

EXECUTIVE OFFICER'S REPORT

To The

Local Agency Formation Commission

TO:

COMMISSIONERS

Michael W. Kelley, Chair [Supervisor]
David H. West, Vice-Chair [Public]
Ray Castillo [Supervisor]
Maria Nava-Froelich [City]

ALTERNATE

Jesus E. Escobar [Supervisor]
Robert Amparano [City]
Vacant [Public]

REPORT DATE: November 25, 2021

FROM: Jurg Heuberger, Executive Officer
Paula Graf, Sr. Analyst 

PROJECT: Discussion/Action/Direction regarding a proposed Memorandum of Understanding with Riverside LAFCO for the exchange of principal county status for a proposed annexation of the Salton City Landfill to the Coachella Valley Water District

HEARING DATE: December 16, 2021 **TIME:** 08:30 a.m.

AGENDA ITEM NO: 10

HEARING LOCATION: El Centro City Council Chambers, 1275 Main St., El Centro, CA 92243

RECOMMENDATION(S) BY THE EXECUTIVE OFFICER (In Summary & Order)

- OPTION #1:** Authorize the Chair & Legal Counsel to sign the MOU as presented
- OPTION #2:** Authorize the Chair & Legal Counsel to sign the MOU with modifications
- OPTION #3:** Provide direction to staff

ANAYLSIS

Project

The Commission is being asked to consider a Memorandum of Understanding (MOU) transferring Principal County responsibility from Imperial LAFCO to Riverside LAFCO to process the annexation of the Salton City Solid Waste site to the Coachella Valley Water District to obtain water for operations and dust mitigation.

EXHIBIT A

Background

The County of Imperial owns the Salton City Solid Waste site located at 935 West Highway 86 in Salton City, CA. The site is operated by Burrtec Waste Industries Inc.

Water is needed for operations and for dust mitigation. Due to the remote location of the site, access to water means driving a water truck to Salton City or further.

The Coachella Valley Water District has water available near the site. The County of Imperial proposes to annex this site to the Coachella Valley Water District to obtain water. On November 2, 2021, the Imperial County Board of Supervisors approved moving forward with annexing to the Coachella Valley Water District.

Steps to Transfer Principal County Responsibility from Imperial LAFCO to Riverside LAFCO.

When a change of organization to a multi-county special district is proposed, the Cortese-Knox-Hertzberg Act (CKH) vests exclusive jurisdiction with the commission of the principal county.

The CKH provides a mechanism to transfer jurisdiction to a commission other than the commission of the principal county.

To transfer exclusive jurisdiction over an annexation, the commission of the principal county (Imperial LAFCO) must agree to relinquish jurisdiction and designate a specific commission to assume jurisdiction (Riverside LAFCO). The commission designated must agree to assume jurisdiction.

Principal County is defined in the California Government Code at Section 56066 which reads as follows: "Principal County" means the county having all or the greater portion of the entire assessed value, as shown on the last equalized assessment roll of the county or counties, of all taxable property within a district or districts for which a change of organization or reorganization is proposed."

Government Code Section 56123 and 56124 allow for the transfer of exclusive jurisdiction from the principal county to the affected county LAFCO if all of the following determinations are made:

- a. The commission of the principal county approves of having exclusive jurisdiction vested in another affected county; (Imperial LAFCO)
- b. The commission of the principal county designates the affected county to assume exclusive jurisdiction; and (Imperial LAFCO)

- c. The commission of the affected county so designated agrees to assume exclusive jurisdiction. (Riverside LAFCO)

RECOMMENDATION

OPTION #1: Authorize the Chair and Legal Counsel to sign the MOU as presented for the exchange of principal county status for a proposed annexation of the Salton City Landfill to the Coachella Valley Water District.

Attachments:

EXHIBIT A: Memorandum of Understanding

CC:

Riverside LAFCO

County of Imperial, CEO

County of Imperial, Public Works Director

EXHIBIT A

Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING
FOR EXCHANGE OF PRINCIPAL COUNTY
STATUS FOR THE ANNEXATION OF THE SALTON CITY LANDFILL TO THE
COACHELLA VALLEY WATER DISTRICT BETWEEN
IMPERIAL COUNTY LOCAL AGENCY FORMATION COMMISSION
AND
RIVERSIDE COUNTY LOCAL AGENCY FORMATION COMMISSION

This MEMORANDUM OF UNDERSTANDING (MOU) IS MADE THIS _____ DAY OF _____ **2021** BY AND BETWEEN THE IMPERIAL COUNTY LOCAL AGENCY FORMATION COMMISSION (hereinafter ICLAFCO) and RIVERSIDE COUNTY LOCAL AGENCY FORMATION COMMISSION (hereinafter RCLAFCO).

RECITALS

The following recitals are a substantive part of this MOU:

1. In January 2006 in the Third Appellate District of the Court of Appeal for the State of California, a decision was rendered, identified commonly as the "Truckee Decision," which applied the California Government Code Section 56066 definition of "principal county" to determinations for spheres of influence under the provision of Government Code Section 56425 et seq.
2. Principal County is defined in the California Government Code at Section 56066 which reads as follows: "Principal County" means the county having all or the greater portion of the entire assessed value, as shown on the last equalized assessment roll of the county or counties, of all taxable property within a district or districts for which a change of organization or reorganization is proposed."
3. Government Code Section 56123 and 56124 allow for the transfer of exclusive jurisdiction from the principal county to the affected county LAFCO if all of the following determinations are made:
 - a. The commission of the principal county approves of having exclusive jurisdiction vested in another affected county;
 - b. The commission of the principal county designates the affected county to assume exclusive jurisdiction; and,
 - c. The commission of the affected county so designated agrees to assume exclusive jurisdiction.
4. It has been the practice that the county within which the territory is situated would be the county determining the sphere of influence, having the knowledge of underlying service providers, affected agencies within and surrounding the entity within the affected county, and understanding the development standards and vision within the affected county. This memorandum of understanding is intended to set forth these prior understandings in a formal manner and to identify that, as allowed by Government Code Section 56375(q), the LAFCOs have agreed to transfer authority for processing the annexation (Riverside LAFCO 2020-11-4 & 2020-12-4).

5. This MOU between ICLAFCO and RCLAFCO is to establish the terms and conditions for the vesting of exclusive jurisdiction in the matter of the annexation (Riverside LAFCO 2020-11-4 & 2020-12-4) determinations to the Commission of the affected county from the Commission of the principal county.

6. This MOU between ICLAFCO and RCLAFCO will not affect or be affected by any consideration of changes to the boundary line between the County of Imperial and the County of Riverside. Such boundary changes are processed pursuant to Article 4, Chapter 2, Division 1 of Title 3 of the Government Code (Section 23200 et seq.) and are within the sole jurisdiction of the Board of Supervisors of the affected counties.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS AND PROMISES CONTAINED HEREIN, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Annexation Transfer Determinations:

- a. ICLAFCO acting as principal County does hereby approve the transfer of exclusive jurisdiction to RCLAFCO.
- b. This MOU identifies that the transfers shall be to the affected county within which the territory considered for annexation and,
- c. Acting as the affected County, RCLAFCO agree to assume the exclusive jurisdiction for the annexation determinations within their respective county territory.

2. Term of MOU

The term of this MOU shall commence upon execution of this agreement by both LAFCOs and shall remain in effect until specific action is taken to rescind it in its entirety or to modify the MOU. This MOU constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and is executed without reliance upon any representations or promises not contained herein.

3. Responsibilities for complying with transfer of exclusive jurisdiction:

Each LAFCO shall advise applicant(s) seeking the annexation in the adjacent county of a special district for which they are designated "principal county" that the applicant(s) shall submit said request to the affected county LAFCO. The application requirements, including fees and processing costs, of the LAFCO vested with exclusive jurisdiction shall apply. The LAFCO with exclusive jurisdiction shall include the principal county LAFCO in all notices, provision of staff reports and resolutions related to the sphere of influence consideration process. Nothing in this MOU shall be construed to limit in any way the provision of State Law governing the consideration process for an annexation.

4. Compliance with Government Code Section 56430:

The policies and procedures of the LAFCO vested with exclusive jurisdiction by this MOU shall apply to the processing of the annexation with regard to Government Code Section 56430. Nothing in this section would preclude the LAFCO vested with jurisdiction from using the service review data and/ or determinations prepared by the principal LAFCO for the affected agency.

5. Modification

This MOU constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This MOU may be modified only by subsequent mutual written agreement executed by ICLAFCO and RCLAFCO and will not be effective until signed by all parties.

6. Termination

This MOU may be terminated by either party by giving a 60-day notice in writing following action of the requesting Commission.

7. California Law

This MOU shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the Superior Court of the affected County. The MOU shall be construed as though jointly drafted by the Parties with the assistance of independent legal counsel.

8. Indemnification

ICLAFCO and RCLAFCO each agree to indemnify, defend at their own expense, including attorney's fees, and hold each other harmless from and against all claims, costs, penalties, causes of action, demands, losses and liability of any nature, whatsoever, including but not limited to liability for bodily injury, sickness, disease or death, property damage (including loss of use) or violation of law, caused by or arising out of or related to any negligent act or willful misconduct of that party, its officers or employees or any other agent acting pursuant to its control and performing under this agreement.

9. Notices All notices shall be personally delivered or mailed, via first-class mail to the below listed addresses:

(a) Imperial Local Agency Formation Commission
1122 W. State St, Suite D
El Centro, CA
Attn: Jurg Heuberger, Executive Officer

(b) Riverside Local Agency Formation Commission
6216 Brockton Ave., Suite 111-B
Riverside, CA 92506
Attn: Gary Thompson, Executive Officer

10. Preservation of Agreement

Should a provision of this MOU be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

IN WITNESS WHEREOF, these parties have executed this Agreement on the day and year shown above.

APPROVED AS TO FORM:

General Counsel,
Imperial Local Agency
Formation Commission

IMPERIAL COUNTY LOCAL AGENCY
FORMATION COMMISSION:

By: _____
MICHAEL KELLEY
CHAIR

APPROVED AS TO FORM:

General Counsel,
Riverside Local Agency
Formation Commission

RIVERSIDE COUNTY LOCAL AGENCY
FORMATION COMMISSION:

By: _____
CHAIR