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staff at meeting.

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MPWMD

LAFCO of Monterey County

LOCAL AGENCY FORMATION COMMISSION
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KATE McKENNA, AICP
Executive Officer

February 17, 2011

Mr. Ron Weitzman
WaterPlus Association
23910 Fairfield Place
Carmel, CA 93923

RE: Jurisdiction of the Local Agency Formation Commission of Monterey County and the Monterey Peninsula Water Management District, and Proposed Reorganization Relating to the Formation of a County Water District and the Dissolution of the Monterey Peninsula Water Management District

Dear Mr. Weitzman:

This office is in receipt of a draft petition that WaterPlus Association is considering circulating to dissolve the Monterey Peninsula Water Management District (MPWMD) and establish a successor county water district to exercise certain powers within the same boundaries. Among other things, the petition presents a question of whether the Local Agency Formation Commission of Monterey County (LAFCO) has jurisdiction over the dissolution of the MPWMD pursuant to the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Government Code section 56000 et seq. (the CKH Act).

I am writing now to reply to the question of jurisdiction, to outline the application requirements and process should you wish to proceed with the petition, and to offer to meet with you to discuss these matters.

Jurisdiction of LAFCO

At my request, the LAFCO General Counsel has prepared a response to the question of whether the dissolution or other change of organization of the MPWMD is subject to LAFCO's jurisdiction under the CKH Act. The short answer is yes; Counsel is of the opinion that LAFCO has jurisdiction concerning the matter of dissolution of the MPWMD pursuant to the terms of

the District's principal act and the CKH Act. As the response is protected by attorney-client privilege, I will request the Local Agency Formation Commission to consider authorizing release of Counsel's memorandum for public review at the next regular LAFCO meeting on February 28.

Petition Process

If WaterPlus Association wishes to initiate the petition process, the basic steps are as follows: filing of a notice of intention to circulate a petition with LAFCO (Government Code section 56700.4); calculation of the number of registered voters residing in the proposed special district (Government Code section 56375 (f)); disclosure of contributions and expenditures in support of and against the reorganization proposal (Government code sections 56700.1 and 56100.1); circulation of the petition (Government Code section 56700 et seq., Government Code section 56860, Water Code sections 30202 and 30203, and Government Code section 56705); submission of the petition to LAFCO; examination of the petition by the County Elections Official (Sections 9113 to 9115 of the Elections Code), and preparation of a Certificate of Sufficiency by LAFCO (Government Code section 56706(a)). The petitioners must pay for all work of the Elections Office.

Application Requirements

Following issuance of the Certificate of Sufficiency for the petition, an application for reorganization must be submitted to LAFCO. The application must contain the information listed in Government Code section 56652 and specific requirements as determined by the LAFCO Executive Officer and discussed with proponents during a pre-application meeting. The application must include sufficient information for LAFCO to determine (1) whether the proposed district can carry out its purposes, (2) whether it will have sufficient revenues to provide the proposed services, and (3) whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner. In part, the information is intended to address statutory requirements and local policies that discourage the unnecessary creation of new, single-purpose agencies. The information must also address LAFCO's broader legislative purposes to encourage the orderly formation and growth of local government agencies, to preserve open space and agricultural lands, to discourage urban sprawl, and to ensure that local government services are provided in an efficient manner (Government Code section 56000, et seq.).

Some of the items to be discussed at a pre-application meeting will include: a detailed plan for the dissolution of the MPWMD and formation of a successor district; a Tax Sharing Agreement with the County of Monterey, if necessary, as outlined in Revenue and Taxation Code section 99; a Financial Feasibility Study prepared by a consultant to be selected by LAFCO and paid for by the proponents (Government Code section 56652 and LAFCO of Monterey County Standards for the Evaluation of Proposals); an environmental analysis prepared by a consultant to be selected by LAFCO as lead agency and paid for by the proponents (CEQA Act and Guidelines); a deposit and written agreement to pay all actual costs of staff, legal, consultant, and other expenses incurred in processing the application (LAFCO Schedule of Processing and Filing Fees),

and provisions for the applicant to defend at its sole expense any action brought against LAFCO, the Commission and its staff, because of the processing or approval of the application.

Application Process

Following submittal of the reorganization application to LAFCO, staff will review the application for completeness and refer it to affected agencies for comment. After the application is deemed complete, including fiscal and environmental studies, the Executive Officer will prepare a report and recommendations, and schedule a public hearing. Recommendations to the Commission will be based on statutory and policy factors, comments from affected agencies, and an analysis of the proposal. The Commission will conduct a public hearing to consider the application on its merits, including local policies and the requirements of State law such as Government Code sections 56425(e), 56668, and 56886.5(a).

If the Commission denies the application, no further proceedings will be held on the proposal (Government Code sections 56660, 56665, and 56880). State law also provides a process for reconsideration of the Commission's action (Government Code section 56895). If the Commission approves the reorganization, the application will be submitted to the U.S. Department of Justice for pre-clearance pursuant to Section 5 of the Voting Rights Act of 1965, as amended. The Department of Justice will respond within 2 months of receiving that request.

In the best of circumstances, the estimated timeline for this application process is about six months, as measured from when a complete application is submitted to LAFCO. The actual timeline will be affected by any legal challenges, reconsideration requests, preparation of an environmental impact report, or other complications.

Election Process

After the U.S. Department of Justice pre-clears the application, LAFCO would request the Monterey County Board of Supervisors to direct the County Elections Official to conduct the necessary elections to establish the proposed district. The election would be held at the next election occurring not less than 88 days after the date of the order of election (Elections Code section 1405(b)). Elections for membership on the Board of Directors of the proposed County Water District would be conducted at the same election (Government Code section 57139).

The election would be conducted at polling places or by mail ballot. After completing the canvass of ballots, the Elections Official would report the results to the LAFCO Executive Officer. Within 30 days of that notice, LAFCO would execute a Certificate of Completion if a majority of those voting favored the reorganization. LAFCO would also submit the reorganization to the State Board of Equalization. If a majority of votes is cast against the reorganization, the Executive Officer would execute a Certificate of Termination (Government Code sections 57149, 57176, and 57179). If the reorganization is ratified by voters, the new County Water District would pay the costs of the election. If the reorganization is not successful, the costs of the election are paid by the County (Government Code section 57150). If the reorganization is

ratified, the new County Water District also pays processing charges from the State Board of Equalization (State Board of Equalization: "Requirements for Statements, Geographic Descriptions, Maps and Fees"). The effective date of dissolving the MPWMD and establishing the successor district would be determined by terms and conditions of the reorganization.

I invite you to make an appointment with me to discuss these matters in detail.

Sincerely,

A handwritten signature in cursive script that reads "Kate McKenna". The signature is written in black ink and is positioned above the typed name.

Kate McKenna, AICP
Executive Officer

cc: Darby W. Fuerst, Monterey Peninsula Water Management District
Linda Tulett, Monterey County Elections Office
Nick Chiulos, Monterey County Administrative Office