

From: Pellman, Lloyd W.
Sent: Thursday, March 18, 2021 9:09 AM
To: Blom, Erica
Cc: Simonds,Keene;
Subject: Special District Advisory Committee Meeting of March 19, 2021 Agenda Item 5b

This is to comment on item 5b on behalf of the Indian Water Authority.

LAFCO statutes limit its authority to dealing with the principal acts of agencies which may participate in a GSA, since it is by virtue of the principal act that municipal services are provided.

The state legislation regarding SGMA has no reference to the processes of LAFCO, and the creation of a GSA has no immediate impact on an agency's services under its principal act. A GSA is not providing municipal services as those services are provided by the member agencies.

There is nothing in the LAFCO statutes that authorizes reviewing the eligibility of an agency to participate in a GSA; that determination of eligibility should be made by the State [Water Resources Control Board](#). If the [Upper San Luis Rey Resource Conservation District](#) is eligible to participate that determination should be made [by the SWRCB That SWRCB has provided non-binding advisory opinions to other resource conservation districts regarding participation is reflected in the public file on this issue.](#) But there has been no such letter placed into the public record regarding this resource conservation district's active powers as opposed to its possible powers under its principal act..

LAFCO has completed its statutory role by approval of the Municipal Service Review, including the addendum, at its meeting on February 1. To modify that action without a timely request for reconsideration would be [an improper and dangerous precedent. To substitute a review and analysis of past activities instead of a review of current active powers will negate the statutory role and responsibilities of LAFCO.](#) The proper process to reach a different conclusion [is for the RCD to file an application with LAFCO for approval to activate its latent power.](#)

Subsequent to the Commission approval of the final MSR on February 1 and the accompanying discussion regarding GSA eligibility, a Court of Appeals opinion was issued which impacts this activity. On March 3, 2021, Justice Arthur Gilbert authored an opinion in *San Luis Obispo LAFCO v. City of Pismo Beach*, in a case involving attorney's fees in a dispute over a LAFCO decision. The court concluded that LAFCOs are limited in their powers to those expressly set forth in Cortese-Knox-Hertzberg or are indispensable to fulfill the purposes for which LAFCOs exist. Absent statutory authority to collect attorney's fees after a victory in litigation, the indemnification agreement included in the LAFCO application was not enforceable.

[Under this very recent appellate Pismo Beach decision](#) ,the state, not LAFCO, should decide the issue of eligibility as LAFCO does not have such a statutory authority or responsibility since the GSA will not be providing any municipal services. LAFCO should not insert itself into an issue that it need not [and is not authorized to](#) address further, having met its statutory responsibility of generating a final Municipal Service Review on February 1, 2021 [by determining that the RCD's only current active powers are wildlife conservation and soil erosion.](#)

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