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REPLY TO:  
 ROSEVILLE     ONTARIO

March 26, 2024

**VIA E-MAIL AND U.S. MAIL**

Chair and Members  
Imperial County Local Agency Commission  
300 S. Imperial Ave., Suite 10  
El Centro, CA 92243-3149

Re: The March 28, 2024, Continued Public Hearing from November 16, 2023, and related action to consider the Pioneers Memorial Healthcare District Proposed Annexation (Item 11)

Chair and LAFCO Commission Members:

The City of El Centro (“City”) writes to provide further comment regarding the above agenda item, which was continued from the Commission’s November 16, 2023, public meeting. The City is encouraged to see that the new Executive Officer is recommending the denial of the proposed item<sup>1</sup> because of the adoption of AB 918, which is now in effect.<sup>2</sup> The City supports the Executive Officer’s recommendation that the Commission should deny the expansion of PMHD.<sup>3</sup>

The City expresses its continued objection to the expansion of PMHD and the inclusion of the City in any such expansion, should the Commission not follow the Executive Officer’s recommended action. The City restates and incorporates by reference all comments it has provided in writing and made orally at the November 16, 2023, public meeting (specifically including but not limited to those made regarding CEQA) and all other comments and writings provided by the City to LAFCO on this topic. The City’s November 16, 2023, materials will be provided for your reference and review.

In the event the Commission continues with the Proposed Annexation, whether or not the City is excluded, it is the City’s contention that the Commission will be acting unlawfully and in excess of its jurisdiction. Therefore, this letter is intended to create a record for litigation based upon the record of the November 16, 2023, public meeting, as well as the record of the March 28, 2024, should the Commission vote to approve the Proposed Annexation.

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<sup>1</sup> Continued Public Hearing from November 16, 2023, and related action to consider the adoption of a Negative Declaration of Environmental Impacts, to consider and adopt a fiscal impact study to determine a proposed county-wide tax amount, and the approval/denial for the expansion of the Pioneers Memorial Healthcare District (“PMHD”) to expand its current boundary to cover the entire County of Imperial, or a substantial portion thereof, (“Proposed Annexation”) to include, concurrent therewith, the dissolution of the Heffernan Memorial Healthcare District (“HMHD”). Also, to include directions to the Board of Supervisors to schedule during the next regular election a measure to add a tax to all parcels of land within the County that are allowed to be taxed.

<sup>2</sup> See LAFCO Executive Officer’s Report regarding Item 11, recommendation 1: deny the expansion of PMHD.

<sup>3</sup> The City also notes the strong opposition from HMHD to inclusion in any such expanded District as well as the support from Imperial Valley Healthcare District for denial.

*I. LAFCO's November 16, 2023, Public Hearing Recap and Recent Developments.*

During the November 16, 2023, public meeting, Imperial County (“County”) residents, along with various city officials throughout the County, spoke against the Proposed Annexation and in support of a Countywide healthcare district, while representatives and affiliates of PMHD spoke in support of PMHD’s Resolution of Application #2023-02<sup>4</sup> to expand the district service boundaries to encompass the entire County of Imperial or a substantial portion of it without El Centro. With the overwhelming amount of public input on this item and the establishment of the Imperial Valley Healthcare District (“IVHD”) impending, the Commission ultimately continued the hearing to March 28, 2024, urging HMHD, El Centro Regional Medical Center (“ECRMC”), and PMHD to come up with a program or a solution that would be presented back to the Commission on or before March 28, 2024. The Commission failed to acknowledge the effective date of AB 918 on October 8, 2023, which put in place IVHD. (Health & Safety Code Section 32499.5 et seq)

The purpose of the IVHD is to consolidate and coordinate medical services and improve healthcare access, reimbursement of costs, and cost-sharing benefits for County residents. The installation of the IVHD is the necessary first step in implementing the solution it sought from HMHD, ECRMC, and PMHD. It is both a step backward and legally improper for the Commission to consider moving forward with the Proposed Annexation.

The initial IVHD Board of Directors (“Board of Directors” or “Directors”) was sworn in on February 2, 2024. The Board of Directors was formed in compliance with AB 918 and is made of seven members; HMHD’s seat went to Heffernan board President Rodolfo Valdez; PMHD appointed Pioneers board Vice President Enola Berker; ECRMC’s representative is Arturo Proctor; the City of Holtville chose Laura Goodsell for its representative; the City of Imperial elected Councilmember Katie Burnworth; the Quechan Tribe chose Donald Medart Jr., and the seventh County seat has gone to James Salvador Garcia, the Ocotillo/Seeley area representative.

Under AB 918, LAFCO’s role is not to conduct annexation proceedings but to coordinate with the initial board regarding two feasibility studies, assist with a special tax election, assist in establishing voting districts (normally a role only for the public agency itself), and govern IVHD’s change of organization now that the initial formation is complete. The role in formation and organization is more limited than that under an annexation, but there remains a defined role set by statute.

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<sup>4</sup> PMHD submitted Resolution Application #2023-02 on January 24, 2023.

*II. Approval of the Proposed Annexation exceeds LAFCO's Statutory Powers.*

Government Code section 56375 states, "The commission shall have all of the following powers and duties subject to any limitations upon its jurisdiction..." Control over annexation generally falls under a LAFCO's exclusive authority. A reasonable limitation would arise when another law (special legislation) is passed that limits the ability of a LAFCO to exercise exclusive jurisdiction over annexation matters becomes limited. The recommendations of the former Executive Director conflict with the duties assigned to LAFCO under AB 918 and would require that LAFCO exercise its authority beyond the scope and intent of Government Code section 56375. Further, the broad powers of LAFCO do not extend to actions that violate the intent and purpose of LAFCOs as defined in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 ("Act"). In this instance, the recommendations of the former Executive Director are in direct violation of another state law, AB 918, and justification for proceeding with the Proposed Annexation over-extends the authority granted to a LAFCO under Government Code section 56375.

*III. Approval of the Proposed Annexation Constitutes an Abuse of Discretion by the Commission.*

A LAFCO annexation determination is a quasi-legislative act subject to judicial review under the ordinary mandamus provisions of Code of Civil Procedure section 1085. (*Sierra Club v. San Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489, 495.) A party may seek to set aside the determination of an LAFCO on the grounds it violated the Act (Gov Code § 56107, subd. (c)). In such an action, courts may inquire as to "whether there was fraud or a prejudicial abuse of discretion. Prejudicial abuse of discretion is established if the court finds that the determination or decision is not supported by substantial evidence in light of the whole record." (*Ibid.*) (§ 56107, subd. (a).)

The November 16, 2023, recommendation provides that PMHD Board of Directors shall be increased from 5 members to 7 members. Until the two new members can be elected during a normal election, the two new members shall be appointed by the Board of Supervisors. One member shall be a resident of the City of El Centro but shall not be an elected official or a staff member of ECRMC or the City of El Centro. The second member shall be a resident of the City of Calexico and shall not be an elected official or a staff member of the HMHD.

The expanded 7-member PMHD Board shall, within 12 months, create 7 electoral districts from which the PMHD Board shall be elected. During the next available standard election cycle, three board members shall be up for election, and two years later, the remaining four shall be up for election.

This proposal fails to comply with the LAFCO law. The authority under Government Code section 56886(n) is not available to allow the Commission to create its own structure for the PMHD Board. That section applies only as follows: "[t]he designation of (1) the method for the selection

of members of the legislative body of a district or (2) the number of those members, or (3) both, where the proceedings are for a consolidation, or a reorganization providing for a consolidation or formation of a new district and the principal act provides for alternative methods of that selection or for varying numbers of those members, or both.” (Emphasis added). The provisions set out in the recommendation of the former Executive Director do not meet the requirements of Health & Safety Code Sections 32100 for the membership of a hospital board under the underlying act, i.e. the Board may be extended to 7 members or greater, and zones may be formed only by election. If the LAFCO authority asserted here exists, then the structure of the Board has to be one or the other of the two described above; consistent with LAFCO’s own argument as to its authority, as the provisions must be consistent with the provisions of 56100(b).<sup>5</sup>

The law does not provide the authority for LAFCO to restructure the PMHD Board as set out in the recommendations of the former Executive Director, to do so would constitute an abuse of discretion.

*IV. Commission Authority.*

Notwithstanding, discretion to act lies with the LAFCO Board. Nothing in the law compels the Commission to approve the Proposed Annexation or to approve it at this time. The Commission has the legal authority to refuse to proceed with the Proposed Annexation; such action is consistent with the Executive Officer’s recommendation and would not impede the IVHD.

*V. Failure to Comply with CEQA*

The City’s previous comments regarding the failure to comply with CEQA are set out in the record of the November 16, 2023, public meeting and will be provided separately in the record of this public meeting (March 28, 2024).

*VI. LAFCO’s Purpose is unmet if the Proposed Annexation is approved.*

LAFCO was not intended as the political tool it has been made to be. LAFCO’s stated purpose is to guard against duplication of services resulting from the indiscriminate formation of new local agencies or the haphazard annexation of territory to existing local agencies. (See *Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal. App. 3d 873, 884; see also Govt. Code §56001). The Act, contained in Government Code Sections 56000-57550, was passed with the purposes of (1) preserving agricultural land resources, (2) discouraging urban sprawl, and (3) efficiently extending government services. (See Govt Code § 56001). The Proposed Annexation considered and partially approved on November 16, 2023, as attached in the March 28, 2024, staff report is in opposition to the Legislature’s intent in creating the Act and defined purpose of the

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<sup>5</sup> As used here, the “principal act” means the underlying action that governs PMHD, found at Health & Safety Code section 56056: “Principal act” means, in the case of a district, the law under which the district was formed and, in the case of a city, the general laws or the city charter.” It is not clear here whether the principal act is the entire Division 23, not the separate chapters: AB 918 is codified as Chapter 11 of Division 23 of the Health & Safety Code, commencing with section 32499.5. It is not part of the same principal act under which PMHD was formed but special legislation set out in Chapter 11 of Division 23.

Act, as stated in Government Code section 56001.

*VII. LAFCO Lacks Authority to Proceed with the Proposed Annexation and Composition of the Board.*

AB 918 took immediate effect on October 8, 2023. AB 918 expressly governs the formation and implementation of the IVHD. However, LAFCO's former Executive Director explicitly stated that despite AB 918, he relied on the provisions of Government Code Section 56100(b) to proceed with the processing of the Proposed Annexation absent either PMHD's withdrawal of its petition or court order.

Government Code Section 56100(b) states:

“Notwithstanding any other law, proceedings for the formation of a district shall be conducted as authorized by the principal act of the district proposed to be formed, except that the commission shall serve as the conducting authority and the procedural requirements of this division shall apply and shall prevail in the event of a conflict with the procedural requirements of the principal act of the district. In the event of such a conflict, the commission shall specify the procedural requirements that apply, consistent with the requirements of this section.”

AB 918 provides a formation process for the IVHD that does not include LAFCO as the “conducting authority,” so that LAFCO previously has taken the position that the LAFCO laws, as outlined in the Act, supersede the provisions of AB 918. That legal argument is flawed for several reasons, mainly because AB 918 is special legislation and, as such, applies under the provisions of California Constitution Article IV, Section 16, as cited in Section 3 of AB 918, which provides as follows:

“(a) All laws of a general nature have uniform operation.

(b) A local or special statute is invalid in any case if a general statute can be made applicable.”

As supported by case law, special legislation supersedes general legislation, such as the Act, based upon the findings of the need for that specific legislation for a specific area, in this case, the County. The need for AB 918 arose for that reason: PMHD's refusal to cooperate in moving forward in a manner that would make healthcare within the County financially viable.

Section 3 of AB 918 provides as follows:

“The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique community needs in the County of Imperial that would be served by the formation of the Imperial Valley Healthcare District to include all of the County of Imperial to provide health care services for an underserved population that suffers from a higher than average prevalence of preventable disease.”

In an unpublished opinion, the Court of Appeal for the Second District *in County of Los Angeles v. State* held that Senate Bill 985, applicable only to Los Angeles County as a special statute, was not invalid because Article IV, Section 16 of the California Constitution does not prohibit the Legislature from enacting statutes that are applicable solely to a particular county or local entity. Further, the court reasoned that the “unique size, demographics, and redistricting history in Los Angeles” made it reasonable for the Legislature to reach the conclusion that “it would benefit the state as a whole if the largest county in the state were required to create an independent redistricting commission, thereby benefitting the largest number of citizens, given that county’s unique circumstances and history.”<sup>6</sup>

In *White v. State*, the Court of Appeal for the Fourth District, in reviewing a challenge to the validity of legislation allocating property and sale tax revenues to the bankrupt county’s general fund, held, “[i]t is well settled that article IV, section 16 does not prohibit the Legislature from enacting statutes that are applicable solely to a particular county or local entity.” (See *White v. State*, 88 Cal. App.4th 298, 305 (2001)). The Court explained that by its express terms, Article IV, Section 16 prohibits this type of legislation only if “a general statute can be made applicable.” *Id.* The court went on to explain that “[i]n determining whether “a general statute can be made applicable,” the issue is not whether the Legislature could conceivably enact a similar statute affecting every locality. Rather, it is whether “there is a rational relationship between the purpose of the enactment ... and the singling out of [a single] ... county affected by the statute.” *Id.* In *White*, the court determined that within the meaning of Article IV, Section 16, the bill could not be made applicable due to the uniquely severe fiscal crisis being experienced by affected local agencies and that, therefore, the special statute was necessary. *Id.*

The commonality between the cases suggests that when there is a unique situation, such as the one concerning the creation and formation of the IVHD as outlined in AB 918, the courts hold that such uniqueness means that the special legislation is not only necessary but that the general statute within the meaning of Article IV, Section 16 cannot be made applicable. The scope of the special legislation to supersede general law is based upon all of the findings set out in Section 1 of AB 918, attached and incorporated, as well as those in Section 5 regarding the immediate financial need for the bill. As discussed in the case law, when such findings are made, the special legislation supersedes the general legislation, such as the LAFCO seeks to assert here.

LAFCO does not have the authority to preside over the Proposed Annexation except for the role provided for LAFCO in AB 918. Essentially, AB 918, as conflicting (special) state law, has removed from the hands of LAFCO the ability to make any decisions or actions that are inconsistent with AB 918. The Proposed Annexation is directly in conflict with the provisions of AB 918. Not only is the Legislature’s intent clear, but case law also supports the notion that a LAFCO does not have unrestricted authority to reign over all matters in connection with duties as defined in the Act. In *Tracy Rural Cnty. Fire Prot. Dist. v. Loc. Agency Formation Com. of San Joaquin Cnty.*, 84 Cal. App. 5th 91, 107 (2022), the appellate court thoroughly discussed the scope and limits of a LAFCO’s authority. The California Supreme Court denied certiorari and refused to

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<sup>6</sup> County of Los Angeles v. State, 2020 WL 204513, Not Officially Published

review the decision. The Supreme Court's denial of certiorari suggests that it, too, finds that a LAFCO's authority is not beyond the realms of limitation.

Now that the new board of the IVHD has been established and is rapidly moving forward to meet the requirements of AB 918, LAFCO needs to work with the new board as the conducting authority. The dissolution of PMHD and HMHD must proceed under AB 918 and will occur before January 1, 2025.

*VIII. Discriminatory Effect of the Recommendations by LAFCO's Former Executive Director.*

The approval of the recommendations of the former Executive Director would effectively remove the Quechan Tribe from participation in membership of the IVHD Board in a manner that is discriminatory on the basis of race, national origin, and ethnicity. In addition, by treating the action only as an expansion of PMHD, LAFCO intentionally eliminates representation or participation by the HMHD Board.

Health & Safety Code section 32100.05 states: "(a) Notwithstanding Sections 32100 and 32100.01, the local agency formation commission, in approving either a consolidation of districts or the reorganization of two or more districts into a single hospital district may, pursuant to subdivisions (k) and (n) of Section 56886 of the Government Code, increase the number of directors to serve on the board of directors of the consolidated or reorganized district to 7, 9, or 11, who shall be members of the board of directors of the districts to be consolidated or reorganized as of the effective date of the consolidation or reorganization."

Essentially, LAFCO is forming a new countywide district controlled by PMHD rather than the newly established IVHD Board. By treating this as an annexation rather than a consolidation, the former Executive Director ignored the provisions for such formation as stated in Health & Safety Code section 32002 "... In addition to all other requirements regarding formation of hospital districts, no hearing upon the petition to form a hospital district shall be held until comments and recommendations of the Office of Statewide Health Planning and Development and each area health planning agency having territory within the proposed district, concerning the need for new or additional health facilities in the area to be served by the proposed district have been filed with the supervising authority. The Office of Statewide Health Planning and Development and the area health planning agency or agencies shall submit these comments and recommendations to the supervising authority within 60 days after receiving a request therefor from the proponents. Failure to submit these comments to the supervising body within 60 days shall be deemed to constitute a 'no comment' response.' If such guidance has been obtained, it is not part of the LAFCO file."

*IX. Impact of the Cities of El Centro and Calexico's Resolutions in Opposition to the Proposed Annexation.*

While it may seem that LAFCO has broad discretion to decide matters related to annexation, the Legislature was mindful not to neglect the valuable input affected cities and districts may have when a proposed change of organization or reorganization takes place. Government Code Section 56668.3(b) states, “[t]he commission shall give great weight to any resolution raising objections to the actions that is filed by a city or a district.”

While the phrase “great weight” is not expressly defined, at a minimum, it can be read to mean that the Commission is obliged to take under strong consideration the objections raised by cities. The record of November 16, 2023, (materials included with this letter) contains a resolution passed by the cities of El Centro and Calexico opposing the Proposed Annexation. (See Enclosed Resolutions from the Cities of El Centro and Calexico). Since then, HMHD has also submitted a letter of opposition, and the IVHD has submitted a letter of support for the denial of the Proposed Annexation.

Therefore, for the reasons set forth in this letter and consistent with the Executive Officer’s recommendation, the City respectfully urges the Commission to accept that recommendation and deny the Proposed Annexation. Any additional delay – such as that resulting from a continuance - creates confusion and continues the barrage of inaccurate statements regarding this item. If the Commission chooses to continue the hearing on this item, the City strongly requests that the hearing be made available via Zoom.

Sincerely,



Elizabeth L. Martyn, City Attorney  
City of El Centro

ELM/RMB

cc. Steve Walker, Walker & Driscoll

Attachments (may be provided separately):  
City of El Centro’s November 16, 2023, written comment regarding the Proposed Annexation.  
City of El Centro’s previously provided CEQA letter.