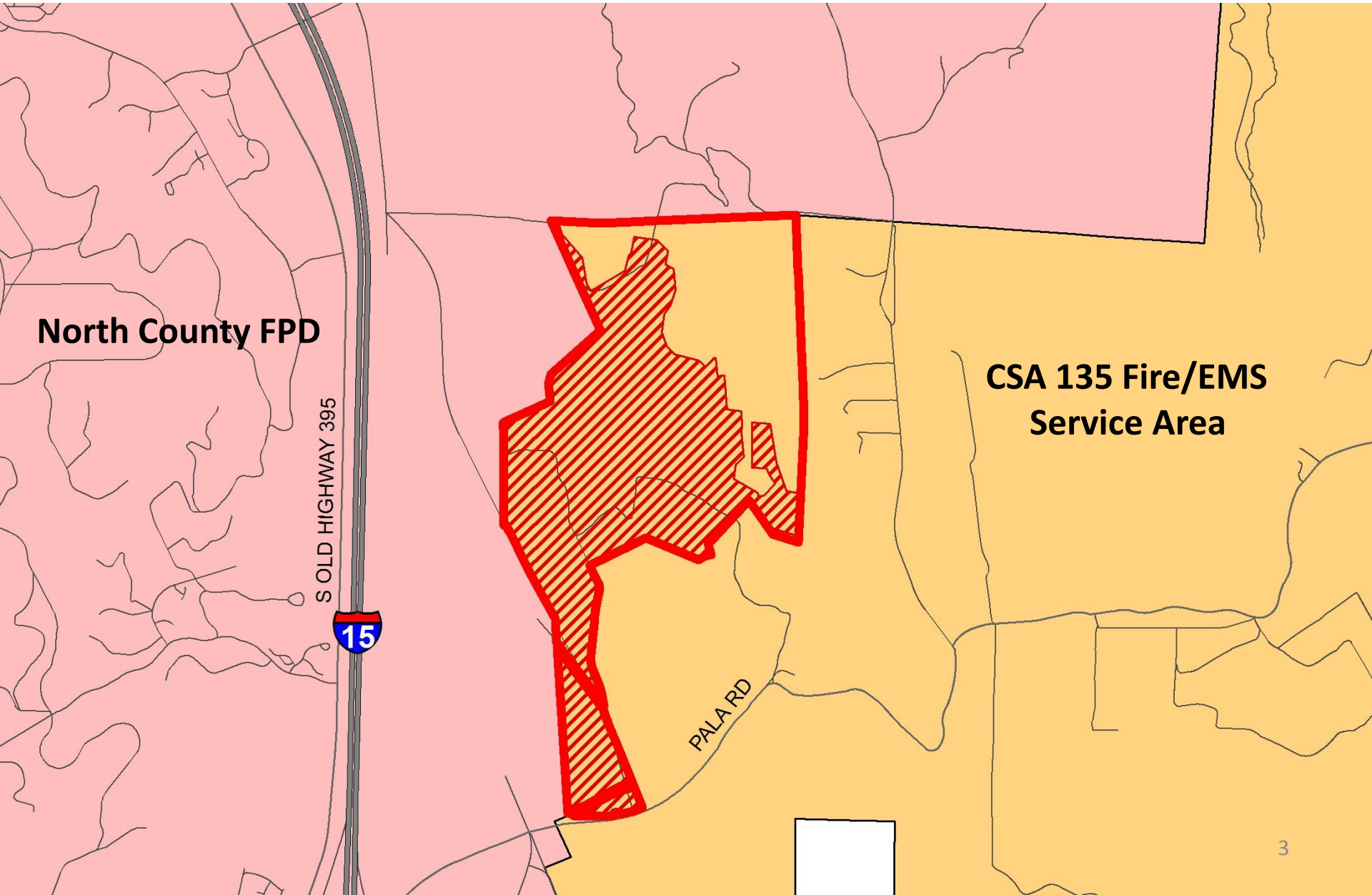
TOM BOSWORTH
COUNTY COUNSEL
MS A-12

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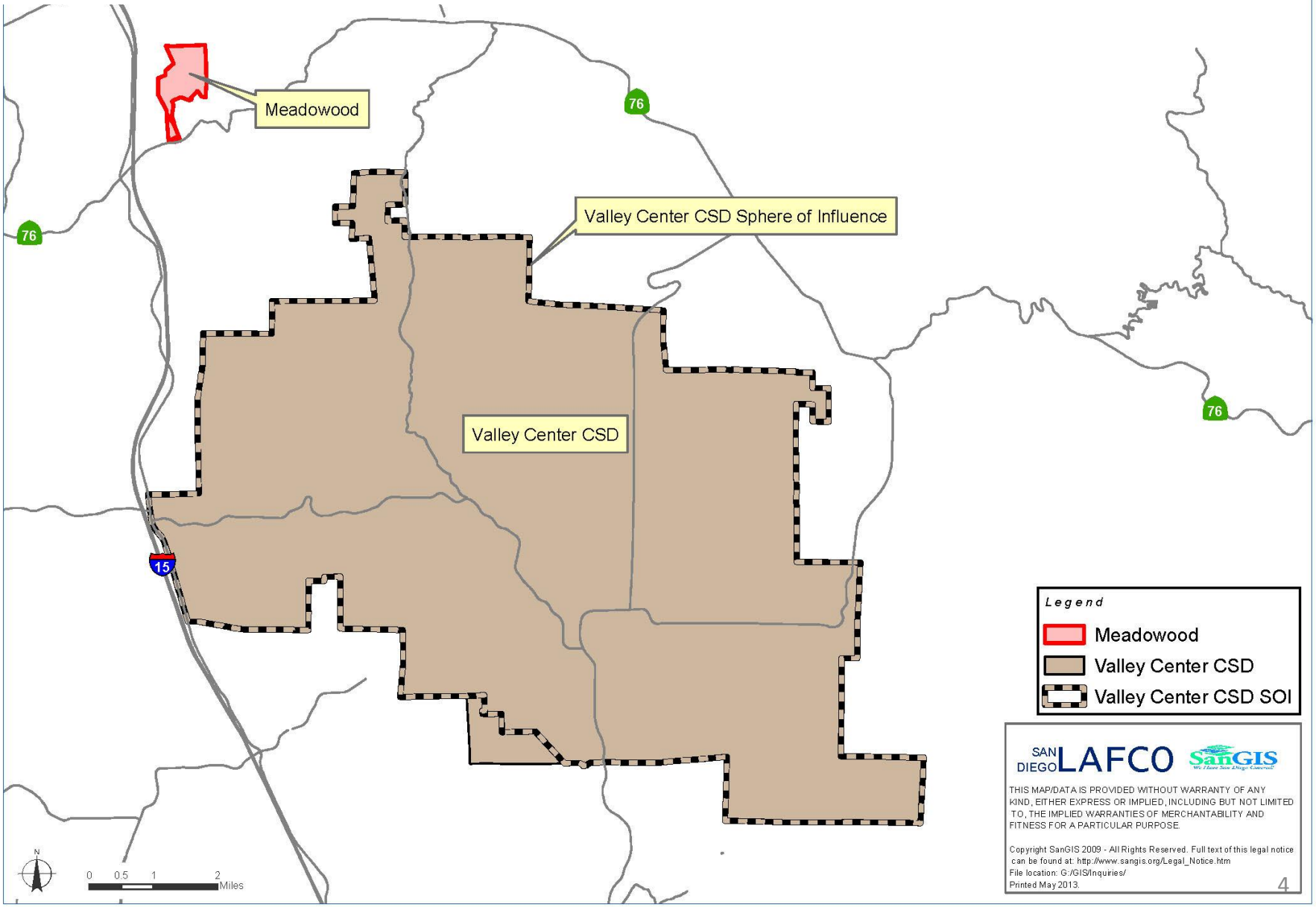
Map A: Meadowood – Water and Sewer Service



Map B: Meadowood – Fire Service/Annex to North County FPD & Remove from CSA No. 135 Fire Zone



Map C: Meadowood – Valley Center CSD



LAFCO
San Diego Local Agency Formation Commission

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Executive Officer

Michael D. Ott

Counsel

Thomas Bosworth

November 4, 2013

7

TO: Local Agency Formation Commission

FROM: Executive Officer
Director, Legislative Research

SUBJECT: November 2013 Legislative Update Report

This is the final monthly Legislative Update Report for November, 2013, designed to keep the Commission informed about legislation in the first year of the 2013-14 Legislative Session. The Legislature has adjourned on August 30, 2013, until January 2014.The Governor has until midnight of October 13, 2013, to sign or veto bills. As of this time, October 11th, the Legislature and Governor have had this level of activity on bills:

2,540 bills were introduced

1,099 bills passed the Legislature; **4** bills are officially "dead"

930 bills have been signed by the Governor

48 bills have been vetoed by the Governor

121 await a decision by the Governor

1,437 bills will carry forward to the second year of the session

Several of the bills that staff identified for tracking have passed the Legislature and been signed by the Governor:

AB 1427 *(The Assembly Omnibus Bill)*: This bill made non-controversial changes to the Cortese-Knox-Hertzberg Act and Government Code. CALAFCO was the sponsor of this bill. Adopted Position approved: ***Support; Letter sent to Author and Governor.*** This bill was signed by the Governor on August 13, 2013.

AB 743 *(Logue) Cortese–Knox–Hertzberg Act Island Annexation Sunset*: As discussed at the August meeting, current law provides for a process for cities to request a commission to annex qualified territory of up to 150 acre limit. Amendments made on April 3, 2013 to AB 743 retain the limit of island territory of a maximum of 150 acres. CALAFCO is the sponsor of the bill. Adopted Position: ***Support; Letter sent to Author***. The bill was signed by the Governor on August 26, 2013.

AB 115 *(Perea)*: Safe Drinking Water State Revolving Fund; Grants to Small Water Systems: this bill authorizes the State Department of Public Health to fund projects to multiple water system applicants for the purposes of consolidating water systems or extending services to households relying on private wells or benefiting disadvantaged communities that are not the applying agency. This is to encourage small system and agencies to work together to solve water quality or delivery problems. The bill passed the Legislature and was signed by the Governor on September 25, 2013.

SB 181, SB 182 and SB 183 *(Committee on Governance and Finance)*: These are three annual validation bills that document the authority of public agencies and territories, etc. These bills are routine but essential for passage each year. Adopted Position: ***Support***. These bills were all signed by the Governor.

Bills that did not pass and were not supported by our commission include:

AB 453 *(Mullin) Sustainable Communities Grants*: This bill would provide a Local Agency Formation Commission the ability to apply for Sustainable Community planning grant funds under the Strategic Growth Council oversight program. Position approved: Originally ***Support; Letter sent to Author***. Position changed in August to ***Oppose*** due to amendments; Held in committee and now a two-year bill.

SB 772 *(Emmerson) Mutual and Private Water Companies*: This bill would require the State Department of Public Health or an applicable local health agency to provide information to the Public Utilities Commission and LAFCO for each public water system and private water system. It would also require a commission to include a review of all such systems in sphere of influence studies and municipal service reviews each five years. The bill has been held by the author and is now a two-year bill. Adopted Position: ***Oppose unless amended; Letter sent to Author***.

Bill amended to deal with non-LAFCO issue and held in Assembly Governance & Finance Committee as a two-year bill. Staff no longer has concerns with this bill as amended.

Staff has provided an update on actions on each of the bills in the attached Tracking Report. No further direction is needed at this time. Therefore, it is:

RECOMMENDED: That your Commission

Receive and discuss, the November 4, 2013 Legislative Status Report and direct staff to continue to monitor legislative activity leading up to the second year of the 2013-14 Legislative Session as it convenes in January, 2013.

Respectfully submitted,

MICHAEL D. OTT
Executive Officer

HARRY EHRLICH
Director, Legislative Research

MDO:HE:trl

Attachment

Legislative Tracking Report

SAN DIEGO LAFCO
LEGISLATIVE TRACKING REPORT
November 4, 2013

7

AB 115 (Perea): ***Safe Drinking Water State Revolving Fund; Grants to Small Water Systems***

Introduced: 1/14/2013
Status: 10/8/2013-Enrolled and signed by the Governor.
Summary: Authorizes the State Department of Public Health to fund projects, by grant, loan, or a combination of the two, where multiple water systems apply for funding as a single applicant for the purpose of consolidating water systems or extending services to households relying on private wells, as specified. The bill authorizes funding of a project to benefit a disadvantaged community that is not the applying agency. By authorizing the use of a continuously appropriated fund for new purposes, this bill would make an appropriation. This bill contains other existing laws. It addresses a problem of encouraging small agencies to develop water improvement projects together and consolidate agencies.

AB 168 (Wilk): ***Local government finance: vehicle license fee revenues: allocations***

Introduced: 1/24/2013
Status: 1/25/2013-Failed to be heard by Committee; dead for this year.
Summary: Under existing law, the Controller is required to allocate vehicle license fee revenues in the Motor Vehicle License Fee Account according to a specified order, with moneys allocated on or after July 1, 2004, but before July 1, 2011, first to the County of Orange, next to each city and county meeting specified criteria, and on or after July 1, 2011, to the Local Law Enforcement Services Account in the Local Revenue Fund, for allocation to cities, counties, and cities and counties. This bill would make technical, nonsubstantive changes to these provisions. This bill appears to have been a spot bill to be amended at a later time.

AB 194 (Campos): ***Open Meetings: protections for public criticism***

Introduced: 1/28/2013
Status: 4/24/2013: Failed to be considered; dead for the year.
Summary: Would make it a misdemeanor for a member of a legislative body, while acting as the chairperson of a legislative body of a local agency, to prohibit public criticism protected under the Ralph M. Brown Act. This bill would authorize a district attorney or any interested person to commence an action for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of the protection for public criticism is null and void, as specified.

AB 262 (Waldron): ***Local government: organization***

Introduced: 2/7/2013
Status: 2/8/2013 Failed to be heard by Committee; bill dead for this year.
Summary: The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 makes certain findings and declarations relating to local government organization, including, among other things, that it is the policy of the state to encourage orderly growth and development, and recognition that the logical formation and determination of the boundaries of local agencies, as specified. This bill would have made technical, nonsubstantive changes to these provisions.

AB 453 (Mullin): ***Sustainable Communities Grants***

Introduced: 2/19/2013
Amended: 7/3/2013
Status: 8/30/2013 Failed to pass deadline in Appropriations Committee Suspense File on; now a two-year bill.
Summary: The Strategic Growth Council is required to manager and award grants and loans to a council of governments and other planning organizations for the purpose of developing regional plans to support the development of sustainable communities. This bill would make a local agency formation commission eligible for the award of financial assistance for those planning purposes.
San Diego LAFCO Position: Originally Support and Letter Sent; amended and San Diego LAFCO withdrew our support.

AB 678: (Gordon): ***Health Care Districts: community health needs assessment***

Introduced: 2/21/2013
Amended: 4/15/2013
Status: 8/30/2013 Failed to pass deadline in Senate Appropriations Committee Suspense File; now a two-year bill.
Summary: Would require that each health care district that leases its facilities for operations conduct an assessment, every 5 years, of the community's health needs and provide opportunities for public input. Also would require that a copy of the annual report on progress toward meeting the service needs in the district be provided to a local agency formation commission.

AB 743 (Logue): ***Cortese-Knox-Hertzberg Act Island Annexation Sunset***
Introduced: 2/21/2013
Amended: 6/11/2013
Status: 8/26/2013 Signed by Governor, Chaptered by the Secretary of State.
Summary: The Cortese-Knox-Hertzberg Act in Section 56434 authorizes a local agency formation commission, until January 1, 2014, to approve, after notice and hearing, a request of a city to annex territory constituting an island as defined in the Act of up to 150 acres and to waive protest proceedings if certain requirements are met. This bill would repeal the January 1, 2013 sunset date.
San Diego LAFCO Recommended Position: Support and Sent Letter to Author

SB 56 (Roth): ***Local government finance, cities***
Introduced: 1/7/2013
Amended: 6/11/2013
Status: 6/19/2013 Passed Senate Governance & Finance Committee referred to appropriations Committee; held as two-year bill.
Summary: Would restore funding to cities that either were incorporated or annexed territory after 2004 utilizing a sliding scale of funding over the next four years.

SB 181, SB 182 and SB 183: ***(Committee on Governance and Finance) Validations***
Introduced: 2/6/2013
Status: 7/3/2013 Chaptered by the Secretary of State
Summary: These three Validating Act bills would validate the boundaries, organization, acts and proceedings of the state, counties, cities and specified districts for 2013. These are routine but required acts to continue authority and operations of various agencies of government.
San Diego LAFCO Position: Support

SB 772 (Emmerson): ***Mutual and Private Water Companies***
Introduced: 2/22/2013
Amended: 9/6/2013
Status: 9/13/2013 Failed to pass committee, last location in Assembly Governance and Finance Committee; now a two-year bill to consider input from stakeholders.
Summary: Would require the State Department of Public Health or the local health agency to annually provide the address and telephone number for each public and state small water system to the Public Utilities Commission and as prescribed to a local agency formation commission; adds requirements for a commission to study all mutual and private water providers when undertaking a municipal service review of retail water services and to document service areas and spheres of influence of all providers, etc. The bill provides no additional authority to implement or funding for these required activities.
San Diego LAFCO Position: Oppose unless Amended – Letter Sent; Amended and no Longer a Concern of staff

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AB 1427 (Committee on Local Government): ***Omnibus Bill on Cortese-Knox-Hertzberg Act***
Introduced: 4/1/2013
Status: 8/13/2013 Signed by Governor and Chaptered by the Secretary of State
Summary: This is the annual Assembly Omnibus Bill that updates the Cortese-Knox-Hertzberg Act to make non-controversial changes to clarify the Act and revise definitions, etc. Proposed changes include clarifying definition of independent special district and designation of special district elected officials for nomination of special district representatives on a commission or advisory committee. The proposed bill has been reviewed by local government stakeholders prior to being introduced.
San Diego LAFCO Proposed Position: Support and Sent Letter to Committee