

September 2011

Honk if You're a Water Wonk

By John Leopold, Santa Cruz County Supervisor and LAFCo Commissioner

As we have seen in many different settings, when we talk about water, a spirited debate is sure to ensue. In Santa Cruz County, we took on the effort to establish our first set of water policies and managed to create an inclusive process that yielded broad support for a comprehensive water policy.

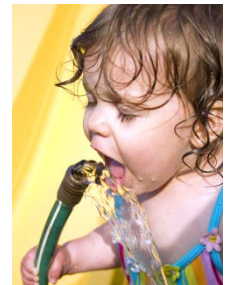
Santa Cruz County obtains water for residents solely through sources available within the county. There are no opportunities to import water; the water systems that have been developed draw off of surface water supplies in the northern part of the county and from groundwater in the mid- and southern parts of the county. A major water agency in the county has applied to provide extra-territorial service to three million feet of new space at the university, two water agencies are considering operating a desalination plant, and one agency is in overdraft and experiencing significant salt water intrusion. Our county's limited water supply requires managing our water resources wisely; our options are limited once it runs out.

Last year our LAFCo decided to undertake a long-standing item on our work plan and create a set of water policies to help guide our future decisions. After assembling a subcommittee of LAFCo

Commissioners, we reached out to all the "water wonks" (purveyors of water systems, large users and environmentalists) we could find. Each meeting of the subcommittee was open to the public and followed the Brown Act. At our first meeting goals were established to create a useable set of policies that were easy to locate and understand, not unduly cumbersome to applicants, forward-looking, and helpful in making meaningful decisions.

Our subcommittee met twice a month and started reviewing data regarding the state of the water resources in the county. This entailed active involvement of our water managers, and we quickly found that each district allocated for its water in slightly different ways. Next we looked at existing efforts in LAFCOs across the State. Lastly we looked at our own policies related to water, which were scattered throughout our policy documents.

Throughout our dialogue about policies, the "water wonks" played an active role in providing information, sharing challenges and presenting strategies for addressing water issues within their districts. Through this



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2011 Annual Report to
the Membership

LAFCo in the Limelight

LAFCo Review Enhances
City Services Plan

Prop 218 Service
Assessments Questioned

New Law Authored by
Assembly Member
Rich Gordon

The Sphere

CALAFCO Journal

September 2011

The Sphere is a quarterly publication of the California Association of Local Agency Formation Commissions.

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1215 K Street, Suite 1650
Sacramento, CA 95814
916-442-6536

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CALIFORNIA ASSOCIATION OF
LOCAL AGENCY FORMATION
COMMISSIONS

CALAFCO

FROM THE CHAIR

In This Together

We are in this together.

That was the clear message that came from CALAFCO Board's strategic retreat in February. Our gracious hosts, Orange County LAFCo and Irvine Ranch Water District's Duck Club provided a beautiful venue and took care of us from the moment we got there. This is the second retreat that I have attended at this location, which is very conducive to thoughtful discussions.

The Board and our CALAFCO staff, through the able facilitation of consultant Cindy Henson, worked cohesively to formulate potential policy changes and enhancements to the organization and decision-making processes. We were also able to ferret out lingering issues and address same in a productive and respectful way.

The building of trust and confidence among Board members allowed us to move forward effectively toward clarifying our purpose and goals. From the actions at the retreat, the Board was able to update and revise our Policies and Procedures including revisions to our election process and legislative focus.

Given the challenges from which we have recently emerged and from which we



Susan Vicklund Wilson
Chair, CALAFCO
Board of Directors

have learned, I am honored to be serving with the caliber of individuals on your current Board and Legislative Committee.

Although CALAFCO is moving forward with a strong, united front in upholding our role in supporting and preserving LAFCos' charge under Cortese-Knox-Hertzberg, the current political and economic climate represents a challenge for our LAFCos. We are unfortunately seeing the demise and/or dilution of various tools, such as the Williamson Act.

Dysfunctional or defunct agencies, cities and districts plague many of our LAFCos with limited resources to determine the best path to remedy same. Governance has come under increasing scrutiny given the economic climate. Further the division between the state and local governments continues to grow without any sense that we are in this together.

Passing unfunded mandates on to local governments and agencies does nothing to foster the partnerships needed to resolve statewide or local problems.

Continued on next page

In the Limelight



Bill Chiat
Executive Director

From the Board Chair

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All of that said, this is a time for creativity and constructive measures and actions. CALAFCO's Legislative Committee, through the leadership of our Executive Director Bill Chiat, continues to educate and enlighten our legislature as to LAFCo's role and the impact proposed legislation would have on local governance and structure. CALAFCO continues to provide guidance to our LAFCos in these challenging times through educational opportunities and awareness.

As a last thought in concluding my year as Chair of CALAFCO, I am reminded of Robert Frost's poem, "The Road Not Taken" about a traveler who comes to the fork in a road and has to make a decision as to which road to take - one well worn, the other less traveled. Perhaps that is what CALAFCO has accomplished these past two years: a decision to try a different road, a different structure, a stronger organization.

CALAFCO is an organization that continues to appraise its value to its membership and look at alternatives and opportunities to better serve you.

This spring and summer brought a fair amount of unexpected – but welcomed – attention to LAFCo in Sacramento. Issues of transparency, numbers and efficiencies of local agencies as well as their oversight were on legislators' minds and culminated in a number of legislative hearings. In addition, California Forward continued its work on a structure to reframe government, and a number of bills were introduced which looked to LAFCo as a tool to implement legislative intent.

A Joint Hearing on Districts

All the energy around LAFCo began in March with a joint hearing of the Assembly Committee on Accountability & Review and the Committee on Local Government. The hearing examined special districts with a focus on efficiency and accountability of local agencies and alternatives for service delivery. Representatives of academic institutions, districts and advocacy groups – including CALAFCO – were invited to testify. A variety of issues specific to districts was explored, but there was also great interest in LAFCo. Both LAFCo's role in reviewing the effectiveness and efficiency of local agencies and whether there was enough authority vested in LAFCo to address recommendations for reorganizations or service delivery alternatives in MSRs or sphere updates were discussed.

Asked about opportunities the Legislature could explore for solutions to challenges LAFCos face, CALAFCO offered several ideas, including:

1. Modify the protest provisions for certain consolidations or

- reorganizations, similar to island annexations;
2. Streamline the consolidation process in certain circumstances to allow an expedited process and expand LAFCo authority to condition the renegotiation of labor and pension agreements;
3. Clarify how applications for consolidation or reorganization would be funded;
4. Looking to the future, provide LAFCo with more authority to prevent the creation of new agencies that are not fiscally viable and limit the Legislature's ability to create new local agencies without LAFCo review.

While there were limited outcomes from the hearing, there was much greater understanding and appreciation of the role, responsibilities and limitations of LAFCo. I anticipate there will continue to be a focus on these issues by both committees next year.

Two specific outcomes emerged:

1. **AB 912 (Gordon)** – Provides LAFCo with a streamlined protest process for dissolution of specific special districts identified for dissolution in an MSR, SOI or other study. Eliminates an election and terminates the process only if there is a majority protest. CALAFCO supported the bill, which was signed into law by the Governor. Please see the AB 912 article in this issue for details.

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In the Limelight

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- Legislative Analyst's Office (LAO) Review** – While the Committees did not ask for a study, the Chair of Accountability & Review did. That study is currently underway and LAO staff has visited with me as well as with a number of LAFcos. The study is examining a range of issues on special districts, including reorganizations and consolidations, transparency and accountability, and service effectiveness. This has provided another opportunity to educate a legislative office on the role and responsibilities of LAFco. The report is anticipated in October.

Informational Hearing on LAFco

Later in March the Assembly Local Government Committee held an Informational Hearing on LAFcos. Again CALAFco was invited to testify along with several LAFco executive officers. The hearing gave us an excellent opportunity to provide in-depth background on LAFco mission, responsibilities, and some of our issues and concerns. In particular, my comments highlighted the limits to LAFco resources and authority to meet the legislative mandate.

Executive Officers Pat McCormick (Santa Cruz), Steve Lucas (Butte) and Kathy Rollings-McDonald (San Bernardino) testified on examples of their LAFcos' work and some of the challenges faced.

Committee members expressed appreciation for the information about LAFco and the value of the hearing to them. It provided great background for the Committee's Omnibus Bill, AB 1430, which makes major improvements to

the definitions in Cortese-Knox-Hertzberg. This experience will also be valuable in the future as CALAFco brings issues to the Committee for action.

California Forward

In April California Forward started to work with stakeholders on its "Smart Government Structural Framework." Two of the five proposals in the draft structure affect LAFco. I was able to participate in several roundtable discussions in Sacramento, and a number of LAFco executive officers and commissioners participated in virtually every stakeholder roundtable held around the state. I am pleased to report that our voices were heard, and California Forward has a much better understanding of the role, responsibilities and possibilities LAFco brings to their goals.

We will learn more during the session at the Annual Conference presented by CA Forward. They are committed to continue to work with us on their recommendations. This is a major change from when they began the process and knew little of LAFcos' existence. Now LAFco is a feature among their proposals. The work of Orange County LAFco is highlighted as a model of how LAFco can review agency effectiveness.

Legislation

Several other pieces of legislation continued to elevate LAFcos' stature with both the Legislature and stakeholder communities.

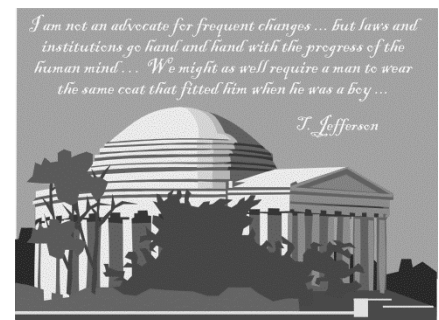
Assembly Member Solario came to CALAFco to work with us on **AB 54**, which will require mutual water companies to respond to LAFco request for information and to provide us with boundary maps. Among his goals is to make mutuals more accountable and transparent, and he turned to LAFco as the strategy.

SB 244 (Wolk) on disadvantaged unincorporated communities was a long, involved process for us. After many months of work, however, there was far greater appreciation for and understanding of the role LAFco plays and a strong interest by the Senator and the sponsors to engage CALAFco, be responsive to the needs and limitations of LAFco, and work to have the bill be flexible to LAFco policies and resources. As of this writing, we are uncertain of the ultimate fate of either AB 54 or SB 244.

50 Years of Possibilities

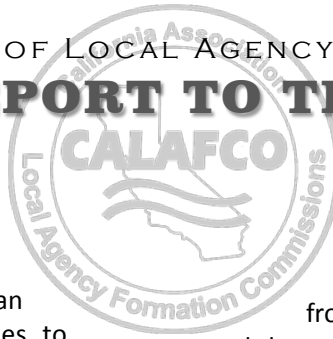
As we approach the 50th anniversary of LAFco law in 2013, it is reassuring to see this new and continued interest in LAFco. As creatures of the Legislature, we continue, in their eyes, to serve the purpose for which LAFco was created.

Thomas Jefferson said: *I am not an advocate for frequent changes ... but laws and institutions go hand in hand with the progress of the human mind....*" As California evolves and grows, so too must the institutions that help manage that growth. This spring and summer saw a renewed interest in how LAFco has grown and contributed in 50 years ... and in the possibilities of what LAFco can contribute in the future.



Now is the time for LAFcos to continue to build and leverage our strengths as we continue **Exploring New Boundaries.**

CALIFORNIA ASSOCIATION OF LOCAL AGENCY FORMATION COMMISSIONS 2011 ANNUAL REPORT TO THE MEMBERSHIP



Dear CALAFCO Members:

We are proud to report to you that the Association continues as a strong, vibrant educational resource to members and as an advocate for LAFCo and LAFCo principles to statewide decision makers. In 2011 the Association maintained a high level of educational services as well as a healthy agenda of legislative issues. During the year we saw a smooth transition to our new regional governance structure with the adoption of new policies and a number of new Board members and perspectives. We are excited with both the program quality and participation in the Staff Workshop and the CALAFCO U courses this year. Napa LAFCo and the Annual Conference planning committee have done an outstanding job with the 2011 Conference. Finally, the Association remains on solid financial ground. The recently adopted FY 2011-12 budget maintains service levels for members, avoids a dues increase and retains a healthy reserve. In this report we highlight the activities of the Association and a few of the things we see on the horizon.

Our achievements are the result of the dedicated efforts of the many volunteer LAFCo staff who contribute their time and expertise. The Board is grateful to the Commissions that support their staff as they serve in CALAFCO educational and legislative roles on behalf of all LAFCos. We are also grateful to the Associate Members and event sponsors who help underwrite the educational mission of the Association and allow us to keep registration fees as low as possible to encourage more participation.

EDUCATIONAL SERVICES AND INFORMATION SHARING

CALAFCO focuses its educational and information sharing-services in four areas: the Staff Workshop, Annual Conference, CALAFCO University courses, and electronic resources including the web site and the member list-serves.



Staff Workshop and Annual Conference We continued the tradition of quality education programming with the Staff Workshop held in Ventura in April and the

Annual Conference in Napa in late August. The Workshop, hosted by Ventura LAFCo, brought together 96 LAFCo staff (a small increase from 2010) from around the state for a three-day workshop. An exceptional program centered on the theme “Maintaining Our Perspective” with sessions including assessments and fees, redevelopment agencies and LAFCo, compensation disclosure, effective staff reports, ethics and use of digital technologies. A special series of sessions was specifically designed for Clerks and included customer service, public noticing, and public records, among the topics. A mobile workshop to the Ronald Reagan Presidential Library highlighted the work of LAFCo and local agencies in land-use policies and the recent annexation of the site to a city.

Over 200 LAFCo staff and commissioners are expected at the 2011 Annual Conference in Napa in late August. Hosted by Napa LAFCo, the program centers on the theme “Exploring New Boundaries” and includes a range of current issues in the sessions: disincorporations; California’s growth trends; collaboration and consolidation of local agencies; managing the agricultural/urban interface; next generation of MSRs; the work of *California Forward*; social justice issues; imposing terms and conditions; and, of course, a summary of legislative issues. The very popular mobile workshops (two offered this year by popular demand) highlight sustainable farming practices in the Napa Valley and the work to balance preservation of prime agricultural lands with meeting housing and growth needs.

CALAFCO University Two courses have been offered so far in 2011, with a third scheduled for October. “Facilitation Skills for LAFCo Staff” was held in February and provided hands-on skills for staff. “California Planning and Land Use Laws” was held in conjunction with the Staff Workshop in April. Both received outstanding evaluations from participants. Later this year “LAFCo’s Role in Regional Governance – A Best Practices Workshop” will be offered. Classes are selected and designed based on interest from LAFCo staff and commissioners. A special thanks to Kate McKenna (Monterey LAFCo) for coordinating the courses this year.

Accreditations All of CALAFCO’s educational activities have been accredited by the American Planning

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Association to provide AICP credits for certified planners. This benefit is provided at no cost to LAFCo staff and helps them maintain their certifications. In addition, both the Conference and Workshop have sessions for LAFCo counsel that have been accredited for MCLE credits by the California Bar. We are pleased to be able to offer these credits which contribute to the professional development and quality services of LAFCo staff.

Web Site The CALAFCO web site consistently attracts between 5,500 and 6,500 visits per week. The vast majority of the visits are for the reference and resource materials found on the site and referral information to member LAFCos. The Members' Section receives between 100 and 200 visits per week. While growing in content every year, the web site has remained unchanged, both in its basic design and structure, since it was first opened nearly ten years ago. Because it is such a heavily used resource, the Association began a complete upgrade of the site in 2011. A team of LAFCo staff volunteers has been working with the executive director and Santa Clara LAFCo Clerk Emmanuel Abello to design and launch a new CALAFCO web site. We are very excited to see this important resource improved. One of the goals of the Board is to increase our use of electronic technology to better communicate with members, provide valuable resources, and reduce our costs for printing and distribution of hard copies. The goal is to unveil the new web site at the Annual Conference in Napa. We look forward to seeing it!

List-Serves The list-serves maintained by the Association continue to be an important communication and information sharing tool among LAFCo staff. This year we added five more list-serves: one for each of the four regions to facilitate more dialogue among the LAFCo staff and Board members in the region and a new list serve for the LAFCo analysts. In total, we now maintain eight list serves to help members share information, materials, and expertise.

Compensation Guidelines Compensation disclosure has been in the forefront of discussion at local agencies since the Bell debacle, and LAFCo is no exception. At the request of members, CALAFCO developed model compensation disclosure guidelines, for consideration by members, as well as suggestions on how to best respond to public information requests for compensation information. CALAFCO distributed the guidelines to all member LAFCos and provided training

during the Staff Workshop. In addition, CALAFCO fully complies with the guidelines: our compensation disclosure is posted on the web site (Resources tab).

California Reform Efforts Executive Director Bill Chiat, along with a number of LAFCo staff, have participated in the *California Forward* roundtable meetings in Sacramento and around the state and have offered written comments on the structural reforms proposed. As a result, significant improvements have been made in the proposed structures. We are excited to continue our work with *California Forward* in 2012 as the group progresses towards a ballot initiative.

LEGISLATIVE PROGRAM

CALAFCO maintained a full legislative agenda this year. While the Association sponsored only one bill this session, it was lengthy and complex. In addition, during the session, CALAFCO staff tracked 39 different bills that could affect LAFCo. The top priority of the Legislative Committee was **AB 1430**, the Assembly Local Government Committee Omnibus bill. While normally this annual bill contains minor technical changes to Cortese-Knox-Hertzberg, this year the 32-page bill sponsored by CALAFCO contains an extensive update of all the definitions in the code. This culminates a lengthy project of the Legislative Committee. Recognition goes to Bob Braitman (Santa Barbara LAFCo) who led the team that rewrote most of the language. We also appreciate the efforts of Legislative Committee Vice Chair Harry Ehrlich (San Diego LAFCo), Assembly Local Government Committee consultant Debbie Michaels and our sister associations



which assisted in bringing this two-year effort to fruition. The new definitions take effect 1 January 2012 and, we believe, will help make the Act easier to understand and use.

Highlights of other bills we worked on include:

- ♦ *AB 912 (Gordon)* – Provides additional authority for LAFCo to dissolve, without an election, certain special districts previously identified for dissolution. (support; signed by Governor)
- ♦ *AB 1265 (Nielsen)* – Provides an interim solution to preserve some Williamson Act funding through local actions. (support; signed by Governor)

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- ◆ *AB 54 (Solario)* – Requires mutual water companies to respond to LAFCo requests for information for MSRs and spheres; also requires mutuals to provide LAFCo with a map of their territory. (support; in Senate)
- ◆ *SB 244 (Wolk)* – Requires LAFCo to identify service deficiencies of disadvantaged unincorporated communities within a sphere for SOI updates and within or contiguous to a sphere for MSRs. CALAFCO worked extensively with the author and sponsor to minimize the workload and cost impacts to LAFCo while at the same time working to provide flexibility to LAFCos and enable LAFCos to produce useful information. (opposition removed; in Assembly)

For a complete list of CALAFCO bills, please visit the web site. Complete information for every bill is available and updated daily.

The Legislative Committee is currently working on several substantial legislative proposals that will likely be introduced in 2012:

- ◆ *Protest Provisions* The Committee is supporting a two-phase effort to bring order to the wildly chaotic assortment of protest provisions in Cortese-Knox-Hertzberg. The first legislative focus would move all current provisions to one section of law and make minor changes for consistency. Former San Diego LAFCo Counsel Bill Smith has taken the lead to draft these changes. The second phase would be to enact more substantive changes to the protest provisions, to make them more consistent and easier to apply. Thank you to San Diego LAFCo for supporting this project.
- ◆ *Extension of Services Outside Boundaries* The Legislative Committee has examined this for years, but in 2011 an intensive effort led by Keene Simonds (Napa LAFCo) has led to a near-consensus on language that would increase LAFCo flexibility in certain situations to extend services outside of boundaries and spheres. Some additional work remains, but we are hopeful a bill will be introduced this winter.
- ◆ *Lengthen Spheres of Influence Update Cycle* Members assert that the update cycle should be extended from five to eight years to match the new Regional Transportation and Housing Element cycles. CALAFCO continues to work with state agencies and the legislature to extend the cycle.

The positive results of the Committee's efforts in producing new legislation and avoiding bad legislation would have been impossible without the leadership of Committee Chair Bill Chiat and Vice Chair Harry Ehrlich (San Diego LAFCo), along with the volunteer efforts of the 20 LAFCo staff, counsel and Board members who serve on the Committee; the work of this group has been critical in crafting legislation, providing recommendations to the Board on legislative issues and supporting the legislative process.

ASSOCIATION MANAGEMENT

A Focus on Regions The Board this year engaged in a major effort to work with and build on the opportunities of the Association's new regional structure. Work began with a two-day Board Retreat and Meeting last February in Irvine. Lengthy, and at times challenging, discussions focused on how to build on the regional structure and assure that all voices are heard and considered in decision-making. In the end, the Board unanimously adopted a series of policies to accomplish its goals and help to assure better balance and participation in decisions. Among those policies:



- ◆ **Statewide Interest:** Board members represent the statewide interests of the Association and are encouraged to solicit input from and disseminate information to the members of their region.
- ◆ **Regional Representation:** The Board encourages regional participation in appointments for officers and committees and requires appointments from each region to the Legislative Committee.
- ◆ **Officer Terms:** Terms are one year to encourage more Board members to serve as officers and to support more rotation among the regions.
- ◆ **Board Action on Legislative Issues:** In order for the Association to take a position on legislation, a 60% majority vote is required, including at least one affirmative vote from each region.
- ◆ **Rotation of Meetings and Events:** Board meetings, conferences and workshops will be rotated among the regions as much as practicable.

CALIFORNIA ASSOCIATION OF LOCAL AGENCY FORMATION COMMISSIONS 2011 ANNUAL REPORT TO THE MEMBERSHIP

The Board also adopted an updated strategic plan following the Retreat. While continuing to support educational and legislative strategies, the Board added strategies to enhance communications with and among commissions. Among the strategies already implemented are the regional list-serves and the *CALAFCO Quarterly*. The *Quarterly*, which is distributed regionally to all staff and commissioners immediately following every Board meeting, highlights Board discussions and actions.

Financial Policies and Reporting The Association continues to stand on a strong financial base and is in compliance with all state and federal rules which govern not-for-profit organizations. The Board maintains policies and current filings to meet all federal and state requirements for 501(c)(3) organizations. The CALAFCO Policies Manual, IRS Form 990 and other key Association documents are available on the web site. The Association also maintains its records with the national non-profit reporting organization GuideStar (www.guidestar.com). In 2011 CALAFCO once again earned the GuideStar Exchange Seal in recognition of its transparency in documentation.

All financial records are reviewed quarterly by an outside CPA with reports to the Treasurer and the Board. The Board also reviews the annual IRS Form 990 tax filing prepared by the CPA and staff.

2011-12 Budget The Board has managed the financial resources of the Association closely. For the third year in a row, the Board voted not to increase member dues as allowed in the Association By-laws. In addition, the Association has not raised member rates for the Annual Conference or Staff Workshop for the last four years.

The adopted budget for 2011-12 provides only minor changes from the 2010-11 budget. The close of the fiscal year showed a greater year-end

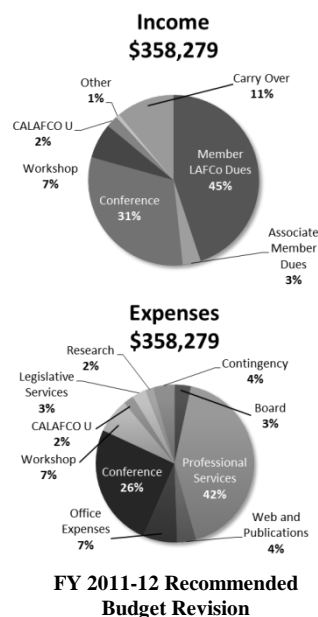
balance than anticipated in the adopted budget, allowing the Association to restore some of the cuts made to services and avoiding use of reserves. The Board will review the budget revision at its meeting during the Conference. The recommended revised budget shows total income of \$358,279, about 3% less than the prior year. Total expenses for 2011-12 are \$342,709 (plus a \$15,570 contingency) or about 12% more than the previous year budget. The increase is largely because \$11,000 for two major projects – a white paper and the web site upgrade – was budgeted last year but will actually be expenses in 2011-12. There are also small increases in rent, professional services and Conference/Workshop expenses. The recommended revisions result in a balanced budget that does not tap any of the reserve funds.

Restricted Fund Reserve Since 2005 an important goal established by the Board has been to grow and maintain a fund reserve to support member services in uncertain economic times and avoid the need to tap members for additional funds, as had been done in the past. With an initial goal of 35% of non-conference operating expenses, the reserve is currently at \$100,754, about 44% of the annual operations budget outside of the Conference and Workshop. The reserve is not part of the annual budget and requires a vote of the Board to use its funds. The Association has not used the fund reserve since the early 2000s. CALAFCO maintains its funds with the Local Agency Investment Fund (LAIF). While the interest rate has remained low again this year, we have not lost any of the principle in our savings or investments.

Finally we want to recognize the outstanding leadership of our executive director **Bill Chiat** and executive officer **SR Jones** (Nevada LAFCo). Added to that is our appreciation for all the contributions of executive assistant **Jamie Szutowicz** in the CALAFCO office, deputy executive officers **Lou Ann Texeira** (Contra Costa LAFCo), **June Savala** (Los Angeles LAFCo) and **Kate McKenna** (Monterey LAFCo), and Legal Counsel **Clark Alsop** (BB&K). These people, along with many other volunteers, associate members, and members of the Board have all worked together this year to bring many achievements and a strong Association to you, our member LAFCos.

Sincerely Yours,

The CALAFCO Board of Directors



Fresh Ideas Blossom at Orange County LAFCo

By Bob Aldrich

Summer continues to be a time for new growth and fresh ideas. In Orange County, many agencies (including OCLAFCo) are responding to the “new normal” – the new economic reality facing cities, counties and special districts – with innovative programs and creative changes in how services are being provided.

The cities of Brea and Fullerton, for example, approved a joint agreement in early May to share a fire chief and other high-ranking firefighters. The two cities already share three battalion chiefs. Under the new shared services arrangement, Fullerton is expected to save \$463,000 annually and Brea will save \$881,000. At the Cities of Garden Grove and Fountain Valley, both city councils unanimously approved a joint contract to share a single city clerk position. This position restructuring will save both cities money without any projected loss in accountability or efficiency. Both actions represent imaginative solutions by cities looking to maintain a high level of services in uncertain economic times.



Recognizing that our member agencies are all experiencing fiscal stress, the Commission used last year’s Strategic Planning effort to rethink LAFCo’s role in these difficult economic times. Specifically - can OCLAFCo play a role in helping our member agencies address the fiscal crisis we all face today? What are the opportunities for LAFCo to make a real difference in local government effectiveness? Instead of focusing so much on changing boundary lines, can we instead focus on making our communities “whole and healthy” in terms of service levels and equity in cost? By reframing our mission, boundary changes became just one tool in accomplishing our mission and opened up other opportunities for LAFCo to make a real difference.

Two projects sponsored by OCLAFCo that we think will make a difference in our communities were summarized in the previous edition of *The Sphere*. Here’s an update: Our “Shared Services” project (a web-based tool to encourage public agencies and homeowner associations to share services for

increased efficiency) went “live” on June 30, 2011. Using a link on the OCLAFCo website, public agencies are able to access a separate website which lists agencies offering services (e.g., street sweeping, police, fire, parks and recreation, etc) and agencies seeking to contract with other agencies for specific services. Several “Working Group” meetings of city, county, special district and homeowner association representatives were used to provide input and refine the project.

Our “Fiscal Early Warning System” website was also launched on June 30, 2011. The website (linked to the OCLAFCo site) includes 10 economic indicators (selected by a Working Group of LAFCo, city, county and special district representatives) and allows agencies and the public to monitor key financial data of each OC agency. The program started small and staff will continue to look for ways to improve and possibly expand the program in the future. OCLAFCo used the services of Creative Revolution, a Redondo Beach-based web design firm, to assist with the website development for both projects.

Both the Shared Services and Fiscal Early Warning System projects help to fulfill our MSR mandate to assess OC agencies’ fiscal health and opportunities for shared services. OCLAFCo Policy Analysts Ben Legbandt and Joe Serrano will be presenting an overview of both projects at the Fall CALAFCo Conference in Napa.

Bob Aldrich is Principal with Aldrich and Associates and a consultant with Orange County LAFCo. He is former assistant executive officer of OCLAFCo.

CALAFCo University
LAFCo’s Role in Regional Governance – A Best Practices Workshop
Friday, October 28th 2011
Sacramento

2012 CALAFCo Staff Workshop
April 25th – April 27th 2012
Ironstone Vineyard
Murphys

2012 CALAFCo Annual Conference
October 3rd – October 5th 2012
Hyatt Regency Monterey
Monterey

On the Horizon



Honk if You're a Water Wonk

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engagement, we decided on a three-part strategy of information, education, and regulation.

With the advice from the “water wonks,” we chose not to create a detailed application about water resources for every applicant seeking assistance from our LAFCo. We agreed to use data already provided to the State Water Agency. This decision allows our LAFCo to compile data for applications and the community about the availability of water to assess future applications. Assembling this information will assist our LAFCo in future decisions.

After reviewing available information, we agreed that not only does our LAFCo need to be better educated about water, but also the community as a whole could benefit from knowing about the state of water resources in our county. To fulfill our strategy of education, we decided that our LAFCo should partner with an existing Prop. 50-funded confederation of water agencies, known as the Integrated Regional Water Management Foundation, to host a community forum on water resources every other year to better inform the public about the challenges and opportunities for our county-wide water resources.

Not surprisingly the toughest part of the process was identifying policies to assist with regulation. Here we engaged a three-part strategy.

First we re-organized our policies to put any existing policy about water in one clearly defined section within our LAFCo policies. Second we drafted policy language for past commission practices that were not currently

in our policies. (This included items such as giving preference to water systems that engaged their customers in determining the direction of the water district.)

We then reviewed the water policies of other LAFCos to determine what might make a good fit in our County. We specifically reviewed policies in El Dorado, San Diego and San Luis Obispo. Our subcommittee and the “water wonks” had useful discussions about all three policies, but our subcommittee gravitated towards the policies in San Luis Obispo because they had been applied over a period of years in situations similar to what exist in Santa Cruz County.

With the assistance of David Church, San Luis Obispo’s Executive Officer, case studies were created to look at their policy of insuring that applicants had “adequate, reliable and sustainable” water when considering their application. Over eight years their LAFCo has never been sued over their policies, which allowed for a wide range of responses to this simple and direct standard.

As we worked on wording in our policies, the inclusiveness that we had established over six months of discussion truly paid off. Water managers who felt as though they might be unfairly affected by this new standard engaged in a dialog with the subcommittee. Having the “water wonks” at the table allowed for a healthy discussion about the proposed policy and the direction that the commission was interested in taking. Twice the subcommittee went to the full

commission to update and solicit input to ensure that we were on the right track. With positive support from the entire commission and active engagement with the “water wonks,” we fine-tuned our new standards to reflect the experience of San Luis Obispo and the realities of Santa Cruz County.

The inclusion of the “water wonks” was critical to the passage of our water policies. Days before

The inclusive effort does not mean we all agree on how to manage our water resources. But with the inclusion of our “water wonks,” we were able to develop a set of policies that will help guide our decisions in the future.

the public hearing on the final draft of the new water policies, our LAFCo received correspondence from one district that tried to scuttle the work of the committee. Fortunately the broad consensus developed within the subcommittee and the “water wonks” was strong enough at the hearing that the water district politely withdrew

their concerns. The water policies passed our LAFCo on a unanimous vote.

The inclusive effort that we undertook in Santa Cruz County does not mean that we all agree on how to manage our water resources into the future. It highlighted some of the differences we have about how to address the challenges of the future. But with the inclusion of our “water wonks,” we were able to develop a set of policies that will help guide our decisions in the future and ensure that they will be based on adequate information, engagement with the community, and standards that allow for a response to incorporate the unique issues that each water district faces.

How LAFCo Review Enhanced a City's Plan for Providing Public Services

By Kai Luoma, AICP

In late 2010, the City of Santa Paula submitted to the Ventura LAFCo a proposal to amend its sphere of influence and annex approximately 550 acres of mostly prime agricultural land to accommodate development of the East Area 1 Specific Plan (EA1SP). The City approved the EA1SP, entered into a development agreement (DA), and certified an EIR for the project in 2008. The EA1SP consists of 1,500 residential units, 435,000 square feet of commercial and light industrial uses, and approximately 375,000 square feet of civic uses. The proposal presented a number of challenges for LAFCo, some of which are summarized in this article.

The City approved the EA1SP with two points of access. One of the access points requires construction of a bridge across a creek which separates the EA1SP from the City. Under the DA, the bridge was required to be constructed no later than the occupancy of the 500th residential unit and there was no limit on the amount of commercial, industrial, or civic development allowed prior to the bridge construction. Thus, as approved, thousands of residents, employees, and visitors could have occupied the EA1SP with only a single means of access, raising

concerns about traffic circulation and emergency access.

The EIR concluded the City did not have adequate fire and police personnel or facilities to adequately serve the project. To mitigate this impact, a new fire station and police facility was required to be constructed. However, the DA deferred construction of the fire/police station by requiring it to occur no later than construction of the 500th residential unit (again with no limit on the amount of commercial, industrial or civic uses that could be constructed). As approved, the EA1SP would have allowed thousands of residents, employees and visitors to occupy the site without adequate emergency response services.

As approved by the City, the EA1SP was to utilize an approximately 2.5-mile wastewater trunk line to convey wastewater to the City's treatment plant. According to the City's wastewater master plan, this trunk line is in poor condition and lacks adequate capacity to accommodate existing flows, much less the additional flows from EA1SP. The EA1SP did not address improvements to this trunk line.



The EIR overlooked the fact that about 40 percent of the EA1SP is within a FEMA designated floodplain. Also, recent studies concluded that the volume of water flowing in the creek during a flood event was 40 percent higher than originally believed. According to comments received by the Ventura County Watershed Protection District

(VCWPD), routine removal of sediment from the creek channel and improvements to the flood control facilities would be needed to accommodate floodwater and protect the EA1SP from flooding. However, the VCWPD indicated that they do not have adequate funding to cover these costs.

Another concern was that, as approved, a new homeowners association (HOA) was to own, fund, maintain, and operate several parks and recreation facilities open to the general public, including a swimming pool, baseball and soccer fields, tennis and basketball courts, an amphitheater, and playgrounds. LAFCo staff pointed out that HOAs are independent entities exclusively funded and controlled by property owners. Staff expressed concern that the City would have no input or oversight of how the HOA chose to operate and maintain these facilities.

A fiscal impact analysis was prepared by the developer and approved by the City as part of the project. The analysis showed that revenue from the EA1SP would substantially exceed the costs to the City to provide services for most of the subsequent 20 years. However, the analysis based property tax revenue on anticipated property values in 2007 near the peak of the housing bubble and did not reflect the drop in property value over the last few years. It also estimated sales tax based on an average annual household income within EA1SP in excess of \$133,000 (more than three times the median income in the City). In addition, it failed to reflect any increase in the costs of providing services over 20 years, the full costs of operating the new fire station, and the full cost of City park maintenance. LAFCo staff concluded that the fiscal analysis appeared to overstate revenue and understate costs.

Finally, approval of the proposal would create an approximately 70-acre unincorporated island.

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Ventura LAFCo Case Study

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This area is substantially developed and included a small low-income community in need of sidewalks, streetlights, and upgraded storm drainage facilities. The City plans to extend water and sewer infrastructure through this community to serve EA1SP, but wished to postpone annexation to a later date. The City requested that LAFCo waive the provisions in CKH prohibiting the creation of unincorporated islands because the City believed that there is a lack of support in the community for annexation, there are blighted land uses in the area, and significant land use planning would be needed. LAFCo staff concluded that the blight and the planning-related issues were the very reasons why the community *should* be annexed. In staff's opinion, the request to avoid annexation of this community was an issue of environmental justice.

The proposal was scheduled for Commission consideration on January 19, 2011. Based on the aforementioned concerns, as well as others, staff recommended that the matter be continued and additional analyses conducted. At this point in the process the property owner, the Limoneira Company, came forward and began working directly with LAFCo staff to address the concerns.

After a series of meetings between LAFCo staff, Limoneira, and the City, the City agreed to make the following revisions to the approved project:

- ◆ Construction of the bridge across the creek expedited to occur as soon as possible, with the intent to complete prior to occupancy of any structures. Some flexibility was warranted given that permits from other agencies with

jurisdiction over the creek would be needed. In the event of a delay, the project will provide a second temporary emergency access point.

- ◆ Construction of the fire/police station accelerated to occur prior to occupancy of the 250th unit.
- ◆ The DA to be revised to identify the approximately \$3.5 million for the improvement of the wastewater trunk line to be shared by the developer and City through impact fees, the City's wastewater enterprise fund, and a bond issued by the City.
- ◆ The developer and/or City to enter into a binding agreement with the VCWPD requiring the developer and/or City to cover the costs to construct needed flood control improvements. Also, the City/developer to establish a benefit assessment to fund the ongoing costs of sediment removal and other routine creek channel maintenance.
- ◆ The HOA will not provide public recreation and park services. A City-controlled assessment district is to be established to provide funding.
- ◆ To cover any revenue shortfalls to the City, the property owner had previously agreed to deposit \$1 million in a fund to be used by the City to cover revenue shortfalls. The property owner agreed to increase the fund to \$2 million and to replenish any funds removed by the City so as to maintain a \$2 million balance for the life of the DA, up to 25 years.
- ◆ Finally, the City agreed that prior to recordation of the EA1SP annexation it would submit an application for the annexation of the area that

would have become an unincorporated island.

On March 16, 2011, with an overflow crowd in attendance, the Ventura LAFCo approved the proposal subject to several conditions addressing the aforementioned project revisions.

The lessons learned were several. First, the positive outcome of the proposal was primarily due to the Commission's support of staff's analysis. The Commission took the concerns raised in the staff report seriously, forcing the City and property owner to do the same. It also demonstrated the importance of involving and working collaboratively with other agencies. For instance, the VCWPD played a key role in the issues regarding flooding. Staff from the District and LAFCo worked together with the

property owners and City to address the flooding issue. It also demonstrated the role that a DA can have with regard to the provisions of public services and the importance of reviewing such documents as part of the LAFCo process. For instance, the DA

substantially revised the project from that evaluated in the EIR. Had staff not reviewed the DA, the deferral of construction of the bridge and fire station, as well as the issues regarding the HOA, would not have been identified and, subsequently, would not have been addressed.

If you would like to learn more about this proposal, please see the January 19 and March 16 staff reports on Ventura LAFCo's website www.ventura.lafco.ca.us or contact Ventura LAFCo staff directly.

Kia Luoma, AICP, is the Deputy Executive Officer of Ventura LAFCo.

Lessons Learned

- ✓ Commission support of staff analysis
- ✓ Value of collaborative work with other agencies
- ✓ Effective role of a development agreement in service delivery

Court of Appeal Questions Service Assessments

by Michael G. Colantuono, Esq.

On June 29, 2011 the California District Court of Appeal in Sacramento decided *Concerned Citizens for Responsible Government v. West Point Fire Protection District*, questioning whether Prop. 218, the “Right to Vote on Taxes Act,” allows assessment financing of government services, as opposed to capital facilities. The decision is sufficiently problematic that several local government associations have asked the California Supreme Court depublish it so it cannot be cited as precedent in future cases.

The dispute. The District serves approximately 2,400 parcels in an unincorporated area of northern Calaveras County. The District imposed a benefit assessment in 2007 under the Fire Suppression Benefit Assessment Act to (i) fund staffing of at least one EMT / senior firefighter at all times, (ii) fund additional volunteer firefighters support and (iii) require periodic town hall meetings and board review of the assessment every five years. The assessment distinguished among improved and unimproved parcels and exempted properties which had assessed valuations (of land and structures) of less than \$5,000. The assessment rate structure was very simple: improved properties were assessed \$87.58 per year and unimproved parcels were assessed \$45 per year. No distinctions were made with respect to the size or value of structures or land use (i.e., single-family, multi-family, commercial).

The assessment was approved by a vote of 61.8% to 38.1% of the property owners in a Proposition 218 assessment protest proceeding, in which ballots are weighted by the amount each property owner is to pay.

The plaintiff association filed a reverse validation action to invalidate the assessment, arguing it failed to comply with Proposition 218’s requirements that it be assessed only for special benefit to property and that assessment amounts be proportionate to the special benefit received by each parcel. The trial court upheld the assessment and awarded the District \$104,153 in attorneys’ fees, finding the plaintiffs had unreasonably denied the District’s discovery requests for admissions. An award of

attorneys fees to a government agency against an activist group is rare and, in this case, not destined to last.

The appellate decision. The Court of Appeal found that the assessment engineer’s report failed to demonstrate that the District’s services specially benefited property in a way meaningfully different from the benefit provided to the general public. The Court also found the very simple, two-rate, assessment formula inadequate to make assessments proportionate to the special benefit



conferred on each property. Although we only know what the Court of Appeals decision tells us about the engineer’s report, these conclusions are not surprising. Ever since the California Supreme Court announced in its 2008 decision in *Silicon*

Valley Taxpayers Ass’n v. Santa Clara County Open Space Authority that courts will use their independent judgment in evaluating assessments – abandoning the pre-Proposition 218 standard which gave some deference to the determinations of local legislative bodies – it has been much harder to defend assessments. Recent appellate decisions involving Riverside County and the Town of Tiburon have continued that trend.

What is notable about the *West Point* decision, however, is the breadth of its language:

Fire suppression, like bus transportation or police protection, is a classic example of a service that confers general benefits on the community as a whole. A fire endangers everyone in the region. No one knows where or when a fire will break out or the extent of damage it may cause. Fire protection is a service supported by taxpayer dollars for the benefit of all those who reside in the entity’s jurisdiction and those unlucky members of the public who may need it while temporarily within its borders. Such protection cannot be quantifiably pegged to a particular property, nor can one reasonably calculate the proportionate “special benefits” accruing to any given parcel. As the

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Assessments and Proposition 218

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Legislative Analyst pointed out in the ballot materials that accompanied Proposition 218, “[t]ypical assessments that provide **general** benefits’ [are] **‘fire, park, ambulance, and mosquito control assessments.’**” Thus, the assessment generates only general benefits.

The Court also suggested that valid assessments must involve:

a local public improvement of direct benefit to that property, as for example a street improvement, lighting improvement, irrigation improvement, sewer connection, drainage improvement or flood control improvement.

These levies go toward paying for specific tangible benefits of which each parcel partakes, and which can be apportioned in relationship to the total cost of the improvement. By contrast, fire protection, as well as public park maintenance and library upkeep, are supported by ad valorem property taxes, which “are deemed to benefit all property owners within the taxing district, whether or not they make use of or enjoy any direct benefit from such expenditures and improvements.”

This last comment was a quote from a 1980 decision involving Proposition 13’s application to fire assessments that was rejected by later courts.

The reaction. On June 28th, the Mosquito and Vector Control Association of California filed a 5-page letter with the California Supreme Court requesting it “depublish” the case – *i.e.*, remove it from the books as precedent for future cases without disturbing the result of the case. On August 4th, the Howard Jarvis Taxpayers Association filed a cursory and polemical two-page opposition to that request. On August 5th, the author of this article filed a 9-page letter supporting the MVCAC request, explaining that the Court of Appeals’ conclusion that Prop. 218 allows assessments for physical improvements, but not for services, does not reflect the language of the

Constitution or the Proposition 218 Omnibus Implementation Act and overlooks important cases, including a recent decision upholding a business improvement assessment in Pomona. That request was filed on behalf of the California Special Districts Association, the California State Association of Counties, the Fire Districts Association of California



and the League of California Cities. In addition, the West Point Fire Protection District has until August 28, 2011 to ask the California Supreme Court to grant review of the case. If the Supreme Court were to grant review, the Court of Appeal decision will automatically be removed from the books. The requests for depublishation remain pending as this article is written.

What should local governments do in the meantime? First, it is very important that assessments be supported by a well drafted engineer’s report. It is not enough to simply put a fresh date on an old report, written before the *Silicon Valley* decision. New reasoning is needed, especially for assessments to fund services that broadly benefit society, like fire protection, park services, and landscaping and lighting services. Second, given the unstable and uncertain state of the law on these issues, it is important that a lawyer review the engineer’s report before it is final and that enough time be allowed for meaningful review. Lastly, of course, agencies with an interest in service assessments should follow the status of the requests to depublish the *West Point* case.

In short, be careful and stay tuned. As always, we will keep you posted!

Michael Colantuono, Esq. is a principal with Colantuono & Levin PC and a Gold Associate Member of CALAFCO. Mr. Colantuono represents several LAFcos.

Assemblyman Rich Gordon Bill Supporting Local Control and Consolidation of Special Districts Signed into Law

By Assemblyman Rich Gordon

During my thirteen year tenure as a San Mateo County Supervisor and LAFCo Commissioner, I experienced multiple instances when certain special districts were deemed extraneous, but LAFCo agencies did not possess the proper tools to dissolve or consolidate such districts. While serving on State Assembly Local Government Committee, I realized this problem was indeed statewide and that thousands of dollars were being used redundantly in holding costly special elections.

In a time when local governments are searching for ways to share resources and find cost-savings of any amount, I authored Assembly Bill 912 to support local LAFCo agencies and enhance local control over special districts.

Signed into law by Governor Brown in July, AB 912 will allow LAFCOs to bypass expensive special elections when commission reports recommend dissolution and a majority of the voters or landowners of a district do not protest the action.

I believe my bill follows through on the original intent of LAFCOs. This law will allow local governments to save hundreds of thousands of dollars on special elections without compromising government accountability or transparency.

While AB 912 makes only a minor procedural change to the Government Code, the law will ultimately increase local control in how counties handle the dissolution of special districts. This is why I believe the bill passed unanimously through the State Assembly and Senate and why

the bill was supported by the California Special Districts Association (CSDA).

It is my hope that, with this new law, local LAFCo agencies are better equipped to use limited government resources more efficiently and find ways to deliver services more effectively to their constituents.



To find the full text of the bill, please visit Leg Info and search for AB 912: www.leginfo.ca.gov or visit the CALAFCO website legislative tab.

I am interested in receiving your feedback and to hear how the passage of AB 912 is impacting special districts and LAFCo agencies in your community. Any reflections or feedback can be registered by emailing: Assembleymember.Gordon@Assembly.ca.gov. Please include "AB 912 LAFCo Feedback" in the subject line of the email.

Assemblyman Rich Gordon represents the 21st Assembly District, which includes much of Silicon Valley, including the communities of San Carlos, Redwood City, Atherton, Menlo Park, Portola Valley, Woodside, East Palo Alto, Palo Alto, Los Altos, Los Altos Hills, Monte Sereno, Los Gatos and the Almaden Valley. Website of Assemblyman Rich Gordon: www.asmdc.org/members/a21/



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