

**State of California  
Little Hoover Commission**

**Hearing on Special Districts  
August 25, 2016**



**Written Testimony Prepared by  
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August 25, 2016

Chair Nava, Vice Chair Flanigan and Honorable Members of the Commission;

Thank you for the opportunity to address your Commission during your August 25 public hearing on special districts in California as a follow up to the Commission's May 2000 report, *Special Districts, Relics of the Past or Resources for the Future?* We appreciate the opportunity to share our viewpoint on the unique relationship between local agency formation commissions (LAFCOs) and special districts.

In the following testimony you will learn much progress has been made in the past sixteen years in the evolution of LAFCOs and their respective relationships with special districts. LAFCOs have worked diligently to keep pace with the changing California landscape and there are many success stories to tell. Like other local government agencies throughout the state including special districts, LAFCOs also face a number of challenges. This testimony will highlight the progress, challenges and opportunities for the future for LAFCOs and their relations with special districts.

### **The California Association of Local Agency Formation Commissions**

The California Association of Local Agency Formation Commissions (CALAFCO) proudly represents all 58 LAFCOs in the state. While LAFCOs have existed since 1963, the state association more formally organized itself in 1971. We are a non-profit statewide association with a mission to provide educational opportunities and be a conduit for information sharing and technical support for our members. We do this by serving as a resource for, and by collaborating with, the public, the legislative and executive branches of state government, and other organizations for the purpose of discouraging urban sprawl, preserving open-space and prime agricultural lands, and encouraging orderly growth and development of local agencies.

As the Executive Director for the past four years, I lead the organization in these efforts and support our sixteen-member Board of Directors.

### **A Brief Review of LAFCO History**

LAFCOs were created by the state Legislature in 1963 (under the provisions of the Knox-Nisbet Act; AB 1662, Knox combined with SB 861, Nisbet) as a result of recommendations from then Governor Pat Brown's Commission on Metropolitan Area Problems. The Commission was charged with studying urban sprawl and its statewide effects and was formed by the Governor out of growing concern for the post-WWII population and housing boom in California. This boom led to a large number of problems, not the least of which included poorly planned cities due to rapid growth and a scramble to finance and extend government services to meet the increased service demands, the proliferation of freeway suburbs, city annexations wars, and the hasty conversion of agricultural land.

The original charge of LAFCO was very limited in scope: to review and approve or disapprove proposals for incorporations and the creation of special districts.

Today, Government Code section 56001, which serves as a statement of LAFCO's mission, memorializes the Legislature's acknowledgement of the need to balance competing state interests. Government Code Section 56001 states in part, "*The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly*

development and in balancing that development with sometimes competing state interests of discouraging urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services.”

Over the years, a number of major changes have occurred in the statute governing LAFCOs. It is clear the scope of responsibility for LAFCO has grown considerably since 1963. The opportunities and challenges of this evolution are discussed later in this testimony. Below is a snapshot of the major statutory changes.

Year	Action
1971	LAFCOs were required to establish Spheres of Influence for each city and special district within their respective county. This was a huge shift of responsibility beyond merely reacting to individual boundary changes. (A Sphere of Influence, as defined in Government Code Section 56076, is a plan for the probable physical boundaries and service area of a local agency, as determined by the commission.)
1972	Special Districts were added to the composition of the LAFCO Commission.
1985	The Knox-Nisbet Act, along with District Reorganization Act of 1965 and the Municipal Organization Act of 1977, were consolidated into the Cortese-Knox Local Government Reorganization Act of 1985.
1992	Added a revenue neutrality provision providing the amount of revenues a new city takes from a county once incorporated must be substantially equal to the amount of savings the county would realize as a result of no longer providing the service.
1993	LAFCO given the authority to initiate proposals for consolidation of special districts or the dissolution, merger or creation of a subsidiary district.
1997	The ability of a city to veto a simultaneous detachment and incorporation proposal was repealed.
2000	The Cortese-Knox-Hertzberg Reorganization Act of 2000. (See below for details)

The most recent overhaul of LAFCO law occurred in 2000 (AB 2838, Hertzberg). The Legislature took parts of the recommendations from both the Little Hoover Commission’s 2000 Special Districts report and the Commission on Local Governance for the 21<sup>st</sup> Century’s report, *Growth Within Bounds*, and incorporated them into AB 2838. These changes are highlighted throughout this testimony. Specific to the Commission’s 2000 report recommendations, those are discussed in the Evolution of LAFCO section.

**The Role of LAFCO and Services Provided**

The role, scope and scale of services provided by LAFCO have evolved over the past 53 years. As noted above, the original mission of LAFCO was narrow in scope to review and approve or disapprove proposals for incorporations and the creation of special districts.

Today, in addition to the original narrow directive, LAFCOs are responsible for:

- Processing city and district annexations and detachments (including annexations of territory being served by a mutual water company), district consolidations, dissolutions and mergers, city consolidations and disincorporations;

- Addressing the activation and/or divestiture of district latent services or powers (latent services or powers are defined in Government Code Section 56050.5 as meaning those services, facilities, functions, or powers authorized by the principal act under which the district is formed, but that are not being exercised, as determined by the commission pursuant of subdivision (i) of Section 56425);
- Conducting sphere of influence (SOI) updates and municipal service reviews (MSRs) of special districts and cities;
- Reviewing and authorizing the extension of services by special districts and cities outside existing jurisdictional boundaries;
- Complying with the California Environmental Quality Act (CEQA), which was enacted after LAFCOs were established;
- Determining property tax revenue exchange amounts for affected agencies in connection with changes of organization or reorganizations such as special district annexations and detachments;
- Mapping and planning for disadvantaged unincorporated communities (DUC); and
- Conducting special studies, among other things.

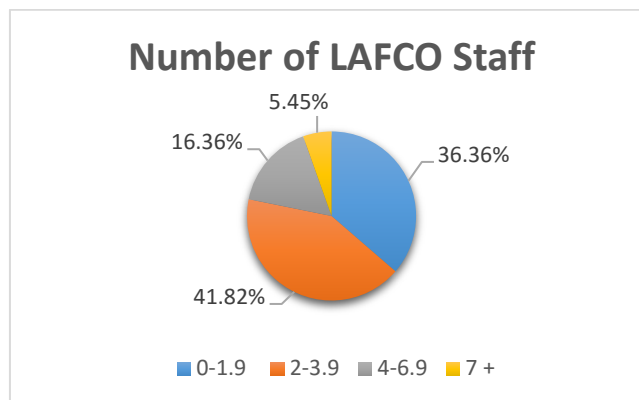
Many local agencies look to their LAFCO to facilitate discussions on things like shared services opportunities, property tax exchange agreements, or, more recently, the formation of Sustainable Groundwater Management Agencies (SGMA). Overall, the complexity of local land use issues and service delivery options have exploded along with the state’s rapid population growth.

**Staffing Models and Level of Independence of LAFCOs Throughout the State**

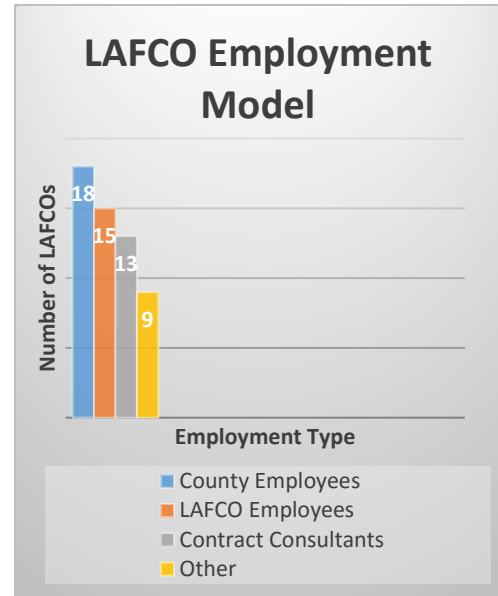
**Staffing Models**

The size and staffing models of LAFCOs throughout the state greatly vary depending on several factors. First, the activity level of a particular LAFCO is a primary driver of their resource needs. Next, the smaller more rural LAFCOs tend to have fewer financial resources and therefore staff accordingly. It is also apparent to CALAFCO that the level of acceptable government oversight varies greatly between regions of the state.

In a 2015 membership survey in which 55 of the 58 LAFCOs participated, CALAFCO found that 78% (or 43 of the 55) of LAFCOs have less than four staff members. In fact over 36% (20 of the 55) have less than two staff members, if there is even a dedicated LAFCO staff office presence. Over 16% (9 of 55) indicated they have four to six staff members. Only three LAFCOs indicated having seven or more staff members.



The reality of LAFCO staffing is that a large percentage of LAFCOs use either part-time contractual relationships or county personnel to fill the primary staffing roles. Many LAFCOs hire part-time staff, by contract, to perform the responsibilities of the Executive Officer (EO). Three of the more rural LAFCOs in the northern part of the state contract with the same person to fulfill EO responsibilities; another seven rural LAFCOs contract with a different person to fulfill EO responsibilities. So between these ten LAFCOs, there are two part-time contractual EOs to guide a very large geographic region that is experiencing ever increasing development pressures and demands for new services. Other examples of LAFCOs that have low staffing resources include one that has the County Administrator acting as the EO; another uses the County Board of Supervisors' Clerk of the Board as EO; and several use the County's Planning Director or the Community Development Director as the EO.



On the flip side of these models are the larger and higher-resource LAFCOs that employ four or more staff members (only 9 of 55 fall into this category). The largest LAFCO in the state employs nine full-time positions and one-part time position, as well as having nine part-time contractors.

**A Matter of Independence**

The need for greater LAFCO independence has long been debated. And while many LAFCOs operate independently from the County (with more moving in that direction), the reality is that many of the smaller LAFCOs still operate with some level of dependence on the County.

In the 2015 CALAFCO Survey, we found that over 32% (or 18 LAFCOs) of the 55 respondents have staff that are employees of the County. Over 27% (15 of 55) have staff that are fully independent and employed by the LAFCO. Contract consultants as lead staff make up over 24% (or 13 of the 55), and over 16% (9 of 55) are a hybrid or some other form of staffing.

**Revenue Sources**

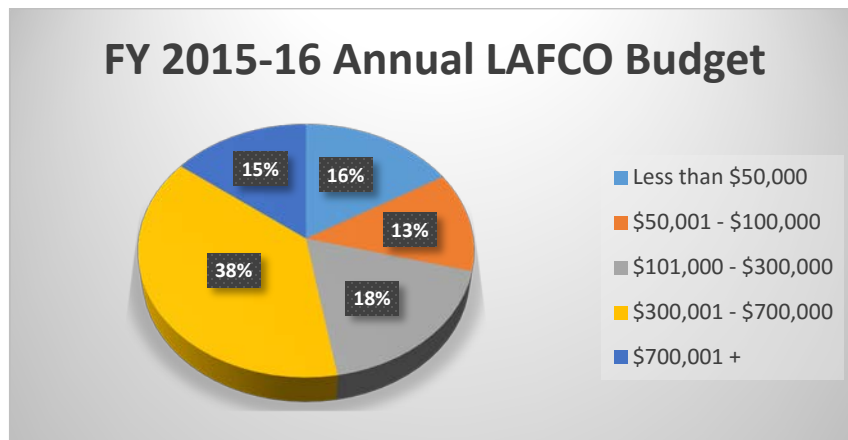
LAFCO funding sources are extremely limited both externally by arbitrary restrictions on state funding sources (Strategic Growth Council grants for example) and internally by political reluctance of a local commission to “grow” government functions. Government Code section 56831 establishes the formula for funding LAFCOs’ budgets requiring the categories of local agencies sitting on the particular LAFCO’s commission to fund the LAFCO budget. In 30 of the 58 LAFCOs cities, counties, and special districts contribute to the LAFCO budget. The statute (Government Code Section 56381) calls for an equal apportionment of one-third share for those LAFCOs in which there is county, city and special district representation. However, the statute allows for individual LAFCOs to modify this statutory budget funding allocation. (For example, Butte LAFCO has special district representation and all parties involved agreed that special districts shall pay less than the one-third apportionment.) The cities’ share is apportioned in proportion to each city’s total revenue, and the special districts’ share is apportioned in proportion to each district’s total revenue as a percentage of the combined total district revenues within the county.

For LAFCOs with no special district representation, the cost is split equally between the cities and county. For LAFCOs in which there are no incorporated cities within the county (Alpine, Mariposa and

Trinity), the cost is to be split equally between the county and the special districts. In two of these instances, however, (Alpine and Mariposa) there is no special district representation, and therefore the county pays 100% of LAFCOs’ budget. Ten counties have only one incorporated city. In these instances, the sole city is responsible for the city apportionment of the LAFCO budget allocation.

LAFCOs also adopt fee schedules allowing LAFCOs to recover the cost of certain proceedings including but not limited to processing of applications, amending or updating SOIs and other LAFCO proceedings. By law, fees cannot exceed the estimated cost of providing the service, so, as is the case with other governmental services provided by other types of public agencies, there is no percentage of net profit built into adopted fees. A LAFCO has the authority to reduce or waive fees if it finds the payment would be detrimental to the public interest.

More than half (27 of 55) of the LAFCOs responding to the 2015 Survey indicated to CALAFCO that it was somewhat difficult to maintain annual funding levels and that they are unable to successfully obtain budget increases, while less than half (25 of 55) of LAFCOs reported that they have little difficulty maintaining annual funding levels or seeking budget increases when increases can be justified. The other 3 of the 55 LAFCOs indicated that their budgets are kept flat or have been reduced over time. This is clearly a challenge for the majority of LAFCOs in meeting statutory obligations. This issue is expanded upon in the Lingering Challenges and Opportunities section of this testimony.



Based on the Survey, CALAFCO learned that budgets for LAFCOs around the state vary widely. As you can see, less than 15% of them (8 of 55) have a budget larger than \$700,000 annually, and over 16% (9 of 55) have an annual budget of less than \$50,000.

To help put this into better perspective, here are some examples of FY 2016-17 adopted budgets from LAFCOs as compared to their adopted FY 2015-16 budget:

LAFCO	FY 2016-17 Adopted Budget	+/- from Adopted FY 2015-16 Budget	% of Change
Mono	\$11,582	+\$49	+0.5%
Tuolumne	\$36,283	-\$2,538	-7%
Kings	\$57,126	+\$5,672	+10%
Los Angeles	\$1,405,530	+\$34,530	+2.5%
San Diego	\$1,984,064	+\$163,253	+8.3%



All of Mono LAFCO's staff, for example, are contracted through the County, including the EO who also serves as the County's Planning and Community Development Director. Mono's budget accounts for revenue from the county, only one city and no independent special districts. All of Tuolumne LAFCO's staff are contracted through the County and the EO also serves as the County's Community Resources Agency Director. Their budget also reflects revenue from the county, only one city and no independent special districts. Kings LAFCO staff are also County employees, with the LAFCO EO also serving as the Community Development Director. Their budget reflects revenue from the county, four cities and no independent special districts.

In contrast, both Los Angeles and San Diego LAFCO have full and part-time staff who are employed directly by LAFCO. Los Angeles receives revenue from 88 cities, 53 independent special districts and the county. San Diego LAFCO's revenue is derived from 18 cities, 60 independent special districts and the county.

### **The Role of LAFCO and Special Districts**

The nature of relationships between LAFCOs and special districts vary across the state from one of mutual respect, to a fear and contempt of LAFCO, and many places in between. Many LAFCOs are proactive in their efforts to stay connected with the special districts in their area, while others could improve these efforts. For those LAFCOs with special districts seated on their LAFCO, staying connected with special districts is a much easier task.

It is important to note that LAFCO has no direct regulatory authority over special districts. The MSR conducted by LAFCO is only as good as the information received from the entity being studied or other resources (as needed). In this respect, the LAFCO must rely primarily on the district to provide the necessary information. In many instances this is accomplished with great efficiency. However, in some instances this is not the case.

Following are two extremely different examples. First, one LAFCO in the central valley, while working to complete a series of MSRs, provided a particular district a request for information in January of this year. Despite four months of repeated follow up by the LAFCO, which was then followed up with a more formal request for information, the request and follow up requests went unanswered for several months. Despite the LAFCO's attempt to communicate to the district the purpose, importance and statutory requirement for the MSR, the district remains a strong resistant to providing the necessary information. As a result, this LAFCO's completion of the MSR has been substantially delayed.

On the other extreme, in the southern part of the state, a different LAFCO and the district being reviewed work so cooperatively together that a draft MSR was completed with relative ease and in a much more timely manner than as described above.

As you will see in the section below, MSRs are evolving into documents that are increasingly designed to assist special districts (and other municipal service providing entities) to improve the efficiency and effectiveness with which they provide the service. LAFCOs and special districts would both benefit greatly if a cooperative relationship and a mutual understanding of the benefits of the MSR process existed. CALAFCO has begun conversations with the California Special Districts Association (CSDA) to facilitate local discussions about these benefits.

**Municipal Service Reviews**

**Purpose**

In 2000, there was a substantial change in LAFCO responsibility when the requirement of conducting MSR was added (Government Code Section 56430). The requirement at the time Section 56430 was enacted, was to conduct a MSR in order to establish or update a SOI and the LAFCO was required to comprehensively review all agencies providing municipal services in the prescribed geographic area. The law prescribed that by January 1, 2008, LAFCOs were to have all SOIs updated, and done, as necessary, and every five years thereafter.

Over the years the frequency with which the MSR is to be conducted and the factors to be considered in a MSR have changed. Today, the statute indicates LAFCO shall, as necessary, review and update each SOI every five years. Should there be a change in the SOI, then the appropriate MSR must be revisited. The “as necessary” clause allows for adopt local policies based on local circumstances and conditions.

MSRs today must include LAFCOs’ determinations on seven areas, including: growth and population projections for the area being studied; location and characteristics of any DUC within or contiguous to the SOI; present and planned capacity of facilities, adequacy of public services, and infrastructure needs and deficiencies; financial ability of the agency to provide the services; identification of opportunities for shared services; accountability for community service needs (including governance and operational efficiencies); and any other matters the LAFCO deems relevant in the provision of services.

LAFCOs have discretion in how to conduct MSRs. For example, some LAFCOs choose to conduct MSRs on all service providers (regardless of service type) in a particular geographic region or area. Others prefer to study the entire county by category of service (one MSR will study all fire service providers while another MSR will study all water service providers). Still others may choose to conduct MSRs based on the type of special district, or they may be done on an individual agency.

LAFCOs also have the discretion to conduct MSRs with in-house staff or hire consultants. More often than not, the amount of financial and human resources available to the LAFCO dictates how an MSR will be completed and more importantly, affects the depth and quality of the prepared MSRs and any potential resulting determinations for future corrective actions that may be deemed necessary. Given that the MSRs are a critical component of LAFCOs oversight of local agencies, this great disparity in MSR resources directly impacts LAFCOs ability to identify deficiencies and take corrective measures.

The current language of the MSR statute leads many LAFCOs to conclude that the Legislature intended that MSRs be conducted only when it was necessary to establish a new or update an existing SOI (hence the use of the term “as necessary”). However, it is becoming increasingly clear to CALAFCO that somehow the initial intent has been lost and a new paradigm has been created regarding MSRs. There is growing dialogue among some that the expectation is for LAFCOs to conduct MSRs on all municipal service providers every five years, regardless of whether or not the SOI is being updated.

This expectation is a growing concern for LAFCOs and CALAFCO for a number of reasons. First, it is misaligned with the express language of the MSR statute and its original intent. Second, a comprehensive MSR can take many months if not years to complete and requires a great deal of resources (both human and fiscal). This may mean that a LAFCO is unable to apply the proper amount of attention to an agency in need of improvement because there is just not the time. Third, and perhaps the most daunting for many LAFCOs is that the requirement for MSRs was added to the LAFCO plate without the addition of any resources to conduct them. As a result, many of the lower



resource LAFCOs are finding it difficult to complete comprehensive MSR, so they are completed in a minimal way. LAFCOs that have a large number of agencies providing municipal services in their area clearly have a large number of MSR to conduct. However, given all of this, a great majority of LAFCOs are completing MSR regularly or on a schedule that is locally acceptable.

I will use Monterey LAFCO as one example to demonstrate the resources and time required to complete a comprehensive MSR. Monterey has 12 cities and 42 independent special districts. In a snapshot of their MSR schedule in March 2016, they reported having completed 14 MSR/SOI studies in December 2015; another 5 that had the administrative draft under review or hearing set; and another 4 for which information collection was under way. This means that in the latter portion of 2015, Monterey LAFCO was studying no less than 23 municipal service providers simultaneously. This is in addition to all of the other work being completed pursuant to the LAFCO's annual work plan. To accomplish these MSR, Monterey LAFCO contracts out to a consultant approximately 1,000 hours of work per year at a cost of approximately \$50,000. In addition, it supplements the consultant's work as needed with an existing full-time staff person at an average of 500 hours per year. All of this cost is included as part of its annual operating cost and absorbed by those paying into the LAFCO.

Another example is San Diego LAFCO and its review for four healthcare districts. In conducting this particular MSR, due to the complexity of healthcare district functions and financial operations, it took San Diego LAFCO 1 ½ years to complete the final MSR.

### **MSRs and Independent Special Districts by the Numbers**

A recent poll of LAFCOs regarding MSR found that most LAFCOs have conducted at least one if not two complete rounds of SOI updates and as a result, one or two rounds of MSR. The sample size for this poll is 26 LAFCOs geographically spanning as far north as Del Norte; as far south as San Diego and Imperial; as far east as Inyo and as far west as Monterey and Santa Cruz. All 26 LAFCOs are diverse in their size, budget, staffing and type (urban, suburban and rural). What we found was that among these 26 LAFCOs, the number of independent special districts subject to review ranged from 9 to 105 (the average being 42.5) for a total of 1,150 independent special districts. Of these, an MSR had been conducted on 1,058 of them, at some point in the last ten years. This is an average completion rate of 92%, and does not account for all of the municipal services provided by cities that must also be reviewed. CALAFCO believes this number could have been greater if more emphasis was placed on agencies or services in need of review rather than a standard and arbitrary deadline to meet. Opportunities for change are discussed later in this testimony.

### **The Use of MSR in the Reorganization of Districts**

A point of great importance with respect to MSR and the reorganization of districts is that ultimately LAFCO does not have the authority to mandate a district to take action. Through the MSR a LAFCO can make recommendations for changes of reorganization as described in more detail below. Additionally, a LAFCO can make recommendations that are more operational in nature (addressing governance, managerial or financial concerns). But in the end, for these types of recommendations, LAFCO lacks the authority to ensure implementation.

LAFCO has been described as the Legislature's "watchdog" to guard against wasteful duplication of services. (*City of Ceres v. City of Modesto* (1969) 274 Cal. App. 2d 545 [79 Cal.Rptr. 168].) To emphasize the point made above, the Legislature's "watchdog" is different from the Legislature's "enforcer." A watchdog identifies and alerts others to possible problems, and in rare instances, may actually be able to help solve the problem. But in most cases, the local agencies themselves must solve their own problems. When an agency seeks LAFCO approval (e.g., annexation), LAFCO can

impose terms and conditions on its approval. However, generally speaking, LAFCOs do not have legislative authority to "hold agencies accountable" and directly rectify issues or problems.

That said, LAFCOs do make strong recommendations and take the initiative to consolidate or reorganize districts. However, for as many opportunities as there are, there are a number of challenges. There are barriers to reorganization. In the Commission's 2000 report, it was stated few changes had been made in the structure of special district government. While this may be true statutorily, the report's subsequent statistics told a different story. The report cited in looking at six LAFCOs since 1994 (presumably to 2000), 22 special district reorganizations were submitted, of which 16 were approved, three were denied, and three were withdrawn. We view this as significant action.

LAFCOs have been criticized for not doing enough when it comes to dissolving or consolidating districts. Simply reorganizing agencies does not necessarily improve services – ultimately LAFCO recommendations are designed to improve the provision of service. Each district has its own funding approach and some have distinctly different levels of service. Consolidation or dissolution for the sake of change is not as simple or logical a path as one presumes and often leads to unintended consequences. LAFCOs must always recognize and respect that a special district board is locally elected and is accountable to its constituents when making local decisions, even if in stark contrast to a LAFCO recommendation.

Many of the determinations and recommendations made in a MSR are operational in nature to address governance, managerial or financial concerns. Further, since MSRs and SOIs are considered long-term planning tools, many recommendations contained within them are not intended to be enacted immediately. Some recommendations have a timeframe exceeding the associated five-year cycle.

### **So What Has Been Accomplished?**

A number of LAFCOs recently reported to CALAFCO taking action to consolidate, dissolve or otherwise reorganize districts, some successfully and others not. For example:

- Amador LAFCO reports in the last ten years it has completed two dissolutions.
- Los Angeles LAFCO reported the recent completion of one LAFCO-initiated dissolution.
- Yolo LAFCO indicated the successful dissolution of three districts with a fourth currently in process. Additionally, it just finalized a recommendation that a local Fire Protection District contract services through one of the local cities.
- Imperial LAFCO indicates it has dissolved two districts, are in the process of dissolving another, and looking at two additional districts for potential action.
- Lassen LAFCO reports it initiated a consolidation of two districts as a result of an MSR/SOI. Although the LAFCO initiated the process, under the guidance and leadership of the LAFCO the two districts ultimately agreed this was the best course of action and now are full partners in the consolidation.
- Orange County LAFCO reported since 2000 (when the mandate of MSRs took effect), it have processed nine complex special district consolidations, dissolutions and reorganizations.
- In a much publicized action, Contra Costa LAFCO undertook a full review of a healthcare district and despite political pressure to dissolve the district, and determined it was better to reorganize the district and create a subsidiary district within the City of Concord. Today this district is healthy and thriving.
- Butte LAFCO has conducted special studies of sewer districts prompting many changes to increase local cooperation and efficiencies related to shared services. Butte has also

reorganized special districts to remove powers no longer needed or add powers to increase constituent services.

- Santa Clara LAFCO reports conducting special studies to consider dissolving or consolidating certain districts and has facilitated several discussions amongst affected agencies. However, in the end, the inability to resolve the inherent complex issues relating to any of those actions, such as the transfer of assets and liabilities to successor agencies, the lack of community support, or the lack of political will to engage in a lengthy, expensive and uncertain process, all led to no action being taken by the entities involved or Santa Clara LAFCO.
- Marin LAFCO initiated the consolidation of six wastewater agencies as a result of a MSR. After several years of study, public hearings, and LAFCO commission approval, in the end the voters within the all four districts denied the consolidation.
- Santa Cruz LAFCO indicates in the last 36 years it has reduced the number of districts by seven, with almost all of them being a significant undertaking. It reported just completing a reorganization that took three years of work and was its main project for that time. This was known as the Lompico Reorganization, which involved the dissolution of one water district and the annexation of that area to another water district. As a result of the length of time and the amount of resources required to complete the reorganization, Santa Cruz LAFCO revised its priorities to allow enough time to facilitate the reorganization, resulting in it getting behind on other MSRs. Currently, it has identified four small districts as candidates for consolidation or dissolution. However Santa Cruz LAFCO notes that they are all functioning at the moment and it would take a crisis for an action to be initiated. This is due to the resources required to conduct a successful reorganization of any sort.

**What are the challenges?**

The last several examples highlight some of the challenges LAFCOs face in the reorganization of districts. The lack of community support to change which manifests through the protest provision process is a factor. Regardless of how logical the consolidation or dissolution may be, the voters in the district have the final say on the disposition of the district. The LAFCO can expend years of time and resources moving towards such an action, only to have it be turned down by the will of the people being served. This factor is often a consideration when a LAFCO decides whether or not to initiate such action.

Another challenge appears to be an inability of agencies to reach agreement on how to share the tax revenue, an action over which LAFCO has no authority to resolve.

It is important to note yet again that LAFCO can make determinations and recommendations that are operational in nature, addressing governance, managerial or financial concerns, and short of a recommended change of organization, has no authority to enforce them. Should the Legislature desire LAFCO to be more proactive and aggressive in this area, then CALAFCO suggests this be a topic that is moved forward for discussion in a forum of long-term roundtables or workshops with all affected stakeholders at the table.

**The Evolution of LAFCO – What’s Changed Since the Commission’s 2000 Report**

**Looking Back at the Steps Forward**

The governing landscape of LAFCOs has evolved considerably over the past 16 years. As mentioned previously, there were substantial changes in the laws in 2000, many of which were the outcome of recommendations from a report issued by the Commission on Local Governance for the 21<sup>st</sup> Century as well as the Little Hoover Commission’s 2000 Report. Several of the recommendations found in

the Local Governance Commission’s report (issued January 2000) parallel the recommendations of the report of this Commission issued in May 2000. Below are the most significant changes that have occurred:

**Required LAFCo independence.** One of the Commission’s recommendations in the 2000 report was to enhance the independence of LAFCOs. The new statute provided that the county was no longer required to supply the LAFCO with all the necessary logistical resources required to do the job. Instead it created the opportunity for LAFCOs to become independent of the county. Many LAFCOs have transitioned to an independent model, although this remains a challenge for many due to a lack of financial resources or political will to expand LAFCO services. Examples of both existing dependent and independent models were provided elsewhere in this testimony and the challenges that remain in this area will be addressed in the next section.

**Equal Funding.** Both reports suggested equal funding would benefit LAFCOs. The statute changes provided for a formula of equal funding, thereby removing the entire financial responsibility from counties. Today this is the standard financial model with some local exceptions. Please refer to the Revenue Sources section of this testimony for details of how this formula works.

**Special District representation.** As a result of adding an option for special district representation on LAFCO (previously the requirements were limited, and in 2000 the law changed to allow for an automatic option to seat two special district representatives on LAFCO), 30 of the 58 LAFCOs now have this kind of representation (those counties represented in yellow on the adjacent map have special district representation on LAFCO). While this is substantial progress, CALAFCO and CSDA would like to see special district representation on all 58 LAFCOs. This is addressed further in the next section.



**Review of special districts in the provision of services.** The Commission’s 2000 report recommended that LAFCO be required to conduct periodic and specific reviews of independent special districts. A substantial change in 2000, the law was updated to add MSRs as a required precursor to updating a SOI. MSRs are discussed in much greater detail in the above MSR section above, as requested by your Commission.

**Allowance of local policies.** While prior to 2000 LAFCOs were encouraged to create local policies to implement the law, the new statute declared the Legislature’s intent that all LAFCOs shall adopt written policies and procedures by January 1, 2002 and that the policies include lobbying disclosure and reporting requirements, and all forms to be used by the LAFCO. Today virtually every LAFCO has adopted local policies and procedures based on local circumstances and conditions to guide them in their work.

**Use of technology.** The new statute required each LAFCO, by January 1, 2002, to establish and maintain a website on which access to notices and other LAFCO information is readily accessible to the public.

In today’s world of ever-changing technology that allows for a higher level of information exchange and a statewide call for greater transparency, information is much more easily disseminated by LAFCO to the public and to other agencies. Further, LAFCOs now have greater access to information on special districts and other entities. Not only are those documents available directly through a district’s website (if they have one), but also via the State Controller’s website, where an annual report of special districts is published. These changes have most certainly increased the level of

transparency in which all public agencies operate, which was a recommendation of the Commission's 2000 report.

**Greater collaboration.** At the local level, there is more collaboration among local agencies today than ever before, and LAFCOs are increasingly at the hub of these collaborative dialogues. Good examples of this include (but in no way are limited to): Yolo LAFCO who gathers local leaders and facilitates discussions amongst the county and various cities on shared services opportunities; Orange County LAFCO's initiation of the South Orange County Governance Visioning Process, designed to provide a forum for stakeholders to identify viable future governance alternatives for the established and developing communities in the unincorporated territory of South Orange County; and San Diego LAFCO who coordinated and hosted a workshop on the 2016-17 San Diego County wildland fire season readiness, which brought together a number of local fire services providers.

Additionally at the state level, CALAFCO is doing increasingly more collaboration and coordination with other state associations such as CSDA, the League of California Cities, the California State Association of Counties (CSAC) and the Association of California Water Agencies (ACWA) on matters of joint interest.

### **Lingering Challenges and Opportunities**

#### **Independence and Funding**

Although progress has been made in the areas of LAFCO independence and revenue sources, some challenges remain. As noted previously, the matter of LAFCO independence is still a struggle. The extreme variation in LAFCO staffing often creates a significant hurdle to managing the many complex governance issues facing the state and allows for many issues to remain unaddressed entirely.

Although revenue sources were expanded in 2000, this remains a challenge for at least half of the LAFCOs in the state. The variable funding schemes reported in the Revenue Sources section of this testimony create differential financial burdens among affected agencies that is not always proportional to the effort required by each LAFCO. It also creates a competitive dynamic that often results in LAFCO budgets being established based on the hardships to the smallest entities which often drive down the overall LAFCO budget and therefore the LAFCO's ability to meet its statutory requirements. Of the 55 LAFCOs who responded to CALAFCO's 2015 survey, only 30 reported their budgets allowed them to meet statutory responsibilities. Nineteen LAFCOs (34%) indicated their budgets were barely sufficient for them to meet the minimum statutory requirements and another 6 (or 11%) stated their budgets were not adequate to meet all of their responsibilities. As the Legislature creates additional responsibilities for LAFCO without providing additional funding resources, the gap will grow as LAFCOs will increasingly find it difficult to keep pace with the very limited budgets.

#### **Political Pressure**

There are political pressures and potential conflicts inherent in the very nature of the makeup of a LAFCO commission. The statute requires all LAFCO commission members to exercise their independent judgment as a whole in furthering the purpose of LAFCO rather than the interests of their appointing authority. Through the years CALAFCO has provided LAFCO commissioners throughout the state training on how this may be accomplished. The reality is that it is a difficult mandate. How reasonable is it to expect that a county, city or special district elected official will "check that hat" at the door and think only in terms of LAFCO? It is rare when an official can set all of the political pressures of their primary entity aside and think and act only in terms of LAFCO. And, when that is accomplished, there are often great consequences. For example, at the will of the entire County Board of Supervisors, or the City Selection Committee or the Special District Selection



Committee, an official appointed or elected to serve on LAFCO can easily be replaced by the entity that put them in that seat. A recent example can be found in the central valley when the City Selection Committee removed a commissioner from a LAFCO because the majority of those on the Committee disagreed with the vote of the elected official while acting as LAFCO commissioner. Arguably, this level of political or issue oriented intervention can significantly undermine any LAFCO attempt to remain neutral and independent of local agency influence.

This challenge could potentially be addressed by appointing LAFCO commission members to a fixed term regardless of their actions. This may create a better balance of the democratic appointment process with the empowerment of the official to act more independently.

### **Special District representation on all LAFCOs**

Both CALAFCO and CSDA are working together on generating ideas and solutions to this opportunity. Today the path for special district representation on LAFCO is long, and we are collaborating on ways to make this process easier. The other challenge to having special district representation on all LAFCOs is a matter of cost. Many districts do not want to pay the cost associated with participating on LAFCO and are unable to see the significant benefits of that participation. LAFCOs are stronger when they are more diverse. When considering matters relating to special districts, it is always a broader and better balanced perspective with the views of special districts represented in the discussions. Without a special district voice on the LAFCO, those interests are left to other entities. CALAFCO and CSDA continue outreach and educational efforts with CSDA members on the benefits of being seated on LAFCO.

### **Emerging Challenges and Opportunities**

Albert Einstein said, *“The world that we’ve made as a result of the level of thinking we have done thus far creates problems we cannot solve at the same level of thinking which created them.”* The reality of our world today is the issues we are dealing with are more complicated than ever before.

### **The evolution of the role of LAFCO without the supporting resources**

The evolution of the role and responsibilities of LAFCO through the years have not kept pace with the evolution of the resources available to LAFCO to meet the changing demands. In 1963 LAFCOs were designed to move boundaries. The level of scrutiny they had was light and authority was local. Over time, LAFCOs evolved to add responsibilities, to look at future growth areas and plan for where that future growth may logically occur. Then in 2000, the Legislature added the responsibility of conducting a MSR – evaluating functions, service delivery and governance of a service provider - in order to do a SOI update. A later addition required LAFCO to conduct SOI updates every five years or as necessary, which means conducting MSRs as part of that process. Today these MSRs are required to contain LAFCO commission determinations on seven primary categories. The structure and resources to implement these additional responsibilities has remained for the most part unchanged.

In 2012, as a result of SB 244 (Wolk, 2011), the Legislature added responsibility for LAFCO to identify and plan for the needs of all disadvantaged unincorporated communities (DUCs) that lie within or contiguous to an existing SOI. LAFCOs are experiencing increasing pressure from groups calling for more action to address the real needs of these communities. Not only does LAFCO lack the authority to address service deficiencies, recent legislative efforts lack addressing the root cause of many of these issues – a lack of water, lack of infrastructure, and a lack of financing for agencies to keep pace with the cost of infrastructure, operations and maintenance and regulatory compliance. LAFCOs welcome the partnership of the local communities, local, regional and state agencies to solve these very complicated and complex issues.



Increasing demands from the Legislature for LAFCOs to address local agency deficiencies without the authority and resources to do so, and the reluctance of local agencies to readily accept LAFCO assistance or intervention, combine to create a lose-lose for all. Ultimately, the LAFCO must still rely on the participating local agencies as their primary source of operational revenue (other than fees for services). These are the same agencies who are also critically reviewed by LAFCO and may not view a strong LAFCO as a helpful entity. This has become increasingly challenging as local agencies continue to grapple with their own fiscal shortages and desire to maintain local control in an era of increasing regional planning demands.

#### **Unique new service entity structures**

Joint Powers Authority and Joint Powers Agencies are becoming a more common form of local governance and in some cases the delivery of municipal services. Lacking the oversight in the provision of those services similar to those that special districts have is an increasing challenge for LAFCOs.

#### **Recent legislative trend challenging LAFCO authority**

During the 2015-16 legislative year, CALAFCO noticed an increase in legislation introduced that either bypassed established local LAFCO processes or divested LAFCO of authority in some way. Your Commission requested CALAFCO provide our thoughts on this trend. We believe there are several reasons for this trend.

First, as many of the legislative authors and sponsors have indicated, the LAFCO process is perceived as long, costly and does not guarantee the outcome they desire. To that, we say the Legislature intentionally created LAFCO processes to be deliberate, transparent and locally reviewed, especially when dealing with the dissolution or reorganization of an entity. Many factors must be considered and deliberated carefully. Several of this year's legislative efforts do not take into account all that must be considered by either dissolving or expanding a district.

We struggle with the notion that using the state legislative process is any less costly for tax payers than the local LAFCO process, and in fact argue that the local LAFCO process is more efficient and effective as local entities are better able to consider local circumstances and conditions. It has been CALAFCO's experience that while special legislation addresses an immediate concern, it often results in collateral long-term impacts to resolving local issues.

Another reason for this trend was present in several examples: the involved district previously worked with the LAFCO and was unhappy with the results of that interaction. Consequently, rather than going back and working through the issues, it sought remedy at the state level. In yet another example the local entities involved – all of which are in some way represented on their LAFCO – never discussed their issue with the LAFCO and instead went straight to their state Legislator to seek remedy. The more this scenario is embraced by individual legislators, the more frequently it is sought by special interests and others, thus moving an issue from a local public forum to Sacramento.

Finally, several of the bills introduced address entities over which LAFCOs have no authority. For example, SB 88 from 2015 gave the State Water Resources Control Board (SWRCB) the authority to mandate consolidation of water entities. It is worth noting the agencies under the SWRCB focus are primarily agencies that are not under LAFCO jurisdiction, such as mutual water companies and private providers. This particular piece of legislation was a last minute budget trailer bill on which LAFCOs were never consulted. The passage of SB 88 left CALAFCO and all LAFCOs holding the bag so to speak in figuring out how to make the new statute actually work. For the past year CALAFCO has been working with the SWRCB in the proper implementation of this bill.

There are long-term effects to the “chipping away” of the foundation of the Act. Not only does this kind of random pick-and-choose create the opportunity for conflicting sections in the statute, it can inadvertently create statutory loopholes with very serious unintended consequences. Furthermore, the continual passage of such legislation will only invite more of the same, and create a more top-down approach to local governance – which is in direct conflict with the reason the state Legislature gave LAFCO the authority it has had since 1963. The Legislature’s willingness to pass these “one-off” bills undermines the LAFCO authority rather than empowering the LAFCO.

It was stated earlier that LAFCO processes were created by the Legislature to be local, thorough and deliberate. Allow me to expand on that for a moment and tie that concept to a lack of action (whether perceived or real). The peoples’ voice is an important part of the LAFCO process. In most cases, voters decide on whether a district should be formed, and ultimately they can decide the fate of a district. The protest provisions in statute allow for that voice to be considered as part of the process.

Taking action to dissolve or reorganize a district requires thoughtful planning at the local level including the identification of a successor agency, the determination of what to do with the obligations, liabilities and assets of the district, and in many cases the agreement of tax revenue sharing. Many of these actions are reasons a LAFCO may choose not to initiate an action. While the applicant may pay the fees associated with the process of their application, if the LAFCO initiates the action, it is the LAFCO that absorbs all of the costs associated with that action. With already strapped budgets and staffing resources (as discussed above), the majority of LAFCOs today do not have the resources required to undertake such actions which, as noted before, can take several years to complete with no guarantee their recommended action is implemented.

So while it may seem like a simple and straightforward action, the reality is it is not.

**Opportunities for the Future**

As indicated in this testimony, there has been a substantial evolution of LAFCO over the past 16 years and overall LAFCOs have done a solid job meeting and in many cases exceeding their statutory requirements. Opportunities always emerge in the face of challenges. CALAFCO continues to work with our 58 member LAFCOs in support of strengthening their capacities as we see LAFCO as a vital and valuable part of the local governance landscape. CALAFCO offers the concepts below as potential future opportunities to address LAFCOs’ challenges and to increase LAFCOs relevance. We stand ready to engage the Commission and its staff, stakeholders and our members in a meaningful and forward-thinking dialogue to address any viable opportunities as you narrow the scope of your special district review for your next hearing.

***Increase Revenue Options for LAFCO.***

In light of the increasing call for LAFCOs to conduct more in-depth studies of special districts and to consider options for improved local governance that may include actions such as reorganization, we suggest the state consider providing special funding to LAFCOs for local government reorganization studies. As stated previously, in-depth and value-added MSRs take a great deal of resources – human, fiscal and time. The outcomes can be critical to the overall health and long-term well-being of a community.

In its 2000 Report, as part of Recommendation Two, the Commission stated: *“The State should provide LAFCOs with the direction and resources necessary to make them a catalyst for the effective and efficient evolution of independent special districts.”* While several of the recommended actions outlined have been taken, funding special studies remains one unaddressed recommendation.

Perhaps with the Governor’s Office of Planning and Research (OPR) as a partner, a certain dollar amount can be allocated to each LAFCO annually. Or, if the focus is to conduct specific studies, an allocation based on the number identified to be studied can be issued to the LAFCOs involved.

Another suggestion for the state to consider is allowing LAFCO to directly receive a certain percentage of property tax revenue in addition to the funding provided by the local entities participating on LAFCO. Perhaps the state can issue to LAFCO a fraction of the percentage of these agencies’ portion of Educational Revenue Augmentation Fund (ERAF) funding that was previously taken away. Since the local agencies have a statutory obligation to financially support LAFCO, this seems like a logical connection.

With increasing unfunded mandates on local government, the State is setting up expectations that are harder and harder to meet. As LAFCOs are funded by local agencies, the more mandates these entities must deliver on the fewer financial resources are available for the LAFCO to call on to deliver their increasing mandates. It is a no-win cycle. CALAFCO urges the Legislature to consider the cumulative impact of all of the mandates being handed down to local entities.

***Statutorily authorize LAFCO to dissolve inactive districts.***

Although the total number of inactive districts statewide is currently unknown, CALAFCO suspects there are a number of districts that have not met in well over a year, not adopted an annual budget for a number of years, have not held elections in years, or have gone completely dark. We believe these districts are worthy of a closer look and may very well be the most obvious candidates for dissolution. We suggest the state grant LAFCO the statutory authority to dissolve these districts after the appropriate study has been conducted or certain determinations have been made by the LAFCO. Funding to conduct these studies and conduct the dissolution process should be considered along with the statutory authority.

***Conduct a statewide study on the effectiveness of MSRs and make legislative recommendations accordingly.***

It has now been 16 years since LAFCOs were authorized to conduct regular SOI updates and MSRs. Enough time has passed and enough LAFCOs have completed several “rounds” of these studies for there to be the kind of data needed to study and evaluate the effectiveness of the requirement. There are certainly lessons learned and best practices that exist as a result. It may be the right time to ask questions such as: (1) Are the right factors being reviewed; (2) Is the seemingly arbitrary timeframe of every five years the most appropriate interval; (3) What have been the MSR determinations and the subsequent actions; and (4) What do the entities involved see as the value in these studies? In partnership with CALAFCO, the state may want to consider funding a study of the effectiveness of updates and reviews based on the original intent of the law and local circumstances and conditions. CALAFCO can partner with any number of entities on this study.

***Revisit and revise certain principal acts.***

Over the past 16 years a number of principal acts have been updated thanks to the efforts of the former Senate Local Government Committee consultant staff. CALAFCO recommends all of the principal acts be reviewed and updated as necessary, perhaps starting with the one pertaining to healthcare districts. As this is a substantial undertaking in both time and resources, this would be a multi-year project requiring a detailed plan and timeline. As prior principal act reviews were led by local government committee staff, CALAFCO recommends either the Assembly Local Government Committee of Senate Governance and Finance Committee take the lead on this endeavor.

***Keep LAFCO decisions local.***

CALAFCO urges the Legislature to keep local LAFCO decisions local. While we understand there are certain situations in which the state must act (for example, if a unique governance structure is requested outside of that provided in the principal act, or granting powers of the district not provided for in the principal act), there are many instances in which legislation is introduced that is best dealt with locally. The more these kinds of legislation are passed, the more we will see introduced.

As an association, CALAFCO has adopted Legislative Policies that guide both our Board of Directors and our Legislative Committee when considering legislative matters affecting LAFCO. Primary among those policies is the preservation of the authority of LAFCO. CALAFCO supports legislation that maintains LAFCO's authority to condition proposals to address any or all financial, growth, service delivery, and agricultural and open space preservation issues. Further, we support legislation that maintains LAFCO's ability to make decisions regarding boundaries and formations, as well as to enact recommendations related to the delivery of services and the agencies providing them, including consolidations, reorganizations or dissolutions.

As all of these recent legislative efforts fly in the face of LAFCO authority, CALAFCO has opposed them in one form or another, while attempting to work with the authors and sponsors on acceptable middle-ground to create a win-win. From a CALAFCO perspective, some of those efforts have been successful while some have not.

CALAFCO has also increased efforts to educate state legislative staff on who LAFCOs are and what they do. In the fall of 2015 for the first time, we hosted a *Lunch and Learn with LAFCO* series and plan to repeat these sessions annually. In addition, CALAFCO continues to find new ways to educate our member LAFCOs on the importance of building strong relationships at the local level with their state Legislators.

***Recommendation Three from the 2000 Little Hoover Commission Report.***

The 2000 report was very broad in scope with a host of recommendations. One in particular, Recommendation Three, appeared to get little traction, despite the fact it contains a good foundation for discussion in improving and enhancing local governance.

CALAFCO agrees in concept with several of the specific actions outlined within this recommendation, and feels they are worthy of closer scrutiny. We see the opportunities cited therein have evolved over the past 16 years to:

- ***Study the long-term effects of consolidations and reorganizations.*** This could be done in partnership with CALAFCO, CSDA and the Institute of Local Government (ILG), or perhaps the Public Policy Institute of California.
- ***Develop performance measures for special districts.*** Standard industry measures could be created by service type for certain measures, and other measures would be standard across the board for things such as finance and governance. These can be collaboratively developed by CSDA, CALAFCO, the ILG and the Special District Leadership Foundation (SDLF). Once established these performance measures can be effectively used by LAFCO when conducting a MSR and SOI update.
- ***Establish a cadre of trainers.*** In conjunction with CALAFCO and CSDA, the ILG seems like the logical partner to coordinate and support this effort. Retired LAFCO EOs and special district General Managers from around the state who are willing to train as needed or be called upon to assist and advise in certain situations, might be used at the cost of a small stipend or even on a pro-bono basis.

In closing, I want to again thank you for the opportunity to share our viewpoint on the special relationship between LAFCOs and special districts, to highlight the progress made by LAFCOs over the past 16 years, and to address challenges and opportunities we see for the future. CALAFCO is happy to make itself available as a resource to the Commission and the Legislature to improve the landscape of local governance in California.

Respectfully,



Pamela Miller  
Executive Director