San Diego County
Local Agency Formation Commission
Regional Service Planning | Subdivision of the State of California

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AGENDA REPORT
Business | Discussion

March 3, 2025

TO: Chair Whitburn and Commissioners

FROM: Priscilla Mumpower, Assistant Executive Officer
Joelle Burila, Analyst I

SUBJECT: **Update on Implementing Report Recommendations from University of California Berkeley to Expand LAFCOs' Effectiveness**

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will receive an update on recent staff activities to advance critical recommendations involving LAFCOs' effectiveness in meeting statutory objectives from a report published by the University of California, Berkeley. The report was presented to the Commission in March 2024 and outlines strategies to strengthen the relationship between State regulators, LAFCOs, and local communities in addressing the delivery of safe drinking water, with recommendations focused on elevating municipal service reviews (MSRs) and facilitating water system consolidations. Consistent with feedback from the Commission, staff has been collaborating with the U.C. Berkeley author and other stakeholders – including other LAFCOs – in developing legislative amendments to address the report's core recommendations and related themes. Most notably, this includes exploring legislation to expand LAFCOs authority to initiate annexations to cities and special districts under certain circumstances to address public health considerations involving water and wastewater services. This update is being presented to the Commission for informational purposes with an opportunity for the Commission to provide input on staff activities going forward.

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BACKGROUND

University of California Berkley Report | LAFCo and Water System Consolidation

In January 2024, a report published by UC Berkeley's Agriculture and National Resources Department (Professor Kristin Dobbin and PhD Candidate Justin McBride) examining the relationship between State regulators and LAFCOs in advancing certain State objectives. This includes a primary objective to economize and improve public water systems through notional consolidations and in doing so ensure safe and dependable drinking water with additional emphasis on helping the most vulnerable communities. Key report conclusions and recommendations follow.

- The report emphasizes the importance of effective communication between LAFCOs and State water regulators, recommending regular meetings to address failing water systems and explore collaboration.

- Recommends integrating information from MSRs and state water assessments through formal channels or legislation, along with providing guidance on MSR development.

- Highlights the need for well-funded MSRs to identify consolidation opportunities, with LAFCOs assessing shared facilities and recommending consolidations.

- Recommends LAFCOs prioritize consolidations, create effective pathways for merging small private water systems, and seek authority to initiate annexations for greater service efficiency.

The report and a summary of observations and recommendations was initially presented to the Commission at its March 2024 meeting.

The full report is provided as Attachment One.

DISCUSSION

This item provides San Diego LAFCO with an opportunity to provide input on staff's ongoing efforts to advance recommendations from the U.C. Berkely report to LAFCO statute. These activities are part of a joint legislative effort with the report authors, other LAFCOs (Orange, Napa, Sacramento, Alameda, Butte and Santa Cruz), and community organizations (Community Water Center and Leadership Counsel for Justice and Accountability). The amendments total three at this time and aim to offer legislative solutions to advance LAFCO's ability to help ensure the timely and sustainable extension of municipal water and wastewater services to all Californians with the following legislative proposals. The three key legislative amendments follow.

1) **Expand LAFCOs ability to initiate change of organizations or reorganizations under certain circumstances**
   Amend California Government Code 56375(a) and its enumeration of LAFCO initiating powers to include change of organizations or reorganizations necessary to provide timely water or wastewater services consistent with community needs and in response to public health or safety concerns.

2) **Amplify MSRs Role in Communicating Community Needs**
   Amend California Government Code 56430 and its provisions on preparing municipal service reviews to require LAFCOs to take up these studies at noticed hearings as well as require the affected agencies to formally receive the studies at their own noticed hearing and provide confirmation in doing so back to LAFCOs.

3) **Address Service Barriers for Mutual Water Companies and Mobile Home Parks**
   Amend California Government Code 56430 to include mobile home parks and mutual water companies in its list of agencies that supply vital services, and who should be evaluated as part of MSRs. This change would also importantly make public health information from mobile home parks available to LAFCO. Pursue a concurrent change to make explicit mobile home parks' water systems qualify as mutual water companies.

The group continues to make significant progress on these above efforts and is currently finalizing a one-page fact sheet, a joint interest letter, amended language to the LAFCO statute, and a synthesized memorandum for efficient sharing. These materials will be provided to the Commission once finalized.

The initial letter of joint legislative interest is provided as Attachment Two.

ANALYSIS

The proposed legislative amendments as described under development by San Diego LAFCO and other stakeholders advance LAFCOs ability to meet its standing directive by the Legislature to match municipal services with community needs. Most pertinently, providing LAFCOs the authority in statute to initiate annexations to facilitate water and wastewater delivery to areas in need and remedy public health and safety concerns serves to concretely meet desired State outcomes - whether in the form of serving as applicant or motivate local agencies to initiate their own proposals. Similarly, establishing an explicit feedback loop where local agencies are taking up MSRs and their recommendations on their public meeting agendas helps to ensure local decision-makers are directly addressing MSRs with their constituents as they see fit. Last, making clear in statute – CKH and Corporations Code – that mobile home parks with their own water systems qualify as mutual water companies would – among other benefits – make clear LAFCOs' authority to readily receive requested service information as part of the MSR statutes.

With respect to next steps, San Diego LAFCO and other stakeholders are working to meet with key state legislators to identify an author for the proposed amendments.

RECOMMENDATION

This item is presented to San Diego LAFCO for discussion and feedback only.

ALTERNATIVES FOR ACTION

None.

PROCEDURES

This item has been placed on San Diego LAFCO's agenda for information as part of the business calendar. The following procedures are recommended in consideration of this item:

1) Receive verbal presentation from staff unless waived.
2) Invite comments from interested audience members, if any.
3) Discuss the item.

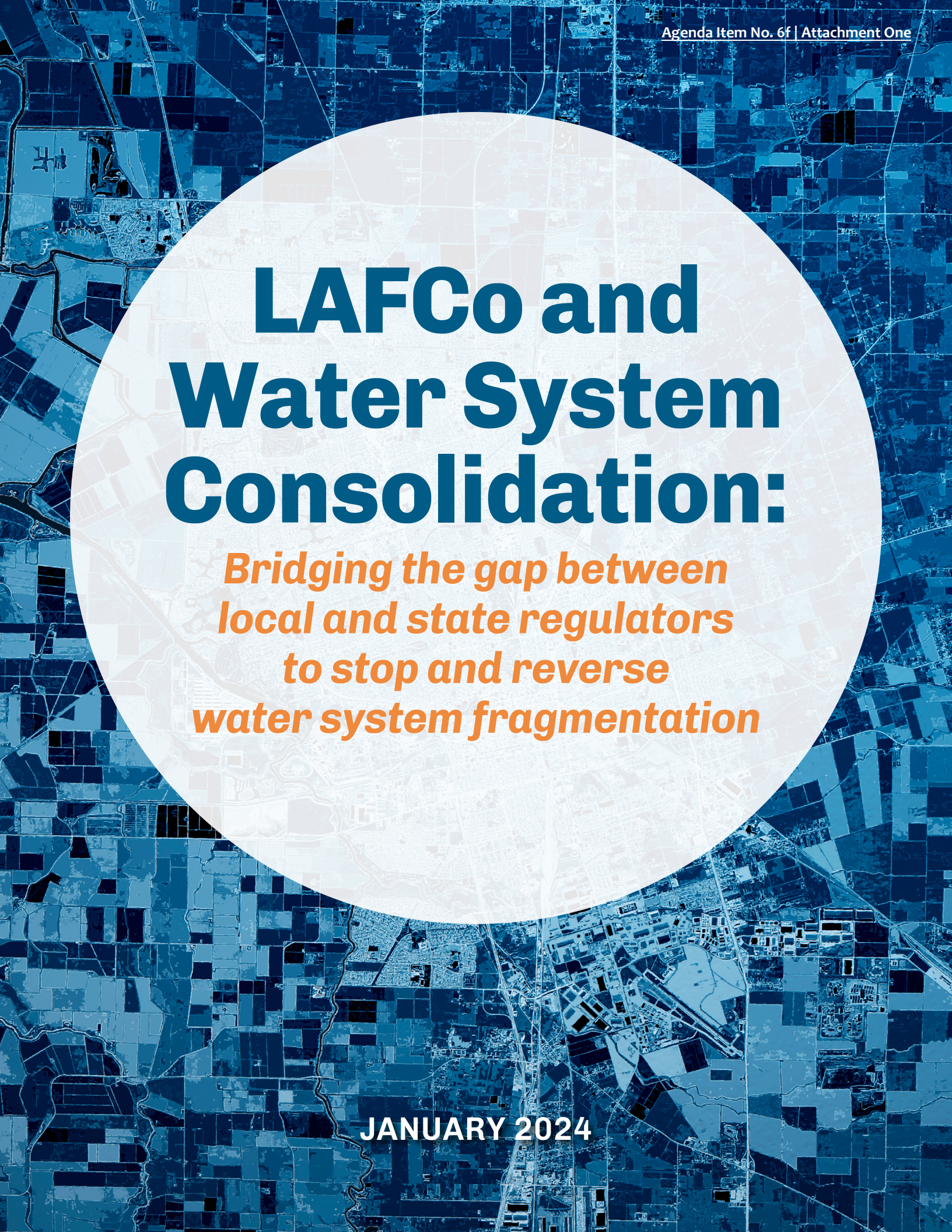
On behalf of staff,

Joelle Burila

Joelle Burila
Analyst I

Attachments:

1) LAFCO and Water System Consolidation – Full Report (January 2024)
2) CALAFCO Initial Letter – Opportunity to Coordinate on Joint Legislative Interest



LAFCo and Water System Consolidation:

Bridging the gap between local and state regulators to stop and reverse water system fragmentation

JANUARY 2024

UNIVERSITY OF CALIFORNIA
Agriculture and Natural Resources

Berkeley
UNIVERSITY OF CALIFORNIA

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Introduction

In 2012, California passed AB 685 enshrining the human right to water into state law. Achieving this vision is not a simple task, instead it requires ongoing commitment and investment by state legislators and regulators. Water system consolidation, or the merging of two or more water systems, has increasingly become a focus of these efforts due to a wide array of potential benefits. This is particularly true for the state's very small water systems, many of which struggle to achieve consistent regulatory compliance. In the hopes of halting and reversing the proliferation of small water systems, California has implemented policy changes including developing financial incentives for larger water systems to consolidate small systems, introducing new powers to mandate consolidation under specific circumstances, and working to limit permits for new water systems in favor of extending existing systems. With these efforts as well as unprecedented financial investments in consolidation through the new Safe and Affordable Funding for Equity and Resilience (SAFER) program, the state has reduced the total number of public water systems by more than 3% in the last 9 years.[1]

Despite these successes, implementing consolidations in an efficient and equitable manner continues to be a difficult task. A large array of challenges from local politics to funding regularly delay and sometimes prevent consolidations, both between existing systems and for systems intended to serve new industrial or residential development. This report focuses on one such challenge, the need to coordinate and align actions by state and local regulators. Under the Federal Safe Drinking Water Act, the state of California is responsible for ensuring compliance among public water systems. This role has put the State Water Resources Control Board (SWRCB) at the forefront of efforts to reduce the number of small water systems. Nonetheless, changes to drinking water services often implicate changes to local government, thus requiring consultation with, and sometimes the approval of, local regulators.

In particular, in California, county Local Agency Formation Commissions, known as LAFCos, are regional planning and regulatory agencies tasked with "coordinating logical and timely changes in local government boundaries, conducting special studies that review ways to reorganize, simplify and streamline governmental structure and preparing a sphere of influence for each city and special district within each county."[2] In this capacity, they have a critical role to play in promoting and implementing water system consolidations for existing and proposed water systems. Because LAFCos regulate boundaries between most public agencies, they often have the final say over water system consolidation projects that involve a local government entity including special districts and cities. Yet in practice, many water system consolidations are conceived of and planned without input from local planners and may only come before LAFCo for formal review after significant resources have already been invested in the project. Much the same can be said for local development plans. To the extent a new development relies on a new public water system, local project proponents may find themselves at odds with state regulators who wish to avoid the creation of additional small water systems they perceive as unsustainable. In these cases, there is significant potential for frustration on all sides when plans are delayed or must be changed due to inadequate coordination, conflicting policies and/or competing priorities.

These examples highlight what can be a wide gulf between drinking water regulators and LAFCos when implementing water system consolidations, whether for existing or new systems. Though intertwined in practice, the two often approach questions of water system fragmentation with distinct perspectives and priorities. Such differences can reverberate beyond individual projects, impacting broader efforts to rationalize drinking water services, increase equitable access, and ensure sustainability under a changing climate. Overwhelmingly LAFCos and state drinking water regulators share goals for promoting equitable,

efficient, and sustainable local drinking water service. Yet we are a long way from the policy alignment necessary to stop, let alone reverse, the proliferation of small water systems.

Drawing on interviews with state regulators and LAFCo representatives, input from state technical assistance providers, and a survey of county LAFCo Executive Officers, this report aims to: 1) Highlight important intersections between LAFCos' local planning and regulatory roles and state policies and programs that prioritize water system consolidation as a safe drinking water solution; 2) Identify challenges at these intersections that limit progress on shared goals; and 3) Provide recommendations to begin to address these challenges.

Section I: Understanding LAFCos and Their Role in Water System Consolidation

About LAFCos

Local Agency Formation Commissions (LAFCos) are county-specific independent governmental agencies charged with conducting studies to evaluate, reorganize, and streamline local government functions and services. LAFCos were first created by the State of California in 1963 to manage sprawl. Subsequent legislative updates have gradually increased the scope of LAFCo powers and authorities over time. The most important of these updates occurred in 2000 with the passage of the Cortese-Knox-Hertzberg Act (CKH).[3] Though amended periodically, the CKH Act remains the most important reference for understanding LAFCo powers and processes.

Each LAFCo is governed by a commission comprised of elected and appointed individuals. Every LAFCo includes representatives of the county's Board of Supervisors and city councils from cities within the county boundaries along with one appointed member of the general public. Many LAFCos also include board members from special districts within the county. The exact structure of individual LAFCo commissions varies, but a typical commission has at least five, and up to seven, members who serve four-year terms. Though geographically coterminous with every county, LAFCos are politically independent from the county government where they operate. Commission decisions are not subject to oversight, review, or approval by the County Board of Supervisors.

LAFCo commission meetings are public meetings, and as such must be regularly held, open to the public, and are subject to the Ralph M. Brown Act.[4] The work of the commission is carried out by staff, led by an Executive Officer. Staffing levels vary substantially between counties. Some have full-time Executive Officers and up to eight additional full-time staff members, and others have only part-time Executive Officers and minimal, or even no, additional staff *(See Appendix)*.

The Cortese-Knox-Hertzberg Act of 2000

The Cortese-Knox-Hertzberg Act of 2000 was the most recent major overhaul of LAFCo powers. It establishes procedures for local government changes of organization, including city incorporations, annexations to a city or special district, and city and special district consolidations. In carrying out these functions, the Act specifically directs LAFCos to:

- Limit urban sprawl;
- Ensure orderly boundaries between governmental agencies;
- Preserve open space and agricultural lands.

Though LAFCos may have other priorities related to local political preferences, these three mandates are shared to some extent by all LAFCos in accordance with state law.

LAFCos are funded from two primary sources. First, all LAFCos receive annual funding from the local governments represented on the commission (county, cities, and sometimes special districts). The size of these contributions varies by county, as each LAFCo sets its own budget. Second, LAFCos may charge fees for some types of applications or services. These fees are typically borne by the relevant agencies or other applicants (such as landowners) applying for the action in question, for example, an adjustment to a district's jurisdictional boundary.

LAFCos and water system consolidations

To avoid the duplication of services and ensure that growth occurs in an orderly fashion, one of LAFCos' primary roles is to regulate and approve changes to the jurisdictional boundaries and planning boundaries of all cities and most special districts (the most notable exception is school districts). As a result, LAFCo will be involved in any consolidation project if one or more of the systems — either consolidating or receiving — is a public agency, specifically a city or a special district.[5] If a consolidation project involves no such water systems, there is no formal role for LAFCo, although if the consolidation involves one or more Investor-Owned Utilities, the California Public Utilities Commission (CPUC) will play a similar oversight role. If a project involves both public and private water systems, LAFCo may only be involved in certain components. For example, if an Investor-Owned Utility takes over water provision in a community previously served by a local agency (as in the case of the Sativa Water District in Los Angeles County), LAFCo would be involved in the dissolution of the public district but not in the "annexation" by the Investor-Owned Utility of the new service area which would instead be approved by the CPUC.

It is important to keep in mind that while a LAFCo's purview includes districts that provide drinking water, LAFCos do not primarily regulate drinking water providers or their day-to-day operations. Rather, their role is to ensure that drinking water provision happens in an orderly manner that does not create additional burdens on residents, does not conflict with established local policies or encourage unwanted urban sprawl, and does not create wasteful duplication of services. In other words, in many cases LAFCos will be concerned with the question: How will this consolidation fit into our broader planning priorities for the county?

The answer to this question will largely depend on the structure of the proposed consolidation. Water system consolidation can be accomplished in many ways including not only district or city consolidation but also through extensions of service, annexations, etc. *(See 'Bridging differences in terminology' box)*. Any one of these procedures may also trigger reorganizations or dissolutions, all of which may have distinct procedures and requirements for implementation. In some cases, LAFCos have a preferred pathway for how to accomplish consolidations that will need to be adhered to in order to receive the necessary approvals. However, in other cases, LAFCos may prefer to make recommendations or determinations based on the specifics of an individual project. We recently surveyed LAFCos across the state and received responses from 23 of the state's 58 LAFCos. Nearly 40% of respondents indicated they preferred outright annexation to extraterritorial service agreements whereas 52% reported having no pre-set preference.

Even when a LAFCo has a preference, however, they may still approve exceptions based on specific circumstances. For example, under California law, LAFCos may (but are not required to) approve a request for a service extension outside of a service providers' jurisdictional boundary and sphere of influence to respond to an "existing or impending threat to the health and safety of the public or the residents of the affected territory".[6] More than two thirds of survey respondents indicated they had approved such a request in their county. Notably the requirements for doing so vary between counties. Some counties require only a letter from an affected local government body, while others require expert documentation of the threat.

Beyond the need to coordinate with LAFCo on the structure of a proposed consolidation, LAFCo involvement has another important implication: Fees. Given that LAFCos are authorized to collect

Bridging Differences In Terminology

This report uses the term "consolidation" in a broad sense to mean the formal merging of some or all functions of drinking water provision between two or more water providers or communities. Consolidation, in this drinking-water focused sense, can happen through a variety of different pathways that vary in not only their implementation but also outcomes (for more information see the 2022 guide Designing Water System Consolidations). Under this definition, consolidation can include the physical interconnection of existing water system infrastructure (physical consolidation) but it does not have to. Consolidation may instead entail merging only the governance and management functions of two pre-existing systems (managerial consolidation) or extending a water system to serve a domestic well community or new development. This inclusive definition is informed by, and aligned with, the definition state drinking water regulators and community water advocates employ.

However, for a LAFCo, the term consolidation refers to a narrowly defined legal process, closely constrained by state law. The CKH Act defines consolidation as "the uniting or joining of two or more cities located in the same county into a single new successor city or two or more districts into a single new successor district." Consolidation in a LAFCo sense always entails the creation of an entirely new district.

While largely semantic, this difference can cause confusion. Projects such as the extension of a community water system to serve residents previously reliant on a state small water system or where a special district like a County Service Area is absorbed into a neighboring city would both be commonly referred to as consolidations among drinking water stakeholders. To a LAFCo representative, however, many such "consolidations" are instead understood as extensions of service, annexations, reorganizations, and/or dissolutions.

fees for services and studies and that some rely on these fees to cover the associated costs of those additional reviews, those seeking to consolidate drinking water services may have to bear the cost of any related study required by state law. LAFCos have some degree of autonomy in setting fees to compensate for staff time. As such, relevant fees vary significantly between counties. Of the 23 LAFCos that responded to our survey, estimated total fees associated with a consolidation project ranged from $0 to $50,000, depending on the LAFCo and the complexity of the project. Seventy percent of survey respondents said that they waive fees under specific circumstances, the remainder indicated that fee waivers were not available.

Municipal Service Reviews

Beyond regulating local government boundaries, LAFCos also play an important role in evaluating municipal services within their county and making recommendations for improvements. The CKH Act mandates that every five years, as necessary, LAFCos review and update the designated sphere of influence for each city and special district under their jurisdiction.[7] Prior to establishing or updating a sphere of influence, LAFCos must perform a special study called a Municipal Service Review (MSR). MSRs are comprehensive studies designed to better inform LAFCo, local agencies, and the community about the provision of municipal services. MSRs can be conducted individually for specific cities or districts, covering all services, or on a county-wide or regional basis focused on specific services.

Based on these requirements, some LAFCos conduct regular MSRs while others do so only when necessary, such as when a sphere of influence issues arise. Budget and capacity constraints are a major factor influencing how frequently MSRs are conducted. Some LAFCos reported in interviews that they did not conduct MSRs as frequently as they would like due to high costs.

The requirements related to MSR contents are also loosely bounded, meaning that in practice, the content and level of detail varies by county. Ideally an MSR will have insights into the kinds of things those pursuing consolidation would likely be interested in — water quality, water source reliability, fiscal stability, managerial capacity, and technical expertise. Take for example the recent Countywide Water Service and Sphere Review by Santa Cruz County which provides significant detail

on system finances, water rates, transparency and local accountability among other items.[8] In other cases, MSRs may have few of these details and thus provide little in the way of local insights either supporting or challenging consolidation efforts (capacity can also be a factor here). By statute, LAFCos are authorized to request information from privately owned water systems as part of their reviews including from mutual water companies.[9] Notably, very few LAFCos currently do so and some LAFCos report mutual water companies have failed to respond to requests for information when they have attempted to include them in MSRs.

Approval of new public water systems

Recognizing the importance of stopping the further proliferation of potentially unsustainable small water systems throughout the state, recent regulatory changes now require that all applications for new public water systems[10] must be approved by the SWRCB. Applicants wishing to construct a new system must apply at least six months before initiating water-related development with an accompanying "preliminary technical report." The preliminary technical report must analyze the feasibility of connecting to any public water systems within three miles, assess the twenty-year costs of operating the proposed system, and evaluate the sustainability and resilience of the proposed system long-term. As part of the assessment of consolidation feasibility, an applicant needs to document contact with LAFCo regarding the identified existing water systems. Approval of non-water system related development (e.g., a warehouse facility to be served by the proposed water system), however, remains a local decision and LAFCos retain final authority on areas where services can be provided by the existing water systems of cities and special districts. Thus, there is potential for inconsistent determinations between state and local authorities, which could cause delays and/or lead to potential litigation. These changes increase the need for coordination between state drinking water regulators and local authorities regarding when and where the creation of new water systems is appropriate.

38% of LAFCos report that they evaluate the feasibility of consolidation as part of their MSR process and 61% report that they recommend consolidation in MSR findings where warranted.

Section II: Challenges

Based on our interviews and survey results, in this section we describe seven key challenges that limit effective coordination between state and local regulators with respect to water system consolidation, both among existing and new systems.

Lack of communication and information sharing between LAFCos and drinking water regulators

Although LAFCos, the State Water Resources Control Board (SWRCB), and the California Public Utilities Commission (CPUC) all play key roles relevant to drinking water system consolidations, each has a unique niche in the enforcement patchwork, and communication between these agencies is limited.

While, in many cases, LAFCos rely on publicly available SWRCB data in developing their MSRs for water services, the MSR process also often generates new information about the status of local water providers, especially regarding the state of system governance and finances. This information can be highly relevant to understanding the potential of a system to encounter future challenges. Yet only 30% of surveyed LAFCos report sharing their MSR findings with drinking water regulators. And while some SWRCB staff do independently seek out and use MSRs when working with a system, not all MSRs are publicly available online.

This lack of information sharing mirrors a general lack of communication between local planners and state drinking water regulators. Nearly all LAFCo Executive Officers we interviewed reported only infrequent contact with state drinking water regulators. The lack of communication creates issues in both directions. On the one hand, the SWRCB may have information about the challenges of local agencies unavailable to LAFCos who often only have infrequent communications with the small water providers under their jurisdiction. Similarly, a LAFCo might be aware of issues which could merit consolidation in the future. These systems might be good candidates for SWRCB intervention, but intervention is unlikely if information does not flow between agencies. On the other hand, the SWRCB may pursue solutions such as consolidation without a clear understanding of locally specific challenges such as conflicting policies, or potential political barriers.

California's other key water agency, the CPUC, regulates Investor-Owned Utilities. The CPUC communicates even less frequently with LAFCos than the SWRCB. This is not surprising, given that LAFCos do not regulate private utilities. But in some cases, LAFCos might be ignorant of potential privately-owned consolidation partners for troubled local government systems or vice-versa, of struggling private systems where governmental systems could expand their service area. Additionally, consolidations involving Investor-Owned Utilities (referred to by the CPUC as acquisitions) can significantly impact local development. Currently there are no specific mechanisms for LAFCos to provide feedback to the CPUC on these matters except to file a motion for party status in an acquisition proceeding which is subject to approval and conditions by a judge.

Lack of shared language and vision

Sometimes, when drinking water stakeholders interested in water system consolidations encounter LAFCos, they find the experience to be frustrating. Often, part of the problem is that LAFCos do not share a common vision or even use the same language to talk about consolidations. As previously mentioned, for LAFCo staff the term "consolidation" refers to a specific legal process, not a broad suite of options. Conversations that casually use the term consolidation can thus create confusion, since many water system consolidation projects fall under LAFCo descriptions for annexations, dissolutions, extraterritorial service agreements, or other arrangements.

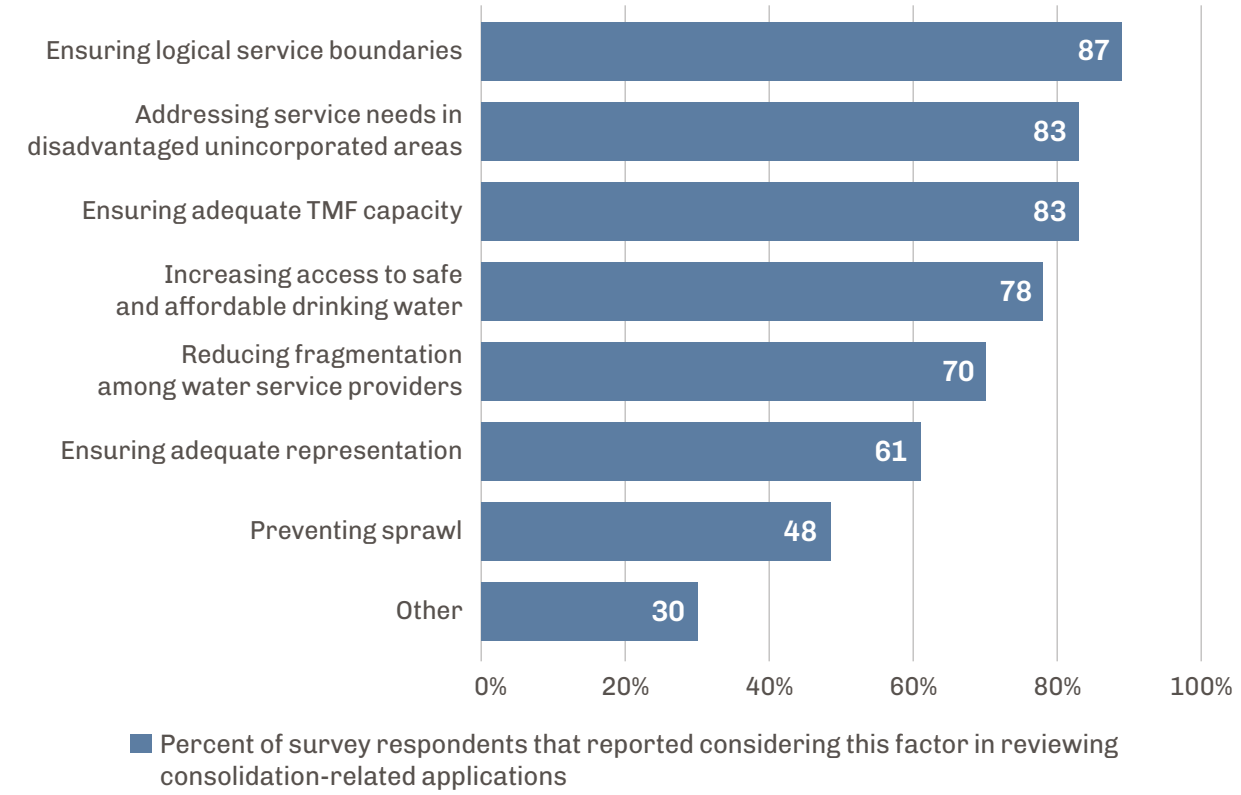
But this challenge is not only semantic. While all parties share a commitment to ensuring efficient, equitable local services, the goals that motivate system consolidation and the metrics by which "success" is assessed in these projects can also vary. State regulators tend to prioritize projects on the basis of Safe Drinking Water Act compliance, cost, and improving system sustainability (i.e., targeting "at-risk" systems). Overall LAFCos take a broader perspective, including considering impacts to different community services as well as county-wide impacts and consistency in long-term planning. This is well demonstrated by the fact that surveyed LAFCos reported considering, on average, more than five different factors when reviewing consolidation-related applications *(Figure 1)*. Among these considerations, 30% of LAFCos reported that ensuring adequate Technical, Managerial, and Financial (TMF) capacity was the most important, followed by ensuring logical service boundaries and increasing access to safe and affordable drinking water, each of which was voted most important 26% of respondents. Notably, whereas preventing and reversing water system fragmentation is a top priority of the SWRCB, this consideration did not rise to the top among LAFCOs, only 70% of which said they consider system fragmentation when reviewing consolidation-related applications.

Diversity in local implementation

All LAFCos are governed by the CKH Act, but policy occurs just as much in implementation as in statute. Because the CKH leaves substantial autonomy for local LAFCos to tailor their operations to local conditions, implementation varies substantially from LAFCo to LAFCo. The state's rules have few hard guidelines except when it comes to specific procedural actions.

For example, according to statute, LAFCos are supposed to interpret any requests to

Figure 1. LAFCo considerations in reviewing consolidation related applications by frequency.



accommodate a system consolidation based on the potential costs and savings, as well as other impacts to local residents. This open-ended set of criteria leaves room for interpretation leading LAFCos to review a wide range of factors as mentioned above. This statute language also allows for LAFCos to have different local policies leading some LAFCos to prioritize specific planning goals, like the prevention of urban sprawl or addressing service needs in unincorporated areas.

LAFCos vary substantially in their preferences regarding consolidation pathways. Technical assistance providers may select a consolidation pathway which they think will best suit the needs of the community they work with. LAFCos will tend to take a more holistic view and measure the proposed benefits of any consolidation project against the potential impact on development and services county-wide. For example, if a consolidation of private wells into a nearby municipal system would extend that city's sphere of influence into an area slated for non-development purposes, the LAFCo may oppose the project for fear of losing open space. In many cases there are workable compromises that can be found if these goals and constraints are clearly communicated, for example pursuing an Extraterritorial Service Agreement (also called Out-of-Agency, Out-of-Boundary or Outside Service Agreements depending on the county).[11]

Unclear roles and responsibilities

While the SWRCB is committed to stopping and reversing the proliferation of small water systems as part of advancing the Human Right to Water (AB 685), precisely because of the planning and local government implications, there are practical and political limits to their ability to do this work on their own. Yet there is ambiguity, and even disagreement, regarding what the role and responsibilities of local planners such as LAFCos is, or should be, with respect to advancing the same mission.

Generally, LAFCos rely on the SWRCB to flag struggling systems and initiate consolidation processes rather than do so themselves (although in certain counties, LAFCos do sometimes play a more central role in promoting projects). However, LAFCos do not necessarily view this as a positive from a local policy standpoint. Several LAFCos indicated that state-level policymakers and agencies generally lacked an understanding of the intricacies of local implementation of consolidations. Some also regarded state-initiated projects without adequate state financial support as unfunded burdens for the affected communities and for LAFCos themselves.

But locally initiating projects has its own challenges. California state law is clear that, in some circumstances, LAFCos have the power to initiate water system consolidations through district dissolution, even without the consent of targeted district.[12] These types of consolidations are rare, however, for several reasons. Perhaps unsurprisingly, LAFCo commissioners are often reluctant to go against locally elected political leaders — some of whom may even sit on the LAFCo commission themselves. Second, such actions are subject to public hearings and can be blocked by formal protests from residents, an outcome which is more likely because the threshold for popular motions to block the action is lower in LAFCo-initiated proceedings. Third, LAFCos are generally reluctant to force other systems to take on new customers, even if the receiving system is best suited to serve those communities. LAFCos generally operate under tight budgets and with limited staff, and thus generally require a project proponent to fund any necessary studies to proceed with a dissolution rather than take on the cost from their own budget. Additionally, LAFCos are prohibited from initiating certain consolidation pathways, such as annexations. Thus, even if a LAFCo knows consolidation is the best choice, they rarely act as proponents. An exception to this trend is when a local scandal erupts, either around system governance or water quality.

Nearly 40% of LAFCos report facilitating or supporting local consolidation projects whereas less than 9% report initiating consolidation projects.

This does not mean, however, that LAFCos do not view themselves as having any role in consolidations. For some LAFCos, considering consolidation options is already a part of their standard operations. Thirty-two percent of surveyed LAFCos reported assessing the feasibility of consolidations as part of MSRs for drinking water service providers. Sixty percent reported recommending system consolidation as part of

Consolidating Sativa County Water District Post-Scandal

When some Compton residents began to notice discolored water in their taps in the spring of 2018, popular protests erupted. One entity was not surprised. Los Angeles (LA) LAFCo had flagged the water provider, the Sativa County Water District, as struggling in multiple categories as early as 2005, and staff had recommended outright dissolution of the agency to the commission in 2012. However, despite these red flags, the agency continued to operate, and no consolidation efforts were formally initiated, either locally or by the SWRCB. When the protests began, however, LA LAFCo was prepared to spring into action. With the changed political winds following the fallout from the scandal, the commission was able to initiate a dissolution process for Sativa just two months after complaints first arose and soon thereafter work with the state to allow the county to temporarily takeover operations while all parties looked for a new permanent provider.

The case of Sativa highlights just how effective a well-resourced LAFCo can be in dealing with a local crisis. But the case also provides an example of how a lack of coordination around system dissolution priorities and political inertia can led to a crisis in the first place. A more aggressive approach locally, or better coordination from the SWRCB, might have dealt with the issues at Sativa before brown water flowed out of residents' taps. Nonetheless, LA LAFCo's quick response and effective collaboration between local and state regulators headed off the problem before things got worse.

MSRs based on assessments of water supply, governance, proximity to other systems, or other factors. In these cases, our interviews reveal that most LAFCos view the initiative to then fall on the individual system boards to explore possible options for consolidations or alternatively, for the SWRCB to intervene if a system is underperforming to such a degree to require consolidation.

As a result, most consolidation projects in California are initiated by, or in partnership with, the SWRCB. Due to the SWRCB's responsibilities under the Safe Drinking Water Act, these consolidations tend to target existing or imminent health and safety concerns. A more proactive approach to other types of potentially challenged systems — such as small systems with governance issues, those unable to raise capital or with retiring staff or those particularly vulnerable to climate disasters — has so far not been on the agenda for lack of a clear responsible party or champion.

Gaps in relevant authorities

In addition to ambiguity about the role of LAFCos in reversing water system fragmentation, the fact that not all water systems are subject to the jurisdiction of LAFCos limits even the potential for LAFCos to support consolidation projects. Water systems are regulated by a patchwork of state and local agencies, depending on the structure of the system and other key factors. Because of this, some of the systems most suitable for consolidation fall between the cracks.

LAFCos only regulate and review cities and special districts, not private firms. Yet many struggling water systems are private systems, like mobile home parks or mutual water companies, which unlike Investor-Owned Utilities, are not regulated by the CPUC. State policymakers have noticed this oversight and granted LAFCos the ability to include information for private water systems operating in their county in MSRs. However, doing so is optional, and often inhibited by resource and information constraints. Because most LAFCos have their hands full performing MSRs for the public agencies under their jurisdiction, very few have included mutual water companies, mobile home parks, or other small systems in their MSR cycles, and most do not anticipate doing so in the future. While LAFCos might seem to be natural agencies to promote consolidation for these types of systems, they ultimately do not have either the statutory mandate, funding, or powers to do so.

Resident Support Is Often Non-Negotiable

Most LAFCo actions, such as district dissolutions and annexations, are subject to protest by registered voters and landowners in the affected territory. Generally, if more than 25% of the voters or landowners representing 25% of the assessed value of land in the area submit written protests, the change must then be approved by voters in an election which is a costly and time-consuming undertaking. In some instances, namely if LAFCo initiates the boundary change itself, this threshold is lowered to 10%. Moreover, some LAFCo actions that can be needed for a consolidation project, like the creation of new special district, always require a local election. This means that regardless of whether a consolidation project is initiated by the state or a local proponent, resident support is usually critical to successful implementation.

Competing local priorities

LAFCos are political organizations primarily composed of elected officials. As such, local politics matter a lot. If a local agency's board does not favor consolidation, even for a consolidation that is logical and feasible, LAFCo commissioners may be reluctant to force the issue to avoid controversy or protect local relationships. The same can be true for supporting new development. To the extent that a new water system is tied to a politically favored development project or powerful local interests, LAFCos may be subject to significant political pressure to support the preliminary technical report required by the SWRCB.

County specific priorities and policies can also impede consolidation efforts. One such example is the issue of limiting urban sprawl. If a consolidation project is seen to have the potential for increasing development in an area the county has earmarked for light or no development, a LAFCo might be unlikely to approve the consolidation. Notably, such concerns are county specific. Only 48% of survey respondents listed preventing sprawl as a factor for approving consolidation-related

applications. However, it is increasingly common for municipalities or special districts to implement their own moratoriums on new connections. Such moratoriums serve to arrest new development, but they can also prevent the consolidation of water services for existing peripheral residents.

Importantly, local priorities and interests can also have positive effects on efforts to increase water system consolidation. When locals identify system fragmentation as a major concern, LAFCo staff can work effectively to foster consolidation in unique ways. Tulare County, for example, has completed more than 16 consolidations since 2015, in part due to the active involvement and support from the Board of Supervisors.

Limited and uneven LAFCo resources

LAFCos have uneven funding levels across the state. Because represented agencies are a primary source of funds, counties with small numbers of cities, special districts, or both, typically have small LAFCo budgets. In some of these counties, LAFCo work may be handled on a contract basis by the county planning department or be contracted out to a private firm. By contrast, counties with large amounts of regulated agencies, like San Diego or Los Angeles, often have relatively large LAFCo budgets.

In many cases, funding levels can directly correspond to staffing levels. LAFCos in counties with low staffing levels may be harder to contact and necessary procedures may take longer, especially if there is no full-time staff. MSRs in such counties may also be updated less frequently than would be preferred if local capacity was higher. Limited resources can also lead to over-reliance on fees associated with studies and applications, which can in turn increase costs and impede a county's ability to offer fee waivers. As previously mentioned, only about two-thirds of the 23 LAFCos who responded to our survey offered fee waivers for studies.

Section III: Recommendations

Based on the challenges outlined in the previous section, the following recommendations highlight potential pathways for addressing the existing gaps and improving alignment between local and state regulators organized around three key themes: Improving information sharing and communication between regulators; Identifying consolidation opportunities; and Advancing locally-driven consolidation projects.

Improving information sharing and communication between regulators

- ***Ensure regular, sustained communication between LAFCos and state drinking water regulators:*** Locally, LAFCo, the SWRCB, and the CPUC (as applicable) should routinely meet to discuss failing and at-risk systems within each county. Such meetings would present the opportunity for each party to share the information on specific systems as well as identify promising partnerships across a range of system types that are consistent with local plans and policies. When distinct from LAFCo staff, county planners should also be included. At the state-level, biannual LAFCo conferences and SWRCB's internal staff training programs present opportunities for cross-learning on relevant topics with the potential to increase collaboration. Regular communication would go a long way to increasing mutual understanding of relevant priorities and limitations as well as overcoming terminology and other barriers.
- ***Transmit and connect information from MSRs and the annual state drinking water needs assessment:*** Currently, both MSRs and the annual SWRCB drinking water needs assessments contain information helpful for assessing the functioning and sustainability of community water systems operated by cities and special districts. Systematically sharing these findings would help connect relevant knowledge from the local and state agencies and align with the Open and Transparent Water Data Act. At a minimum, MSRs should be readily accessible online and county-level meetings can support their use by the SWRCB. Most LAFCos that responded to the

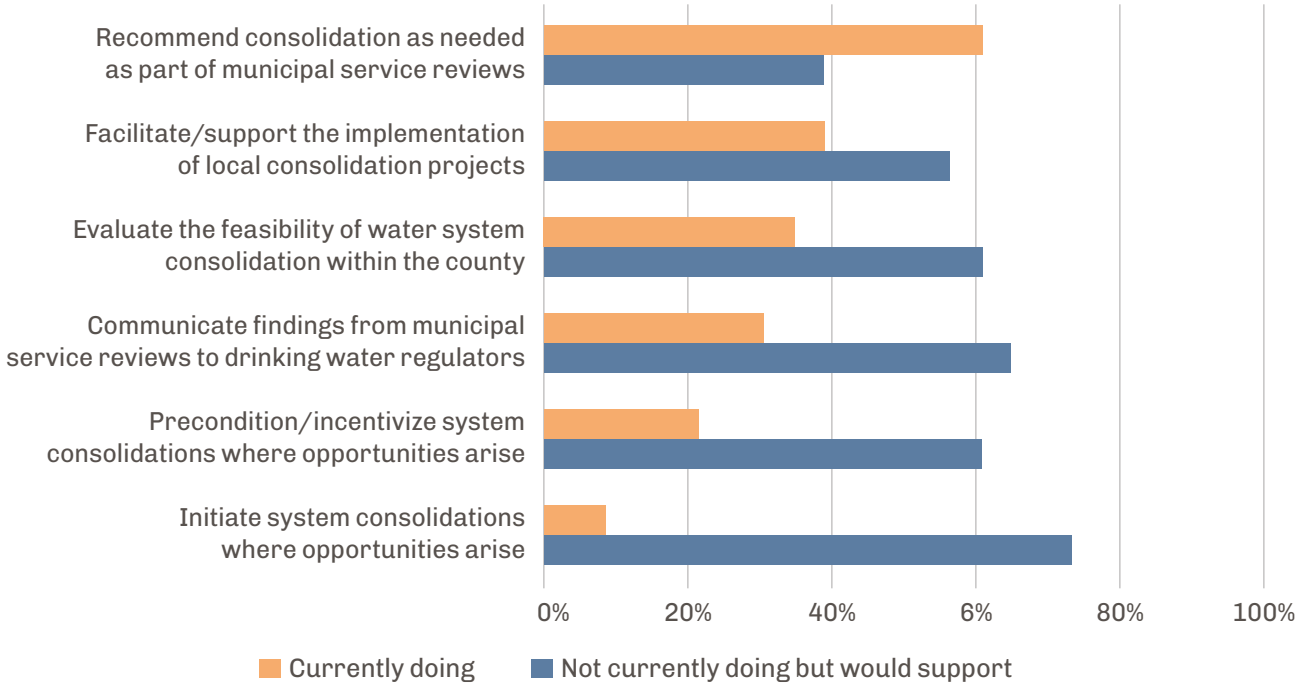
survey support this type of information sharing *(See Figure 2)*. In the future, the SWRCB could create formal pathways for integrating MSR data and/or the state legislature could consider changes to require information sharing and coordination.

- ***Clarify and message relevant state goals:*** Many LAFCos are eager to support state efforts for advancing safe, accessible, and affordable drinking water and climate resilience but do not have a clear understanding of state priorities on these topics nor the type of performance metrics they could use to assess and advance these goals locally. The state should develop clear resources that can guide LAFCos in the development of MSRs and inform local decision-making about service boundaries.
- ***Ensure early coordination on system consolidation projects:*** For project proponents, ensuring early coordination between communities, the SWRCB, technical assistance providers and LAFCo staff is essential. Consolidation can be accomplished through many potential pathways that must be matched with local conditions. It is therefore important to learn what pathways are preferred or even possible locally and why. If a LAFCo has formal or informal policies related to consolidation, they should be shared as soon as possible. Having this information as a project is developed will help ensure alignment with local planning and promote success. Early communication can also help avoid unnecessary delays in planning or implementation by anticipating fees, processing times, etc.
- ***Ensure early coordination on proposals that implicate new public water systems:*** State regulators, LAFCos, and counties should communicate as early as possible about development proposals that explicitly or implicitly could lead to the creation of a new public water system. Early coordination on priorities and limitations at both levels will help prevent inconsistencies that could lead to conflict and delay.

Identifying consolidation opportunities

- ***Ensure robust and regular MSRs for drinking water service providers:*** Municipal Service Reviews (MSRs) are a valuable opportunity to both assess the functioning of local service providers and make recommendations for improvements. Ensuring that thorough MSRs are conducted regularly throughout the state could go a long way towards identifying and advancing consolidations. Importantly, identifying funding sources to support this work is likely key to achieving this goal.
- ***Standardize assessment of consolidation feasibility as a part of the MSR process and recommend consolidation, as appropriate, in the findings:*** California state law requires that LAFCos explore "opportunities for shared facilities" for public water systems as a part of their MSR process. Some LAFCos go beyond this requirement to assess consolidation opportunities for some or all systems under their jurisdiction. All LAFCos should do so with an eye not only for physical consolidations but also managerial consolidations and water system partnerships (e.g., shared staff). Where appropriate based on these findings, LAFCos should make formal recommendations for consolidation as part of their MSR findings. While not all counties responded to our survey, the results demonstrate unanimously support for both actions among those who did.
- ***Fill data and oversight gaps for under-regulated water systems:*** LAFCos collect and maintain important information about the water systems operated by municipalities and special districts in their jurisdictions. The CPUC maintains similar information for the state's Investor-Owned Utilities. For other private water systems like mutual water companies and mobile home parks data collection is limited to the drinking water needs assessment which necessarily provides very limited insights on system governance and management. Figuring out how to fill this gap should be a state priority. For example, these systems could be subject to reporting and oversight by the CPUC or included in MSRs.
- ***Proactively identify priority consolidations and tie these into other opportunities for boundary expansion:*** Some systems are reluctant to receive

Figure 2. Existing practices and policy preferences among surveyed LAFCos for addressing local water challenges.



customers from struggling systems but are happy to expand with greenfield development. Working with both state drinking water regulators and local water managers (e.g. Groundwater Sustainability Agencies), LAFCos should develop and maintain a list of priority consolidation projects in their county. LAFCos should then use their existing authorities to tie these projects to locally promoted boundary changes, for example, annexations or sphere of influence updates, when feasible. More than 80% of LAFCos that responded to the survey support this type of approach.

- *Clarify roles for identifying and promoting potential consolidations:* Currently the SWRCB is the primary entity identifying potential consolidation projects and initiating conversations with a particular focus on "failing systems" with pressing health and safety concerns and those at-risk of failing. There is a need to clarify who else, if anyone, should take responsibility for identifying and initiating potential consolidations among different subsets of systems such as privately-owned non-Investor-Owned Utilities and low-hanging fruit consolidations (e.g., based on proximity or where system managers wish to retire).

Advancing locally-driven consolidation projects

- *Reduce financial impediments to locally-driven consolidations:* Proposed consolidations entail LAFCo related costs to be borne by a project proponent and/or the LAFCo itself. As such, promising projects can languish if they are not financially supported by the SWRCB and/or a local government proponent. Establishing a funding source to support LAFCos or other local proponents to advance consolidation projects could help increase the number of locally initiated projects. Similarly, state and federal funding and technical assistance is often essential to make consolidation feasible. Creating clear pathways for accessing these resources for locally-initiated projects could similarly increase local leadership on the issue.

- *Reduce administrative and procedural hurdles to implementing consolidations:* Consolidation is a complicated and difficult process constrained by convoluted statutes with significant limitations and even contradictions. Often a single consolidation project may trigger several concurrent actions which only further increases the administrative burden and associated costs. To every extent possible, the associated statutory requirements should be clarified and streamlined.
- *Create local pathways for consolidation of mutual water companies, mobile home park systems, and other small private systems:* LAFCos do not have authority over private water systems and therefore cannot initiate consolidation among them. Thus, the state must explore possibilities to promote the consolidation of small private systems that are not Investor-Owned Utilities.
- *Allow LAFCos to initiate annexations:* Currently LAFCos can initiate dissolutions but not annexations. Given that annexation is a common and often preferred mechanism for consolidating water systems, granting LAFCos the ability to initiate annexations could increase the number of projects advanced locally.
- *Ensure technical assistance providers working on consolidations have a clear understanding of work plan elements and project requirements related to LAFCo:* The SWRCB should provide technical assistance providers clear guidance for addressing the local planning dimensions of consolidations including working with LAFCo. Ensuring that LAFCo tasks and expenses are accounted for in work plans and budgets will streamline implementation.

Resources and Further Reading

Assembly Committee on Local Government. (2023). Guide to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. https://alcl.assembly.ca.gov/system/files/2024-01/ckh-local-goverment-reorganization-act-of-2000-2023.pdf

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State Water Resources Control Board (SWRCB). (2023). Drinking water system partnerships and consolidations. https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/waterpartnership.html

US Water Alliance. (2022). Catalyzing Community-Driven Utility Consolidations and Partnerships. https://uswateralliance.org/wp-content/uploads/2023/09/Catalyzing-Community-Driven-Utility-Consolidations-and-Partnerships-PAGES_0.pdf

Appendix

LAFCo information and select survey results by county

County	# of Staff	Offers Fee Wavers?	Approx. Range for Consolidation-Related Fees
Alameda	2	N	$6,500 - $13,000
Alpine	1	Did not respond to survey	Did not respond to survey
Amador	4	Did not respond to survey	Did not respond to survey
Butte	4	Y	$1,000 – $25,000
Calaveras	2	Did not respond to survey	Did not respond to survey
Colusa	2	Did not respond to survey	Did not respond to survey
Contra Costa	2	Y	$4,000 - $8,500
Del Norte	2	Did not respond to survey	Did not respond to survey
El Dorado	2	Y	$1,000 – $50,000
Fresno	5	Did not respond to survey	Did not respond to survey
Glenn	1	Did not respond to survey	Did not respond to survey
Humboldt	3	Did not respond to survey	Did not respond to survey
Imperial	4	Did not respond to survey	Did not respond to survey
Inyo	2	Did not respond to survey	Did not respond to survey
Kern	3	Did not respond to survey	Did not respond to survey
Kings	2	Did not respond to survey	Did not respond to survey
Lake	2	Did not respond to survey	Did not respond to survey
Lassen	3	Did not respond to survey	Did not respond to survey
Los Angeles	7	Y	$6,000 - $30,000
Madera	2	N	$3,000 - $6,000
Marin	2	Did not respond to survey	Did not respond to survey
Mariposa	1	Did not respond to survey	Did not respond to survey
Mendocino	2	Did not respond to survey	Did not respond to survey
Merced	2	N	$2,000 - $5,000
Modoc	2	Did not respond to survey	Did not respond to survey
Mono	1	Did not respond to survey	Did not respond to survey
Monterey	4	Did not respond to survey	Did not respond to survey
Napa	2	Y	$8,500 - $34,000

County	# of Staff	Offers Fee Wavers?	Approx. Range for Consolidation-Related Fees
Nevada	2	Did not respond to survey	Did not respond to survey
Orange	5	N	$10,000 - $30,000
Placer	2	Y	$20,000 - $40,000
Plumas	2	Did not respond to survey	Did not respond to survey
Riverside	5	Did not respond to survey	Did not respond to survey
Sacramento	2	Y	$3,000 - $10,000
San Benito	2	Did not respond to survey	Did not respond to survey
San Bernardino	4	Did not respond to survey	Did not respond to survey
San Diego	10	Y	$6,500 - $25,000
San Francisco	1	Did not respond to survey	Did not respond to survey
San Joaquin	3	N	$2,000 - $2,500
San Luis Obispo	3	Y	$3,000 - $7,500
San Mateo	3	Y	$2,000 - $10,000
Santa Barbara	2	Y	$2,000 - $6,000
Santa Clara	2	Y	$4,000 - $8,500
Santa Cruz	2	Y	$1,000 - $2,000
Shasta	2	Did not respond to survey	Did not respond to survey
Sierra	1	Did not respond to survey	Did not respond to survey
Siskiyou	2	Did not respond to survey	Did not respond to survey
Solano	3	N	$7,500 - $35,000
Sonoma	3	Y	$4,000 - $6,000
Stanislaus	3	Y	$500 - $3,500
Sutter	3	Did not respond to survey	Did not respond to survey
Tehama	1	Did not respond to survey	Did not respond to survey
Trinity	2	Did not respond to survey	Did not respond to survey
Tulare	3	Y	$3,500 - $4,000
Tuolumne	2	Did not respond to survey	Did not respond to survey
Ventura	3	Did not respond to survey	Did not respond to survey
Yolo	2	Y	$1,500 - $6,500
Yuba	2	Did not respond to survey	Did not respond to survey

References and Notes

1 Dobbin, K. B., McBride, J., & Pierce, G. (2023). Panacea or placebo? The diverse pathways and implications of drinking water system consolidation. Water Resources Research, 59(12), https://doi.org/10.1029/2023WR035179.

2 CALAFCo website, What Are LAFCos responsibilities? Accessed 11/6/23. https://caLAFCo.org/LAFCo-law/faq/what-are-LAFCos-responsibilities

3 CA Government Code §56000 et seq.

4 CA Government Code §54950 et seq.

5 A consolidating water system is a system that will stop providing drinking water service after a consolidation is completed. In contrast, a receiving water system is a system that continues to provide drinking water service including to new customers/territory added through the consolidation.

6 CA Government Code §56133(c)

7 CA Government Code §56425(g); A sphere of influence or SOI is a planning boundary outside of an agency's jurisdictional boundary (such as the city limit line or water service area) that designates the agency's probable future boundary and service area.

8 Countywide Water Service and Sphere Review. Local Agency Formation Commission of Santa Cruz County. Accessed 01/22/24. https://santacruzlafco.org/wp-content/uploads/2022/09/Countywide-Water-MSR-Adopted-Version.pdf

9 CA Government Code §56430(7)(d)

10 A public water system is a water system serving at least 15 connections or 25 people for a minimum of 60 days per year. This is the body of water systems that is regulated by the SWRCB under the Federal Safe Drinking Water Act.

11 Extraterritorial, Out-of-Agency, Out-of-Boundary or Outside service agreements all refer to situations where a city or special district extend services outside of their jurisdictional boundaries. For drinking water service this means outside of their approved service area. Prior to 1994 service extensions only required LAFCo approval if they involved annexation. Since 1994 service extensions always require approval by LAFCo (with some exceptions such as the transfer of non-treated water).

12 CA Government Code §56035; For a LAFCo, a dissolution entails the "disincorporation, extinguishment, or termination of the existence of a district and the cessation of all its corporate powers."

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December 5, 2024

Delivered by Electronic Mail
Ms. René LaRoche, Executive Director
California Association of LAFCOs
ATTN: Legislative Committee
rlaroche@calafco.org

SUBJECT: Opportunity to Coordinate on Joint Legislative Interest

Ms. LaRoche:

In January 2024, with funding from the University of California Agriculture and Natural Resources, a report published by U.C. Berkeley (authors Kristin Dobbin (UC Berkeley) and Justin McBride (UCLA)) was published addressing the relationship between State regulators and Local Agency Formation Commissions (LAFCOs) in achieving the State's interest in consolidating and otherwise remedying problems with small public water systems. The report draws on surveys and related analysis showing priority deviations and communication barriers that underlie the overall malaise in advancing the State's interest in making public water systems more resilient through consolidations with specific focus on disadvantaged and otherwise underserved communities. A copy of the report is available online at bit.ly/LAFCO_systemconsolidation.

The six signatory LAFCO Executive Officers to this letter jointly believe the time is now to put the report's recommendations into action. Specifically, and in partnership with the Community Water Center and Leadership Counsel for Justice and Accountability, we believe now is the time to propose common sense legislative solutions to advance LAFCOs ability to primarily help ensure the timely and sustainable extension of municipal water and wastewater services – as well as other interrelated core urban services – to all Californians. This includes pursuing all of the following legislative proposals:

- **Empower LAFCOs to Initiate Annexations**
  Amend California Government Code 56375(a) and its enumeration of LAFCO initiating powers to include change of organizations or reorganizations necessary to provide timely water or wastewater services consistent with community needs.

- **Amplify MSRs Role in Communicating Community Needs**
  Amend California Government Code 56430 and its provisions on preparing municipal service reviews to require LAFCOs to take up these studies at noticed hearings as well as require the affected agencies to formally receive the studies at their own noticed hearing an provide confirmation in doing so back to LAFCOs.

- **Address Service Barriers for Mutual Water Companies and Mobile Home Parks**
  Amend California Government Code 56036 and its definition of "special district" for LAFCO purposes to include mutual water companies. Similarly, amend California Corporations Code Section 14300 to expand the definition of mutual water companies to capture mobile homes.

The signatories welcome your interest and support in this important effort and anyone of us are available to meet with you at your earliest convenience.

With appreciation,

Carolyn Emery, Executive Officer – Orange County LAFCO
Brendon Freeman, Executive Officer – Napa LAFCO
José Henríquez, Executive Officer – Sacramento LAFCO
Rachel Jones, Executive Officer – Alameda LAFCO
Steve Lucas, Executive Officer – Butte County LAFCO
Keene Simonds, Executive Officer – San Diego County LAFCO

cc: Kristin Dobbin, UC Berkeley
Janaki Anagha, Community Water Center
Nataly Escobedo Garcia, Leadership Counsel
Michael Claiborne, Leadership Counsel