

FINAL MINUTES

OC LAFCO REGULAR MEETING AGENDA

Wednesday, September 9, 2020
8:15 a.m.

Due to COVID-19, this meeting was conducted by teleconference pursuant to the provisions of the Governor's Executive Orders N-25-20 and N-29-20, which suspend certain requirements of the Ralph M. Brown Act.

1. CALL TO ORDER

Chair Brothers called the meeting of the Orange County Local Agency Formation Commission (OC LAFCO) to order at 8:20 a.m., announced that the Commission meeting is being conducted by teleconference, and participation by Commissioners and staff are from remote locations.

2. ROLL CALL

The following Commissioners and Alternates were present:

- **Chair Cheryl Brothers**
- **Vice Chair Douglass Davert**
- **Commissioner Lisa Bartlett**
- **Commissioner James Fisler**
- **Commissioner Derek J. McGregor**
- **Commissioner Donald Wagner**
- **Alternate Commissioner Kathryn Freshley**
- **Alternate Commissioner Lou Penrose**
- **Alternate Commissioner Mike Posey**

The following Commissioners were absent:

- **Commissioner Wendy Bucknum**
- **Alternate Commissioner Michelle Steel**

The following OC LAFCO staff members were present:

- **Executive Officer Carolyn Emery**
- **Policy Analyst Luis Tapia**

- Policy Analyst Gavin Centeno
- Commission Clerk Cheryl Carter-Benjamin
- Legal Counsel Scott Smith

**3. ANNOUNCEMENT OF SUPPLEMENTAL COMMUNICATION
(Received After Agenda Distribution)**

Commission Clerk Cheryl Carter-Benjamin and Executive Officer Carolyn Emery noted that supplemental correspondence was received by email from General Manager Brett R. Barbre, Yorba Linda Water District and Board Member Al Nederhood, Yorba Linda Water District, for Agenda Items 6a and 6b (*Attachment B*).

4. PUBLIC COMMENT

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

Commission Clerk Cheryl Carter-Benjamin read the public comment received from Paul Matheis submitted by email (*Attachment A*). **Chair Brothers** closed the public comments.

5. CONSENT CALENDAR

Chair Brothers called for the approval of the consent calendar. **Vice Chair Davert** motioned for approval of the consent calendar and **Commissioner Fisler** seconded the motion.

Chair Brothers called for a roll call vote on the approval of the consent calendar. The Commission Clerk conducted a roll call vote on the item.

5a. – Approval of Minutes - August 12, 2020 Regular Commission Meeting

MOTION: Approve the consent calendar. (Douglass Davert)

SECOND: James Fisler

FOR: Douglass Davert, James Fisler, Lisa Bartlett,
Derek J. McGregor, Mike Posey, Donald Wagner,
Cheryl Brothers

AGAINST: None

ABSTAIN: None

MOTION PASSED: 7-0.

6. PUBLIC HEARING

6a. - Municipal Service Review and Sphere of Influence Review for the Municipal Water District of Orange County

Policy Analyst Gavin Centeno presented the highlights of the municipal service review and staff recommendations for the Municipal Water District of Orange County.

Chair Brothers opened the public hearing. The Commission Clerk read comments submitted by email from General Manager Brett R. Barbre, Yorba Linda Water District and Board Member Al Nederhood, Yorba Linda Water District (*Attachment B*). **Chair Brothers** closed the public hearing and asked for discussion by the Commission.

During Commission discussion, staff was asked to provide the timeline of the draft MSR and its release date. The Executive Officer noted that the public review draft of the MSR was made available to the affected agencies and published on the agency website on August 24, 2020. She further noted that the document with any changes to the public review draft was released to the Commission on September 2, 2020. A suggestion was made that the Commission be given a month to review and discuss the draft MSR in a workshop setting and then consider approval at a subsequent meeting. **Vice Chair Davert** inquired if the sphere for MWDOC should be extended beyond the County boundary to include the Central Basin Water District service area as an option to address their current challenges.

Chair Brothers asked if MWDOC staff would like to provide comments on the item.

Rob Hunter, General Manager for the Municipal Water District of Orange County noted that a sphere update may be possible. However, he noted that there has been no formal discussion by the District to explore this and that MWDOC has provided technical assistance to the Central Basin Water District in the past through a cooperative agreement.

Vice Chair Davert added that for full disclosure he wanted to note that he is an elected Director of the East Orange County Water District and an employee of the Yorba Linda Water District.

Chair Brothers called for a motion on the item. **Vice Chair Davert** made a motion to approve staff recommendations for the item and **Commissioner McGregor** seconded the motion.

The Commission Clerk conducted a roll call vote on the item.

MOTION: Receive and file the MSR; approve the Resolution adopting the MSR statement of determinations; approve the Resolution

adopting the SOI statement of determinations; approve the notice of exemption for the MSR; approve the notice of exemption for the SOI. (Douglass Davert)

SECOND: Derek J. McGregor

FOR: Douglass Davert, Derek J. McGregor, Lisa Bartlett, James Fisler, Mike Posey, Donald Wagner, Cheryl Brothers

AGAINST: None

ABSTAIN: None

MOTION PASSED: 7-0.

6b. – Municipal Service Review and Sphere of Influence Review for the Orange County Sanitation District

Policy Analyst Luis Tapia presented the highlights of the municipal service review and staff recommendations for the Orange County Sanitation District. He noted a correction to a typographical error in the staff report on page two.

Chair Brothers asked if OCSD staff would like to provide comments on the item.

Jim Herberg, General Manager for the Orange County Sanitation District highlighted the collaboration between OC LAFCO and OCSD during the MSR process. He noted that OCSD agrees with the determinations included as part of the MSR and that the District is committed to address any findings. Mr. Herberg further noted, in response to comments submitted by the Yorba Linda Water District, that he has not had the opportunity to discuss with his Board due to receiving the comments last evening. He noted that the District remains open to addressing the concerns of its members and he would discuss the issues raised with his Board of Directors.

Chair Brothers called for a motion on the item. **Commissioner McGregor** made a motion to approve staff recommendations and **Vice Chair Davert** seconded the motion. It was noted that the comments received for the item had already been read into the record by the Commission Clerk.

The Commission Clerk conducted a roll call vote on the item.

MOTION: Receive and file the MSR; approve the Resolution adopting the MSR statement of determinations; approve the Resolution adopting the SOI statement of determinations; approve the notice of exemption for the MSR; approve the notice of exemption for the SOI. (Derek J. McGregor)

SECOND: Douglass Davert

FOR: Derek J. McGregor, Douglass Davert, Lisa Bartlett, James Fisler, Mike Posey, Donald Wagner,

Cheryl Brothers

AGAINST: None

ABSTAIN: None

MOTION PASSED: 7-0.

7. COMMISSION DISCUSSION AND ACTION

The **Chair** stated there were no items for Commission discussion and action.

8. COMMISSIONER COMMENTS

No general comments were made by Commissioners.

9. EXECUTIVE OFFICER'S REPORT

- **Resuming In-person Commission Meetings**

Executive Officer Carolyn Emery stated that staff continues to stay in contact with the Clerk of the Board regarding current restrictions for in-person meetings. She noted that while the guidelines have changed, the current restrictions would not accommodate the full Commission and staff, and she would keep the Commission updated on when in-person meetings could resume.

- **Assistant Executive Recruitment Process**

Executive Officer Carolyn Emery noted that the recruitment for the Assistant Executive Officer is underway.

10. INFORMATIONAL ITEMS & ANNOUNCEMENTS

Chair Brothers informed the Commission that the CALAFCO Ad Hoc Committee on the membership dues had been reestablished with the addition of two new members. She added that the committee would be meeting on a date in the near future to be determined.

Chair Brothers also informed the Commission that the Southern Region LAFCOs will be meeting virtually on Monday, September 21 at 10:00 a.m. She added that the agenda would be sent out soon.

11. CLOSED SESSION

The **Chair** stated that there were no closed session items for discussion.

12. NOTICE OF ADJOURNMENT OF THE REGULAR COMMISSION MEETING

Chair Brothers adjourned the Regular Commission Meeting at 9:36 a.m. to the next regular OC LAFCO meeting scheduled for Wednesday, October 14, 2020, at 8:15 a.m.

Cheryl Brothers, Chair
Orange County Local Agency Formation Commission

By: 
Cheryl Carter-Benjamin
Commission Clerk

Attachments:

- Attachment A: Public Comment for Agenda Item 4
- Attachment B: Public Comments for Agenda Items 6a and 6b

**ATTACHMENT A:
AGENDA ITEM #4 PUBLIC COMMENTS**

From: [P. Matheis](#)
To: [Cheryl Carter-Benjamin](#)
Subject: Public comments for August 12, 2020 meeting
Date: Wednesday, August 12, 2020 9:11:33 AM

Ms. Carter-Benjamin:

Please include the following comments under the public comment section of today's tele-meeting. I am listening and want my comments to be included.

The delivery of fire and EMS services in Placentia is an important local issue that is best determined by local elected leaders. It should be noted that Placentia, when choosing to establish their own fire department have done so at some cost to the public. The change from the Orange County Fire Authority to the City of Placentia has resulted in a significant reduction of firefighters on duty every day protecting the citizens and visitors to the community. While money may be saved, the reduction in firefighters will certainly have an impact on the ability of on duty forces to manage an emergency.

Paul Matheis



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ATTACHMENT B: AGENDA ITEM 6a & 6b

September 8, 2020

Ms. Carolyn Emery, Executive Officer
Orange County LAFCO
2677 N Main St Ste 1050
Santa Ana CA 92705

Re: Comments on Draft MSRs for Orange County Sanitation District (OCSD) and Municipal Water District of Orange County (MWDOC); Public Hearing September 9, 2020

Dear Ms. Emery:

The Yorba Linda Water District (YLWD) is an independent special district providing retail water and wastewater collection service to residents in the City of Yorba Linda and parts of the cities of Brea, Placentia, and Anaheim. YLWD discharges wastewater into the regional sewer system operated by OCSD for treatment at OCSD's regional wastewater treatment plants. YLWD purchases imported water from the Metropolitan Water District of Southern California (Metropolitan) through MWDOC.

OCSD MSR

YLWD is represented at OCSD by YLWD Director Brooke Jones. YLWD obtained this seat at OCSD following the (LAFCO approved) transfer of sewers in Yorba Linda from the City of Yorba Linda to YLWD and subsequent State Legislation to amend the OCSD governing act to allocate the voting seat to YLWD and remove it from the City of Yorba Linda. Representation at OCSD is typically (1) by a city representative when the city owns and operates the local sewers, (2) by a special district when the special district owns and operates the sewers, or (3) by the County of Orange for the unincorporated areas. The 25-member OCSD Board of Directors is presently comprised of 20 city representatives, 4 special district members, and 1 representative from the Orange County Board of Supervisors.

The OCSD MSR (pages 24-26) generally reports on the governance structure but fails to address the anomalies that disenfranchise some while causing an overconcentration of voting power in one city/special district. It should be noted that YLWD represents Yorba Linda sewer ratepayers at OCSD, that Midway City Sanitation District represents Westminster sewer ratepayers at OCSD, and that Costa Mesa Sanitary District represents Costa Mesa sewer ratepayers at OCSD. Accordingly, the cities of Yorba Linda, Westminster, and Costa Mesa do not have a seat at OCSD.

The East Orange County Water District (EOCWD) owns and operates sewers in roughly one-half of the City of Tustin with IRWD owning and operating the remaining sewers in Tustin. The City of Tustin does not own or operate a single sewer. Its sewers were transferred to EOCWD in 2016. Despite this, EOCWD does not have a seat at OCSD,



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and the City of Tustin does. This should be remedied. Also, the City of Irvine which, as noted above, does not own or operate a single sewer and unnecessarily has a voting seat at OCSD. So two cities, both of which are served by IRWD each have a seat giving IRWD, at least arguably, three votes at OCSD. This, too, should be remedied.

MWDOC MSR

YLWD is represented at MWDOC through its District 1 representative who is directly elected to that position. That position is presently vacant but will be filled in the election on November 3, 2020. YLWD is represented at Metropolitan by two members of the MWDOC Board of Directors (Dir. Tamaribuchi who resides in the Irvine Ranch Water District (IRWD) service area and Dir. Dick who resides in the Serrano Water District service area) and two members of the Orange County community, one of whom, per Section 1500 (A)(1) of the MWDOC Administrative Code shall be selected by the "North County" water agencies as follows:

"In addition, for the other two (2) seats, the President of the Board shall request the Member Agencies to nominate in writing a candidate or candidates of their choosing. The request for nominations shall alternate between the North County agencies and the South County agencies, in the absence of agreement to some other process. The nomination by the Member Agencies shall be determined by "one agency, one vote" process. Once filled, the seats will be designated as the "South County Seat" and the "North County Seat" and the nomination for the designated seat shall be from that region."

Page 42 of the Draft MSR for MWDOC reiterates that policy but fails to address the fact the representation at Metropolitan is out of compliance with this policy and the mandates of the MWDOC Administrative Code. This should be remedied in the final MSR.

Specifically, the two non-MWDOC appointments to Metropolitan are both held by South County residents. Dir. Ackerman lives in the IRWD service area and Dir. McKenney lives in the Moulton Niguel Water District (MNWD) service area. Both IRWD and MNWD vote as part of the South County group of agencies for the purpose of selecting Metropolitan Directors. The result is that the North County agencies have not been able to select a Metropolitan Director and are therefore disenfranchised. Moreover, one of the MWDOC-appointed Metropolitan Directors (Dir. Tamaribuchi) also lives in the IRWD service area. This concentrates 50% of Orange County's representation at Metropolitan with one agency (IRWD) and 75% of that representation with one region (South County) which again disenfranchises North County and non-IRWD agencies.



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Inasmuch as YLWD is both a North County agency and a non-IRWD agency, its ratepayers do not have fair representation at Metropolitan. YLWD respectfully requests that this issue of representation be more carefully and thoroughly addressed in the final MSR.

SUMMARY/CONCLUSION

YLWD requests that the aforementioned issues of governance, over- and under-representation, concentration of power in one region or entity, and possible disenfranchisement of ratepayers/voters be thoroughly examined and remedied through this MSR process.

Thank you for your consideration. If you have any questions, please feel free to contact me at your convenience.

Brett R. Barbre, General Manager
Yorba Linda Water District

**ATTACHMENT B:
AGENDA ITEM 6a & 6b**

From: [Al Nederhood](#)
To: [Cheryl Carter-Benjamin](#)
Subject: MWDOC MSR Draft Report
Date: Wednesday, September 9, 2020 7:39:00 AM

Thank you for a generally complete and informative report.

There are a number of items that I wanted to draw your attention to.

First, a minor grammatical error. See page 19, the last paragraph. In the first sentence, "There is a total of three disadvantaged unincorporated", the verb needs to be "are". A corollary to this is the switching of reference points between "gallons" and "acre feet" to describe MWDOC water sales. I would suggest sticking with a single reference for the sake of consistency.

Second, a more significant area of funding that is not discussed and needs to be: funding for WEROC. As emergency plans and services become more important, there needs to be a fuller review and discussion of the WEROC role going forward and funding to support that role.

Third, regarding selection by the MWDOC Board of Met directors. On page 42 of the study under section "Metropolitan Board Members" the process is described for choosing MWDOC representation on the Met Board. With the recent Met Board opening, this process was not followed raising serious questions of policy, appropriateness and integrity. How will the MWDOC board deal with effective policing of itself to insure its own administrative policies are followed?

Fourth, the study is predicated on modest population growth. No consideration is presented for declining population and/or water use. Both are real possibilities and should be added to this review.

Fifth, there is no discussion related to the possibility of the Poseiden desal plant coming online and its impact on MWDOC water sales, revenue and costs.

Thank you,

Al Nederhood
Yorba Linda Water District, Board Member