



## FINAL MINUTES

### LAFCO REGULAR MEETING AGENDA

Wednesday, November 18, 2015

8:00a.m.

Orange County Transportation Authority  
First Floor - Boardroom  
600 South Main Street, Orange, CA 92868

#### 1. CALL TO ORDER

Chair McGregor called the regular meeting of the Orange County Local Agency Formation Commission (OC LAFCO) to order at 8:05 a.m.

#### 2. PLEDGE OF ALLEGIANCE

Commissioner John Withers led the Pledge of Allegiance.

#### 3. ROLL CALL

The following Commissioners and Alternates were present:

- Chair Derek J. McGregor
- Vice Chair John Withers
- Commissioner Lisa Bartlett
- Commissioner Allan Bernstein
- Commissioner Cheryl Brothers
- Commissioner Todd Spitzer
- Commissioner Charley Wilson
- Alternate Commissioner Wendy Bucknum
- Alternate Commissioner James Fisler
- Alternate Commissioner Kathryn Freshley

The following Commissioner was absent:

- Commissioner Andrew Do

The following LAFCO staff members were present:

- Executive Officer Carolyn Emery
- Project Manager Benjamin Legbandt
- Commission Clerk Cheryl Carter-Benjamin
- Legal Counsel Scott Smith

#### **4. ANNOUNCEMENT OF SUPPLEMENTAL COMMUNICATIONS**

The Commission received letters of support for EOCWD and IRWD applications, and a letter from Mr. Sears regarding the disqualification of Commissioner Withers involving the transfer of sewer service for OCSA Service Area 7. The Commission also received a memorandum prepared by legal counsel Scott Smith addressing Mr. Sears' request. Executive Officer Carolyn Emery added at the request of Commissioner Wilson, correspondence received after agenda distribution but prior to the Commission meeting will be emailed to the Commissioners.

#### **5. APPROVAL OF MINUTES**

##### **October 14, 2015 - Regular Commission Meeting Minutes**

The minutes were approved with no revisions.

**MOTION:** Approve the October 14, 2015 Regular Commission Meeting Minutes. (Allan Bernstein)

**SECOND:** Charley Wilson

**FOR:** Derek J. McGregor, John Withers, Lisa Bartlett,  
Alan Bernstein, Cheryl Brothers, Todd Spitzer,  
Charley Wilson

**AGAINST:** None

**ABSTAIN:** None

**MOTION PASSED**

#### **6. PUBLIC COMMENT**

Chair McGregor requested public comments on any non-agenda items.

None

Chair McGregor closed public comments.

#### **7. CONSENT CALENDAR**

None

## 8. PUBLIC HEARING

### 8a. – East Orange County Water District Reorganization for Local Sewer Service (RO 14-01) and the OCSD Service Area 7 Annexation to the Irvine Ranch Water District (DA 15-02)

Project Manager Benjamin Legbandt presented the staff report which included a review of the community workshop hosted by OC LAFCO to present the competing applications and staff's preliminary review and recommendations. Because both applications remain incomplete, staff recommended that the Commission continue the proposed East Orange County Water District and the Irvine Ranch Water District's competing applications to a future OC LAFCO meeting. However, Project Manager Legbandt did note that the Board of Supervisors adopted the property tax resolution for the East Orange County Water District proposed reorganization and once a signed copy is received, the Executive Officer can deem this application complete.

**Commissioner Spitzer** noted his disagreement to staff's recommendation stating that the Commission's decision should be based on which application is complete, and made a motion to amend staff's recommendation to continue the public hearing for the proposed EOCWD Reorganization to the December 9, 2015 regular LAFCO meeting and continue the OCSD Service Area 7 Annexation to the IRWD to a future LAFCO meeting pending the approval of the property tax resolution by the Board of Supervisors.

**Commissioner Bartlett** seconded the motion for further discussion.

**Commissioner Fisler** inquired about the decision by the Board of Supervisors to hold the property tax resolution for IRWD's application. **Commissioner Spitzer** responded that OCSD's General Manager had spoken to the County's Chief Operating Officer and requested that the Board of Supervisors delay the consideration of the required property tax agreement for the IRWD proposed application until an agreement addressing sewage flows for OCSD Service Area 7 had been executed by OCSD and IRWD.

**Commissioner Bucknum** asked for clarity as to why both applications could not be continued to the December 9 LAFCO meeting. **Commissioner Spitzer** responded that EOCWD application is complete and the Commission has the obligation to consider the application.

Ms. Emery informed the Commission that once she receives the property tax agreement for the EOCWD application from the County, she can issue a Certificate of Filing deeming the application complete. She added that the certificate must be issued no less than 5 days before the Commission hearing, properly noticed and the Commission has 90 days to schedule the application for hearing.

**Commissioner Wilson** stated his support of the motion and asked for clarification on the relationship between the property tax exchange agreement and the continuation of the existing arrangement for the treatment of sewage generated in the area by OCSD. Ms. Emery replied that the property tax exchange agreement for the EOCWD application did not include a reference to the sewer transfer agreement between EOCWD and OCSD or continuance of flows and would expect that the IRWD property tax agreement would mirror the EOCWD agreement approved by the Board. The requirement for an agreement and other conditions of approval imposed by the Commission are typically addressed in the LAFCO resolution.

**Commissioner Withers** stated his support for the motion presented by **Commissioner Spitzer** noting that his representation is on behalf of the ratepayers in the area.

**Commissioners Brothers and Bernstein** also stated their support of the motion.

**Commissioner Bartlett** indicated that the approval of the property tax agreement presented to the Board was ministerial adding that the OCSD Board meeting scheduled later this evening includes a discussion item on extending the agreement with EOCWD that expires December 31, 2015. **Commissioner Bartlett** stated that the discussion would include the removal of the exclusivity provision that is preventing OCSD from entering into a similar agreement with IRWD.

**Chair McGregor** thanked the applicants for submission of their applications and complimented staff on the community workshop and for providing a defined process. **Chair McGregor** asked about the process should OCSD not remove the exclusivity provision. Ms. Emery responded that the Commission could consider EOCWD's application only but in accordance with the statute has the responsibility to discuss existing alternatives in the staff report. **Chair McGregor** asked about the process should the exclusivity clause be removed from the agreement between EOCWD and OCSD. **Commissioner Spitzer** replied that the Commission has the ability to consider IRWD's application after the property tax agreement is approved by the County Board of Supervisors, but the motion protects the process for EOCWD. Ms. Emery noted that should the Commission approve the motion made by **Commissioner Spitzer**, the Commission would not be able to consider IRWD's application in December due to the scheduling and noticing timelines.

**Chair McGregor** opened the public hearing and requested comments.

John Nielsen, Mayor Pro Tem for the City of Tustin and Chairman of the OCSD's Board of Directors provided historical context of discussions with EOCWD regarding the transfer of sewer service responsibility for Service Area 7. Mr. Nielsen stated that OCSD does not want to interfere with the LAFCO process but

guaranteeing the wastewater flows continue to be received by OCSD for treatment is a major concern for the District.

Paul Cook, General Manager for IRWD provided clarification regarding the submittal of IRWD's application to provide sewer service to Service Area 7.

**Chair McGregor** closed the public hearing.

**MOTION:** Continue the public hearing for the proposed EOCWD Reorganization for Local Sewer Service to the December 9, 2015 regular LAFCO meeting and continue the OCSD Service Area 7 Annexation to the IRWD to a future LAFCO meeting pending the approval of the property tax resolution by the Board of Supervisors. (Todd Spitzer)

**SECOND:** Lisa Bartlett

**FOR:** Derek J. McGregor, John Withers, Lisa Bartlett, Allan Bernstein, Cheryl Brothers, Todd Spitzer, Charley Wilson

**AGAINST:** None

**ABSTAIN:** None

**MOTION PASSED**

**Vice Chair John Withers** left the dais at 9:20 a.m.

**8b. - Meyer Reorganization to the City of Anaheim (RO 15-01)**

Project Manager Benjamin Legbandt presented the staff report to the Commission recommending continuation of the public hearing on the application due to additional environmental review being completed by the City of Anaheim as lead agency.

**Commissioner Spitzer** asked the Project Manager if he knew the company that was planning a residential housing development project on the reorganization area and if the Levine Act applied to the continuance of a future public meeting. Mr. Legbandt stated that the developer is the Olsen Company and Legal Counsel Scott Smith stated that a motion to continue is procedural and the Levine Act does not apply in this case.

**MOTION:** Continue the Meyer Reorganization to the City of Anaheim to a future LAFCO meeting. (Allan Bernstein)

**SECOND:** Lisa Bartlett

**FOR:** Derek J. McGregor, Lisa Bartlett, Allan Bernstein, Cheryl Brothers, James Fisler, Charley Wilson

**AGAINST:** None

**ABSTAIN:** None

**RECUSED: Todd Spitzer**

**MOTION PASSED**

**9. COMMISSION DISCUSSION AND ACTION**

**9a. - FY 2014 - 2015 LAFCO Annual Audit**

Executive Officer Carolyn Emery summarized staff's recommendation and introduced the Commission's accountant, Cindy Byerrum, and independent auditor, Michael Ludin of White Nelson Diehl Evans LLP to present the Commission's FY 2014-2015 audited financial statements.

Ms. Byerrum spoke to the implementation of a new accounting rule, which became effective this year, to account for all pension liabilities, both funded and unfunded. Ms. Byerrum described how the implementation of the new accounting rule limited any comparative analysis with the prior year's financial statements and resulted in her recommendation to omit the Management's Discussion and Analysis. Ms. Byerrum noted that the omission did not affect the auditor's opinion received by LAFCO.

Commission Freshley asked Ms. Byerrum to clarify why an explanation in writing was excluded. Ms. Byerrum replied that the omission was recommended by the Government Finance Officers Association's and was standard in the industry but the discussion would be included in next year's audit with explanation of the changes due to implementation of the new rules.

Michael Ludin added that the exclusion of the Management's Discussion and Analysis as part of the financial statement was done to maintain conformity of the document. Mr. Ludin concluded with an overview of Commission's financial statements indicating that LAFCO has received the highest opinion, "unqualified" from the auditors.

**Commissioners Spitzer and Bartlett left at 9:35 a.m.**

**MOTION: Receive and file LAFCOs FY 2014-2015 audited financial statements prepared by White Nelson Diehl Evans LLP. (Charley Wilson)**

**SECOND: Allan Bernstein**

**FOR: Derek J. McGregor, Allan Bernstein, Cheryl Brothers  
James Fisler, Charley Wilson**

**AGAINST: None**

**ABSTAIN: None**

**MOTION PASSED**

**9b. - Quarterly Legislative Report**

Executive Officer Carolyn Emery provided a summary of the Quarterly Legislative Report and stated that staff will closely monitor clean-up legislation to SB 88 recently signed into law by Governor Brown authorizing forced consolidation of water agencies serving disadvantaged communities. Ms. Emery also noted her continued participation as a member of the CALAFCO Legislative Committee and working closely with the Commission's legislative ad hoc committee comprised of Commissioners Brothers, Do, and Wilson.

**MOTION:** Receive and file the Quarterly Legislative Report and direct staff to distribute the Legislative Quarterly Report to the County and each city and special district. (Allan Bernstein)

**SECOND:** Charley Wilson

**FOR:** Derek J. McGregor, Allan Bernstein, Cheryl Brothers  
James Fisler, Charley Wilson

**AGAINST:** None

**ABSTAIN:** None

**MOTION PASSED**

**9c. - Comprehensive Quarterly Report**

Executive Officer Carolyn Emery provide a brief overview of the report and staff's recommendation.

**MOTION:** Receive and file the Comprehensive Quarterly Report. (Allan Bernstein)

**SECOND:** Charley Wilson

**FOR:** Derek J. McGregor, Allan Bernstein, Cheryl Brothers  
James Fisler, Charley Wilson

**AGAINST:** None

**ABSTAIN:** None

**MOTION PASSED**

Vice Chair John Withers returned to the dais at 9:45 a.m.

**9d. - Adoption of the 2016 LAFCO Calendar**

Executive Officer Carolyn Emery summarized the proposed meeting dates and informed the Commission that OCTA would be adopting their calendar in February 2016 and if there were any changes with the current proposed meeting schedule, the Commission would be informed.

**MOTION:** Approve the proposed 2016 LAFCO meeting calendar.  
(Charley Wilson)

**SECOND:** John Withers

**FOR:** Derek J. McGregor, John Withers, Allan Bernstein,  
Cheryl Brothers, Charley Wilson

**AGAINST:** None

**ABSTAIN:** None

**MOTION PASSED**

**10. COMMISSIONER COMMENTS**

**Commissioner Bucknum** spoke to the decisions LAFCO makes, which are based upon detailed analysis and is independent of cities and districts. She added that the LAFCO process for decision making is a great process and should be respected.

**Commissioner Withers** recalled prior difficult decisions of the Commission noting his thoughts that as a Commissioner the decision should be based on efficient service and impacts to the citizens in affected areas.

**Commissioner Brothers** summarized the CALAFCO Board update which included the development of an ethics policy by various Executive Officers of LAFCO involving the use of CALAFCO resources, an online survey which had a great return rate of 54 LAFCOs, and the assignment of CALAFCO Board Members to various Committees, noting her appointment to the awards committee. **Commissioner Brothers** reported that the next CALAFCO Board meeting will take place Friday, February 5, 2015 at the offices of Best Best and Krieger in Irvine.

**Commissioner Bernstein** noted the challenging decision that the Commission will have when it considers the applications submitted by EOCWD and IRWD for local sewer service. **Commissioner Bernstein** concluded that the Commissioners will have to walk away knowing there was due diligence to the process.

**11. EXECUTIVE OFFICER'S REPORT**

None

**12. INFORMATIONAL ITEMS AND ANNOUNCEMENTS**

None

**13. CLOSED SESSION**

None

**14. ADJOURNMENT OF REGULAR COMMISSION MEETING**



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The meeting adjourned at 10:00 a.m.

Derek J. McGregor, Chair

Orange County Local Agency Formation Commission

By:   
Cheryl Carter-Benjamin  
Commission Clerk