

EXECUTIVE OFFICER'S REPORT

To The
Local Agency Formation Commission

TO:

Commissioner **DON CAMPBELL** [City] Commissioner **MICHAEL KELLEY** [Supervisor]
(V-Chair)
Commissioner **JASON JACKSON**(Chair) [City] Commissioner **RAY CASTILLO** [Supervisor]
Commissioner **DAVID WEST** [Public]
Alt Commissioner **JACK TERRAZAS** [Supervisor]
Alt Commissioner **MARIA NAVA-FROELICH** [City]
Alt Commissioner **VACANT** [Public]

REPORT DATE: April 16, , 2015

FROM: Jurg Heuberger, AICP, CEP, Executive Officer 

PROJECT: **PUBLIC HEARING ON AN AGREEMENT FOR MCCABE COVE AND MAGNOLIA GATE SUBDIVISION WATER SERVICE BETWEEN HEBER PUBLIC UTILITY DISTRICT AND THE CITY OF EL CENTRO**

HEARING DATE: **May 28, 2015** **TIME:** 8:40 AM

AGENDA ITEM NO: 11

HEARING LOCATION: El Centro City Council Chambers, 1275 Main Street, El Centro, CA

RECOMMENDATION(S) BY THE EXECUTIVE OFFICER (In summary & order)

- OPTION #1:** Authorize the City of El Centro and the Heber Public Utility District to enter into an agreement for providing water service to Magnolia Gate and McCabe Cove subdivisions, subject to the terms and conditions of LAFCO.
- OPTION #2:** Authorize the City of El Centro and the Heber Public Utility District to enter into an agreement for providing water service to Magnolia Gate and McCabe Cove subdivisions, subject to the terms and conditions of LAFCO as modified by the Commission at the conclusion of the hearing.
- OPTION # 3:** Do not authorize any agreement as proposed.
- OPTION # 4:** Continue this item for not to exceed 70 days.

REPORT:

Magnolia Gate and McCabe Cove proposed agreement for water service:

To understand the proposed action, that of authorizing a special agreement between the City of El Centro and the Heber Public Utility District it is imperative that the Commission understand the background as well as the special circumstances that have brought this issue to the Commission, not to mention the potential future ramifications.

HISTORY:

Both the McCabe Cove Subdivision and the Magnolia Gate Subdivision were approved by the County of Imperial through the Major Subdivision process (TR # 914 and TR # 907) dated July 9, 1991, and March 12, 1991 respectively. Since both of these subdivisions were outside the City of El Centro's ability to annex and at the same time some distance for service connections, both were approved with what at that time was individual services. Namely this meant each lot would provide its own water and sewer system. Around that time due to EPA actions, allowing non-potable water connections from an IID system became unacceptable. The Developer requested service from HPUD due to the fact that they had an existing water line a short distance from these subdivisions.

Although both subdivisions were within the Sphere of Influence of El Centro and thus outside the SOI of HPUD, the request for an extension of services to be provided by HPUD was submitted to LAFCO.

LAFCO considered this request and made an unusual decision to grant the service extension primarily due to the fact that it would be "an interim" approval and due to the fact that HPUD had the capacity and ability to provide interim service. Furthermore, both the City of El Centro and HPUD reached an agreement that set forth the conditions under which service was to be provided on an interim basis. LAFCO in making its approval also conditioned its approval on specific conditions, all of which are shown in the attached.

Of specific note are conditions (d), (e) and (f);

(d) The City of EL Centro and HPUD have met with the Executive Officer and have independently approved this temporary agreement, and

(e) It is agreed by HPUD, the City of El Centro, LAFCO and the Developer that this extension by HPUD is temporary until such time that El Centro can and will provide said service, at which time the line between HPUD and this designated service area is to be terminated to the mutual agreement of both El Centro and HPUD, and

(f) The Developer shall record a covenant with the final map to notify all future buyers of this arrangement, noting further that when El Centro can annex this territory, the Developer and all future owners consent without objection to such an annexation.

CURRENT SITUATION:

At this time the City of El Centro has grown contiguous to the two subdivisions and it is therefore technically as well as legally possible for the two projects to be annexed to the City and obtain all relevant services from El Centro. The City of El Centro has prepared some preliminary cost estimates for the extension of services. Furthermore the City of El Centro, HPUD and LAFCO did hold a public meeting

in Heber to advise the current owners of record of the situation, and the options. The City of El Centro, HPUD and LAFCO have also met on at least two occasions to discuss options.

Currently most of the lots within the McCabe Cove subdivision are developed but only a small portion of the Magnolia Gate Subdivision are developed. It is the undeveloped lots/owners that at this time would need to obtain approval for service extensions from LAFCO. To avoid each parcel having to go through the process including the costs, the agencies have developed several alternatives which are described below and preliminarily the City of El Centro and HPUD have a recommended solution. However to effect that solution LAFCO approval is required.

ALTERNATIVES:

- 1) One option is to enforce the current LAFCO approved conditions and require all lots to obtain services from El Centro, meaning they would need to annex and pay the requisite fees including but not limited to capacity fees, extension of line costs etc..
- 2) Another option is to allow each vacant parcel to obtain either as a single approval or on an individual basis authority for HPUD to continue to extend services.
- 3) Another option is to modify the Sphere of Influence of El Centro and HPUD and annex the area to HPUD.
- 4) Another option (recommended and preliminarily agreed to by both EC and HPUD) is to leave the SOI for both agencies, but allow the HPUD to overlap into the SOI and potentially in the future into the City limits of El Centro with water service only.

Alternative 4 seems to have the general approval of the residents and the preliminary approval of both HPUD and El Centro. This will however require an agreement between El Centro and HPUD. It is prudent to have LAFCO be the first to consider this given that it is LAFCO that ultimately can approve or deny such an agreement and it is not logical to have the two agencies work on such an agreement without knowing whether or not LAFCO would concur. It is also necessary that LAFCO act first as both agencies have to know what the terms are and agree to said terms.

RECOMMENDATION:

It is the Executive Officers recommendation, that following the public hearing, the Commission consider approval of alternative number 4 as follows and subject to the conditions shown.

- A) Approve and authorize the City of El Centro and the Heber Public Utility District to enter into a new agreement for HPUD to continue to provide water service only to both the Magnolia Gate project and the McCabe Cove project, subject to the conditions listed below;
- B) Make the finding that this approval is not subject to CEQA as it is categorically exempt.
- C) Condition this approval to be effective for 120 days for an agreement to be executed, and absent an executed agreement being presented to LAFCO within 150 days this approval is null and void.
- D) The conditions of approval are as follows;
 - a. The Sphere of Influence for El Centro shall remain as currently in effect with McCabe Road being the southern boundary.
 - b. The Sphere of Influence for HPUD shall be amended to include both Magnolia Gate and McCabe Cove for the sole authorization of HPUD to provide water service within this area and no other services.
 - c. HPUD may annex these two projects to the District or may continue to provide service as an out of boundary service. HPUD annexing the area to the District does not preclude the area from being annexed to the City of El Centro. It will merely allow a special district to provide a service within an incorporated city.
 - d. HPUD and El Centro, within 150 days shall enter into an agreement to establish the terms and conditions under which the water service by HPUD may be continued to be provided. A draft copy of the agreement shall be submitted to the Executive Officer of LAFCO prior to being approved by either/both agencies. A final recorded copy shall then also be

provided to LAFCO. If in the opinion of the Executive Officer the agreement conflicts with the intent of this approval or condition of the CHK, and the EO so advises both agencies the agreement shall not go into effect.

- e. This approval nor the agreement between the two agencies in no way authorizes or is intended to authorize HPUD to provide any services other than water and certainly no service currently not approved by LAFCO as part of the HPUD approved SAP/MSR.
- f. The agreement between HPUD and EC shall state a term for the agreement to expire; shall state that HPUD will not oppose the annexation to the City; shall state that EC does not oppose the SOI for HPUD to overlap the City SOI for HPUD to provide water service only; shall state that EC does not oppose HPUD annexing this area to the District; shall state that water service may transition from HPUD to EC at such time that both agencies agree.
- g. The agreement shall also state that no other service will be provided to the two projects by HPUD unless first approved by LAFCO.
- h. The agreement once approved by LAFCO and executed by both HPUD and EC shall be sent by certified mail to each parcel of land by HPUD.
- i. At such time that El Centro does annex this area, and if/when El Centro provides water service, HPUD shall apply to LAFCO to change the SOI and if applicable the District boundary back to McCabe Road.

Local Agency Formation Commission

IMPERIAL COUNTY

EXECUTIVE OFFICER - JURG HEUBERGER

STAFF REPORT

TO: Commissioner Ed Sniveiy Chairman
Commissioner Bill Cole
Commissioner Randy Hines
Commissioner Jack Dunnam
Commissioner Wayne Van de Graaff

ALTERNATES:

Sam Sharp, alt. Commissioner
Roxanne Stapleton alt. Commissioner
Colleen Ludwig, alt. Commissioner

REPORT DATE: March 30, 1996
FROM: Jurg Heuberger, CEP, Executive Officer

PROJECT: Mr. Lance Hicks representing DESCO Dev. Co., has requested public utility services from the Heber Public Utility District. Primarily Desco has requested approval to obtain water and solid waste services from HPUD. The purpose is to provide service to two previously approved subdivisions along the north side of Mc Cabe Road. The subdivisions are known as the McCabe Cove subdivision and the Magnolia Gate subdivision.

AGENDA ITEM NO: 3
HEARING DATE: April 25, 1996
HEARING LOCATION: County Administration Center Board Room

RECOMMENDATION(S) BY EXECUTIVE OFFICE (In summary order)

- OPTION #1:** Approve service extension as requested
- OPTION #2:** Approve service extension as amended
- OPTION #3:** Deny request for service extension (project)
- OPTION #4:** Continue the project for a period not to exceed 70 days.

STAFF REPORT

TO: Commissioner Ed Snively Chairman
Commissioner Bill Cole
Commissioner Randy Hines
Commissioner Jack Dunnam
Commissioner Wayne Van de Graaff

ALTERNATES:

Sam Sharp, alt. Commissioner
Roxanne Stapleton alt. Commissioner
Colleen Ludwig, alt. Commissioner

REPORT DATE: March 30, 1996

FROM: Jurg Heuberger, CEP, Executive Officer

PROJECT:

Mr. Lance Hicks representing DESCO Dev. Co., has requested public utility services from the Heber Public Utility District. Primarily Desco has requested approval to obtain water and solid waste services from HPUD. The purpose is to provide service to two previously approved subdivisions along the north side of McCabe Road. The subdivisions are known as the McCabe Cove subdivision and the Magnolia Gate subdivision.

AGENDA ITEM NO: 3
HEARING DATE: April 25, 1996
HEARING LOCATION: County Administration Center Board Room

RECOMMENDATION(S) BY EXECUTIVE OFFICE (In summary order)

OPTION #1: Approve service extension as requested
OPTION #2: Approve service extension as amended
OPTION #3: Deny request for service extension (project)
OPTION #4: Continue the project for a period not to exceed 70 days.

EXECUTIVE OFFICERS REPORT

DATA & FACTS:

Project ID	HPUD (HB 1-96)	Service extension
Project Name:	Desco Development	
Applicant/Proponent:	Mr. L. Hicks	
Application Type:	Petition	
Application Filed:	January 16, 1996	EXHIBIT - A
Certificate of Filing:	February 1, 1996	EXHIBIT - B
Area/Size:	Not applicable to project type	
Location/Legal:	Not applicable to project type (this is a service extension of a water line and solid waste collection service along a series of Roads, north and west of Heber).	
Proposed Project:	Extension of water service and solid waste service only.	

TAX AGREEMENT:

Board Action:	Tax agreement is not applicable to extension of service request, therefore no tax agreement required.
Tax Split:	Not applicable.

CEQA:

Lead Agency:	LAFCO
Documentation:	Negative Declaration (mitigated) of environmental impacts, (EEC March 15, 1996) EXHIBIT - C

ANALYSIS:

Project Description:

This is a request by the developer of the Magnolia Gate and the Mc Cabe Cove (formerly Manteur) subdivisions for a water service line extension from the Heber Public Utility District. The subdivisions were previously approved by the County Board of Supervisors and both are nearing expiration under the Map Act.. To date the subdivision map(s) have not been recorded however both are pending following compliance with all conditions. In order to obtain "potable" water, the developer had the option of either installing his own treatment plant or obtaining potable water from an adjacent City or District. The intent with this application therefore is to obtain the approval of LAFCO in order to allow the HPUD to extend its water (only) service line and solid waste collection (only) beyond its District limits to the subdivisions and to provide water to said subdivisions.

LAFCO approval is required before any City or District can extend its "services" beyond its service boundary. This mandate went into effect in January of 1994 under the provisions of Government Code 56133. Prior to this statute it was possible for a City or District to extend service almost without controls. It is to be understood that if this line is approved, it will not be able to service more than the two subdivisions and those connections already in place. The limitation on the line however is that only the existing users at this date and the two proposed projects will be allowed to connect to the line with further or future connections requiring LAFCO approval.

Sphere of Influence:

The proposed project is NOT within the boundary limits of the Districts current Sphere of Influence. In this case the proposed projects are neither within the Sphere of the HPUD nor within any other jurisdictions Sphere. In reality, the City of El Centro has requested a Sphere amendment (currently rejected by LAFCO staff) that would place the two projects within its Sphere. For a service extension to be allowable, it must be within the Sphere of Influence of the service agency, unless LAFCO can make findings.

CEQA:

LAFCO was lead agency for purposes of CEQA. The Executive Officer prepared the Initial Study and the County's Environmental Evaluation Committee considered the project on March 15, 1996. Said committee recommended that the project receive a Negative Declaration of Environmental Impacts since no significant impacts were identified. To the knowledge of the Executive Officer the documents are in compliance with CEQA and no information has been received to show that the project will have a significant affect on the environment. As a special NOTE, an extension of such a service line does have the potential for "growth inducement" into an area. If this were an isolated area and more particularly an area not planned for urban development, and further were it for a new "proposed" project, the "growth inducement" argument would be a reason for

recommending denial. In this case however, the line merely extends into an area already planned for urban development by the County and the District, and along which several subdivisions already exist. The additional land that can be developed is minimal, and said lands will require the availability of potable water.

Cortese/Knox Reorganization Act:

Government Code Section 56841 specifically requires that certain factors shall be considered in the review of any proposal, and shall include but not be limited to Items A through I.

(A) Population, population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.

Comment: The proposed project is within the El Centro Urban Area as defined by the General Plan for the County of Imperial. This Urban Area extends all the way to Mc Cabe Road on the south.

(B) Need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas.

'Services,' as used in this subdivision, refers to governmental services whether or not the services are services which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.

Comment: The HPUD will if a contract between the developer and the District is reached, provide water only to the proposed two subdivision, and will not make that service available for any other contiguous land owners, except those currently being serviced by said line. This line will not be extended beyond the approved limits set by LAFCO.

(C) The effect of the proposed action and of alternative actions, on adjacent area, on mutual social and economic interests, and on the local governmental structure of the County.

Comment: The proposed service extension will have little affect on the social and economic interests of the area.

(D) The conformity of both the proposed and its anticipated effect with both the adopted Commission policies on providing planned, orderly, efficient pattern of urban development, and the policies and priorities set forth in Section 56377.

Comment: The proposed project appears to be in conformity with both LAFCO policy and planned orderly development and while not yet within the Sphere of Influence of El Centro, it is very likely that in the near future it will be in the Sphere of E.C..

(E) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.

Comment: This project will not reduce (significantly) any agricultural lands, nor will it have a significant affect on surrounding agricultural land uses.

(F) The definitiveness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or of corridors of unincorporated territory and other similar matters affecting the proposed boundaries.

Comment: This project meets the requirements of the Cortese/Knox Reorganization Act and LAFCO policies.

(G) Consistent with City and County General and Specific Plans.

Comment: The project is considered consistent with the Imperial County General Plan.

(H) The Sphere of Influence for any local agency, which may be applicable to the proposal being reviewed.

Comment: This area is NOT within the current Sphere of Influence of the City of El Centro nor within HPUD's Sphere, however if the application currently on file were to be approved, it would be within E.C.

(I) The comments of any affected local agencies.

Comment: No comments have been received for this project by any responsible agency, or any individual.

Public Notice:

Public notice for the proposed project hearing before the Imperial County Local Agency Formation Commission has been given, according to Section 56834 and 56835. Notice was issued in the form of a publication in the Imperial Valley Press at least fifteen (15) days prior or said hearing. In addition, direct mail notices were at least sent to all property owners within one half mile in the incorporated territory, and within 300 feet of the unincorporated area and one-half mile within the unincorporated areas.

Report:

In accordance with Section 56833, the Executive Officer has prepared a report, and presented said report to your Commission and to any public member requesting such report. In addition, a copy of said report has been issued to the applicant, HPUD, the City of El Centro, Imperial (Public Works, Planning, City Manager), County Counsel, County Administrative Office, County Public Works, Imperial Irrigation District, El Centro School District, and the El Centro Regional Medical Center.

EXECUTIVE OFFICERS RECOMMENDATION

RECOMMENDATION:

It is the recommendation of the Executive Officer that LAFCO conduct a public hearing and consider all information presented in both written and oral form. The Executive Officer then recommends that LAFCO take the following action;

- 1: Certify the Negative Declaration of environmental impacts, as prepared by the Executive Officer on recommendation of the County Environmental Evaluation Committee, and on the basis of the Initial Study and all comments received, that the project will not have a significant affect on the environment, and no substantial evidence to show that it will have an impact of significance has been found.
- 2: Make the finding that this project is in substantial compliance with the provisions of the Cortese/Knox Reorganization act and the Imperial County LAFCO Policy, and Procedures, and meets the requirements of Gov. Code section 56133.
- 3: Approve the **WATER service** extension as requested and subject to all of the following conditions;
 - A. The Heber Public Utility District shall be allowed to extend its water and solid waste collection service from the current District limits to the two subdivisions identified herein, and no further.
 - B. Water service from this extended water line may, at the District's discretion be connected to, or be allowed to service any parcel that is directly contiguous with the water line on either side, provided it is first approved (administratively) by the Executive Officer. This water line may however not extend, without prior LAFCO approval to any parcel that is not contiguous to the line at this time. For a parcel to be deemed as being contiguous it shall be a parcel in existence at this time and be physically contiguous to this line along a public Road.
 - C. Service from this line may also be allowed to any existing approved Tract (major subdivision) that has already been recorded at the time of this approval, and that is contiguous to this line. It shall however not be extended beyond the limits of such an approved subdivision.
 - D. The service line shall be sized according to the Engineered Water Plan of the District at a minimum and if determined necessary by the District's Engineer may be increased in size. In the absence of such an approved plan, the District Engineer shall file a written statement with LAFCO on the required size and its capacity or limits. However it shall be the District Engineers responsibility to assure adequate flow.

- E. The line shall be sized to provide an adequate flow of potable water to the areas intended to be served by the line. It shall also be designed with sufficient capacity to provide fire protection through the use of standard fire hydrants. There is no obligation for the District to install fire hydrants at this time, however the District may do so at its own discretion.
- F. The District is encouraged to practice water conservation measures, and is thus allowed to limit its water service for use to potable demand requirements only. The District may as a condition require that landscaping or irrigation in general be from a system other than the District's potable water system.
- G. The District may enter into an agreement or contract with the Developer for the installation of the water line. The District as part of this contract shall delineate the terms and conditions under which connection to this line by any contiguous land owner may be allowed. However until such an agreement is executed and until the necessary encroachment permits are obtained from the County Public Works Department for the installation of the line, if installed in County right-of-way, the actual construction of the line shall not proceed.
- H. The District shall provide a copy of the contract or agreement to LAFCO. This agreement or contract shall be recorded along with the LAFCO documents by the Executive Officer.

4: Authorize the Executive Officer to forward the Resolution of approval to the District. This project does not require the District to act as a Conducting Authority, however it does require the District to enter into a contract with all "users" of said line and a copy of said contract is to be presented to LAFCO.

5: Nothing within the approval by LAFCO for this service extension shall limit or set the costs for the installation of, the maintenance of, or the use of the water line.

6: The expansion or extension of this service line beyond its current location to other areas within the unincorporated area, provided it is within the Sphere of Influence of HPUD, will require the approval of LAFCO. The District shall not extend the line beyond the approved locations delineated herein..

SPECIAL FINDINGS:

LAFCO in approving this project makes the following special findings and conditions due to the fact that the proposed extension of the water line is beyond the Sphere of Influence of both El Centro and HPUD, however in the future may be within the City of El Centro's Sphere of Influence.

- a) While the previously approved subdivisions are not within the Sphere of HPUD or El Centro at this time, they are in need of potable water, and

- b) While the extension of a water service line could be obtained from the City of El Centro in the future, it is currently not feasible to do so, and
- c) The HPUD does currently have the capacity and capability to provide an interim connection, and
- d) The City of El Centro and the HPUD have met with the Executive Officer and have independently approved this temporary arrangement, and
- e) It is agreed by HPUD, the City of El Centro, LAFCO and the Developer that this extension by HPUD is temporary until such time that El Centro can and will provide said service, at which time the line between HPUD and this designated service area is to be terminated to the mutual agreement of both El Centro and HPUD, and
- f) The Developer shall record a covenant with the final map to notify all future buyers of this arrangement, noting further that when El Centro can annex this territory, the Developer and all future owners consent without objection to such an annexation, and
- g) The HPUD also agreed not to object to the proposed El Centro Sphere of Influence being along Mc Cabe Road between Highway 86 and Dogwood Road, and
- l) It shall be the responsibility of El Centro, to notify HPUD, as well as all property owners of record, of its intent to service the area with City services, and terminate this temporary service, and
- j) Any fees to be collected from Developer or future property owners for said service shall be the responsibility of and be between El Centro and HPUD, with LAFCO maintaining no jurisdiction or involvement.

LAFCO Policy:

The proposed service extension application appears to be consistent with the Cortese/Knox Reorganization Act, the Imperial LAFCO Policies and Procedures and the County of Imperial General Plan (Chapter IV. B. of LAFCO's Policies, Standards and Procedures). Furthermore, the City of Imperial has the ability to condition the project to receive the necessary public service, and has assured LAFCO that it has the capacity to service the area.

cc: City of El Centro, Public Works Director
 City of El Centro, Attorney
 City of El Centro, Planning Department
 City of El Centro, City Manager
 Richard Inman, County Administrative Officer
 Raymond Comstock, Auditor - Controller
 Mike Smith, Assessor
 Oren Fox, Sheriff
 Imperial Irrigation District, Jesse Silva
 Imperial Irrigation District, M. Clinton
 Fire/OES
 Steve Birdsall, APCD
 Joanne Yeager, Assistant County Counsel
 S. Harry Orfanos, Public Works Director

John L. Morrison, Assist. Planning Director
Desco Development
Waddell Engineering
HPUD
HPUD LAFCO File 1-96

DLW/JH/oss\HPUD196.doc