

# EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

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## *AGENDA OF JANUARY 22, 2020*

### *REGULAR MEETING*

**TO:** Shiva Frentzen, Chair, and  
Members of the El Dorado County Local Agency Formation  
Commission

**FROM:** José C. Henríquez, Executive Officer

**AGENDA ITEM #12:** **CONSIDER THE ADOPTION OF A POLICY REGARDING THE DETERMINATION OF EXEMPTION UNDER GOVERNMENT CODE 56133(e) AND REQUEST FOR THE COMMISSION'S SUPPORT ON CALAFCO'S LEGISLATIVE EFFORT**

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#### **RECOMMENDATION**

Staff recommends that the Commission

1. Adopt a local policy specifying that this agency retains exclusive authority to determine whether a service extension is exempt under Government Code Section 56133(e); and
2. Support CALAFCO's legislative effort to amend Government Code Section 56133 to include similar language granting all LAFCOs this authority.

#### **REASON FOR RECOMMENDED ACTION**

While out of agency service agreements are rare in this county, and determinations of exemption under 56133(e) are even rarer, there is increasing "chatter" within the LAFCO community that LAFCOs should exert the exclusive authority to "make the call" on whether a service extension is exempt. It is more logical to have one impartial entity making such a determination than 50+ agencies doing the same. Until State Law settles the issue, LAFCO should clarify that it alone has the authority under local policy.

#### **BACKGROUND**

Among other things, Government Code 56133 states that local agencies may extend services outside their boundaries only under a contract that has been approved by LAFCO. The Commission may approve these "out of agency service agreements" under the following two scenarios:

- To territories within the agency's sphere of influence in anticipation of a later change of organization; or

- To territories outside of the agency's sphere of influence in order to respond to an impending threat to health or public safety.

Subsection (e) identifies several types of contracts or services that are exempt from these provisions. This means that in certain circumstances agencies may provide services via contract outside of its service area without LAFCO approval. Examples include contracts between two or more agencies providing similar services (with the exception of fire service contracts, those are subject to Government Code 56134) or the transfer of non-potable or non-treated water. Attachment A contains Government Code 56133 and it is included here for the Commission's review.

The question of who gets to decide whether a contract is truly exempt under subsection (e) – whether an agency or agencies can decide for themselves or whether there should be some determination from LAFCO or its staff – is left unresolved in the Government Code. This has been a source of chatter in LAFCO circles; not because there is disagreement that it should be LAFCO but because of how to assert that LAFCO is the arbiter. From a public policy standpoint, it would be better for each county to have a single, neutral body adjudicating the matter consistent with State Law and local policies rather than thousands of agencies making this decision on their own.

Last year, CALAFCO's Legislative Committee attempted to insert some language in GC 56133 to make it clear that LAFCO has exclusive authority to make the determination of exemption; however, tinkering with 56133 is politically sensitive in the Legislature and many stakeholders balked at amending 56133. The CALAFCO Board of Directors has subsequently voted to make this a legislative priority; however, this effort could go on for several years before it is resolved in Sacramento.

A few LAFCOs have adopted local policies clarifying their role under 56133(e). Some have not and are now finding themselves in a situation where local agencies, mainly cities, opining that they can determine what qualifies under a subsection (e) exemption without LAFCO's assent.

Out of agency service agreements are rare in this county, but there are plenty of experience with them.

- The City of Placerville provides services outside of its City Limits under contract that predate the Cortese Hertzberg Act of 2000 and were grandfathered by subsection (e).
- Over the years, staff at the El Dorado Irrigation District has indicated its reluctance to enter into such agreements. Those agreements involving EID that have been made in the past 10 years were approved by the Commission in order to accomplish a larger policy goal.
- During the past 14 years, several districts have contacted LAFCO to ask informally whether their contracts would be considered exempt. Most of these inquiries were fire contracts prior to the passage of SB 239 (Hertzberg 2015), which added Government Code Section 56134 and removed contracts between fire agencies as exempt under 56133(e). These inquiries were handled at the staff level and not elevated to the Commission to determine whether the exemption qualifies.

- In 2018-19, Tahoe Resource Conservation District also contacted staff to enquire whether their contractual arrangements for boat inspections with the City of Truckee and County of Placer were exempt under 56133(e). These inquiries were handled at the staff level and not elevated to the Commission to determine whether the exemption qualifies.

### *Policy Options*

Staff has determined that there are three options available to the Commission:

- 1) It can retain the status quo with no local policy;
- 2) It can adopt a local policy asserting its role as arbiter and require agencies to submit their contracts for Commission review;

Staff recommends option #2, the adoption of a local policy asserting its role as arbiter and delegate it to staff to make the determination, with the requirements to report back to the Commission and to escalate potential exemptions to the Commission if the exemption could be precedent-setting or difficult to determine at the staff level. Included with this staff report are Los Angeles and Napa LAFCO's local policies on OASAs (Attachments B and C, respectively) that may be used as a basis for your local policy.

### *CALAFCO's Legislative's Effort*

In 2019, CALAFCO's Board of Directors endorsed a proposal by its Legislative Committee to amend 56133 to give all LAFCOs the authority discussed here. This is needed because not all local agencies respect LAFCO's authority asserted through local policy. Your Executive Officer is part of the working group developing the legislative proposal and finding supporters outside of the LAFCO community who will be instrumental in getting the bill through the legislative process. Staff brings this to your attention now so that, should you support this idea and should support letters be necessary, they can be written and dispatched quickly with your position known to staff.

### Attachments

- Attachment A: Government Code 56133
- Attachment B: Los Angeles LAFCO's Policy on Requesting and Out of Agency Service Extension or Exemption
- Attachment C: Napa LAFCO's Policy on Outside Service Agreements
- Attachment D: CALAFCO Bulletin