

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF OCTOBER 23, 2019

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)**

RECOMMENDATION

Staff recommends that the Commission consider whether El Dorado LAFCO should 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).

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 a determination on whether a service extension is exempt.

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, meaning that 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.

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. CALAFCO's legislative committee attempted to insert some language in 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.

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 an (e) exemption without LAFCO's assent.

It is unknown whether this LAFCO should adopt a similar local policy clarifying its role. As indicated earlier, out of agency service agreements are rare in this county. Staff at the El Dorado Irrigation District has indicated its reluctance to enter into such agreements. The majority of contracts that are still in effect predate 2001 and were grandfathered by subsection (e). The remainder were approved by the Commission in order to accomplish a larger policy goal. In addition, 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 automatically 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;
- 2) It can adopt a local policy asserting its role as arbiter and require agencies to submit their contracts for Commission review;
- 3) It can adopt 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.

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