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STAFF**Luis Tapia**

Interim Executive Officer

Scott Smith

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MEETING DATE: September 17, 2025**TO:** Local Agency Formation Commission
of Orange County**FROM:** Interim Executive Officer**SUBJECT:** Request to Join an Amicus Brief effort in the Appeal
of Monterey Peninsula Water Management District
v. Monterey LAFCO.**BACKGROUND**

Similar to other agencies in the public sector, LAFCOs are occasionally confronted with legal court challenges. In 2022, the Monterey LAFCO Commission denied an application seeking the activation of latent powers for the Monterey Peninsula Water Management District (MPWMD) to provide retail water service to a portion of Monterey County, which the District would accomplish by acquiring the California American Water Company (Cal-Am) system through eminent domain. Cal Am is an investor-owned utility regulated by the California Public Utilities Commission. The Monterey LAFCO Commission exercised its discretionary powers by considering factors relevant to the application supported by substantial evidence. Following the denial, MPWMD challenged the ruling in court, claiming the decision violated the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act).

Monterey LAFCO's counsel, Best Best & Krieger, responded to the legal challenge by emphasizing that the Monterey Commission denied the activation of latent powers for MPWMD based on substantial evidence as required by the CKH Act. In accordance with the CKH Act (G.C. Section 56107), a court can only overturn a LAFCO decision if it caused substantial harm and was unsupported by substantial evidence. The trial court acknowledged that some of the reasons cited by Monterey LAFCO to deny the request were well supported by substantial evidence, nevertheless, the court ruled in favor of MPWMD by applying an incorrect legal standard of "rational connection," which is not a standard of measurement for analyzing applications as delineated by the CKH Act.

Monterey LAFCO has appealed the decision of the trial court, contending that the court erred by applying a legally unsupported "rational connection" standard instead of the statutory substantial evidence test outlined in the CKH Act (G.C. Section 56107). Additionally, Monterey LAFCO states that a Commission's decision can only be overturned if it

lacks substantial evidentiary support. OC LAFCO staff and legal counsel agree that this case may have statewide implications. If the appellate court affirms the trial court's ruling, it may significantly raise the burden on all LAFCOs by requiring the Commissions to prove a rational connection for every factor of consideration for a review of an application, instead of the substantial evidence test provided by the CKH Act.

Amicus Brief Effort

Monterey LAFCO and representatives of several LAFCOs (i.e., Los Angeles, Marin, Placer, Sacramento, San Bernardino, San Diego, and San Joaquin) and the California Association of Local Agency Formation Commissions (CALAFCO), began discussing the opportunity to submit an amicus brief, which is a legal document submitted by an entity who is not a party to a court case, but has a strong interest in the matter. The amicus brief would focus on the policy context included in the CKH Act and highlight the precedent-setting potential. Sacramento LAFCO has identified attorney Bill Pellman of Nossaman LLP to prepare and submit the amicus brief. Previously, Mr. Pellman served as Los Angeles LAFCO's general counsel for over two decades. Mr. Pellman has estimated the cost to generate the brief at \$7,500.

Staff recommends that the Commission consider the approval for OC LAFCO to participate in the brief effort and contribute up to \$1,200 towards the cost of generating the amicus brief from the *Other Professional Services* account included in the approved OC LAFCO Fiscal Year 2025-26 Budget.

RECOMMENDED ACTION

Staff Recommends the Commission:

1. On behalf of the Commission, authorize the Interim Executive Officer to join the effort with the other LAFCOs as a party to the amicus brief to be submitted in the appeal of Monterey Peninsula Water Management District v. Monterey LAFCO.
2. Authorize the expenditure of up to \$1,200 from the *Other Professional Services* account included in the approved OC LAFCO Fiscal Year 2025-26 Budget, to cover OC LAFCO's portion of the cost to generate the amicus brief.
3. Direct the Interim Executive Officer to provide the Commission with periodic updates on the amicus brief and the status of the case, Monterey Peninsula Water Management District (MPWMD) v. Monterey LAFCO.

Respectfully Submitted,


LUIS TAPIA