



LAFCO - San Luis Obispo - Local Agency Formation Commission  
SLO LAFCO - Serving the Area of San Luis Obispo County

**MEMORANDUM TO COMMISSIONERS**

TO: LAFCO COMMISSIONERS  
FROM: BRIAN A. PIERIK, LAFCO LEGAL COUNSEL  
RE: ESTRELLA-EL POMAR-CRESTON WATER DISTRICT  
DATE: APRIL 18, 2019

**COMMISSIONERS**

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BRIAN A. PIERIK  
Legal Counsel

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**Recommendation.** It is respectfully recommended that Commission receive and file this memorandum.

This Memorandum is submitted to you in response to your request at the LAFCO meeting on March 21, 2019 regarding the law as related to the action taken by the Commission on February 21, 2019 with respect to the Estrella-El Pomar-Creston Water District (“EPCWD”).

**POWERS AND DUTIES OF LAFCO**

Government Code Section 56375 of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 sets forth the powers and duties of the Commission which include the power to “review and approve with or without amendment, wholly, partially, or conditionally, or disapprove proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission.”

The Court in City of Ceres v. City of Modesto (1969) 274 Cal. App. 2d 545, 550 states that the Commission also has necessarily implied powers:

“A local agency formation commission, commonly referred to as LAFCO, is a creature of the Legislature and has only those express (or necessarily implied) powers which are specifically granted to it by statute. In short, LAFCO is a public entity created by legislative fiat, and like similarly constituted public entities is a body of special and limited jurisdiction (Conover v. Board of Equalization, 44 Cal.App.2d 283 [112 P.2d 341]).”

With regard to the subject of “implied powers”, the Court in Zack v. Marin Emergency Radio Authority (2004) 118 Cal. App. 4th 617, 632 states:

“Implied powers may arise not only by statute (see, e.g., Wat.Code, § 31000 [water districts may exercise powers “expressly granted or necessarily implied therefrom”] ), but also under common law rules of

statutory construction. (Forest Lawn Co. v. City Council (1963) 60 Cal.2d 516, 519–520, 35 Cal.Rptr. 65, 386 P.2d 665.)”

The Court in the Zack case also states in regard to implied powers (118 Cal. App. 4th 617, 632):

“The implied powers of municipal corporations have variously been described as those “[p]owers necessarily arising from those expressly granted, ... those reasonably inferred from the powers expressly granted,” and those “[p]owers recognized as indispensable to local civil government to enable the municipality to fulfill the objects and purposes for which it was organized and brought into existence.” (2A McQuillin, Municipal Corporations (3d ed. rev.1996) § 10.12, p. 337, fns. omitted; Hurst v. City of Burlingame (1929) 207 Cal. 134, 138, 277 P. 308; City of Salinas v. Pacific Tel. & Tel. Co. (1946) 72 Cal.App.2d 494, 498–499, 164 P.2d 905; Frisbee v. O’Connor (1932) 119 Cal.App. 601, 603–604, 7 P.2d 316.)”

#### ACTIONS BY LAFCO REGARDING CONDITION COMPLIANCE BY EPCWD

On April 6, 2017, LAFCO approved Resolution No. 2017-02 entitled: “Resolution Making Determinations and Approving the Formation of the Estrella-El Pomar-Creston Water District, Sphere of Influence, and Environmental Determination”. The Resolution included 13 Conditions.

On December 8, 2017, there was executed and recorded with the County Clerk-Recorder a “Certificate of Completion” for the Estrella-El Pomar-Creston Water District.

On November 15, 2018 at the LAFCO meeting, there was a Condition Compliance Report presented to the Commissioners regarding the 13 Conditions of Resolution No. 2017-02. The Commission voted to extend the approval for a period of time (two years) and require a condition compliance report.

Also at the November 15, 2018 LAFCO meeting, there was a discussion by the Commissioners in which Commission indicated it wanted more information about the possibility of modifying or deleting Condition 11, clarification of the term “GSA Partner” and implementation of the Memorandum of Agreement between the Groundwater Sustainability Agencies in the Paso Basin.

At the February 21, 2019 LAFCO meeting, there was presented to the Commission Agenda item A-2 for Replacement of Condition #11 and other Additional Information regarding Condition Compliance Estrella-El Pomar-Creston Water District. After the staff report was presented to the Commission and following public comment and discussion by the Commissioners, the Commission voted to adopt Resolution No. 2019-02 finding that the EPCWD had complied with all of the Conditions of Approval including the replacement language for Condition No. 11.

As noted, the Commission has the power to make conditional approvals such as Resolution No. 2017-02 for EPCWD. The Commission also has the power to conduct a condition compliance review to determine whether there has been compliance with the conditions. The Commission may conduct that compliance review at times determined by the Commission to be appropriate. Thus, the Commission had the power on February 21, 2019 to conduct a further compliance review regarding Resolution No. 2017-02.

### RECONSIDERATION

The question was raised at the March 21, 2019 LAFCO meeting in regard to the rules on reconsideration. Reconsideration is referenced in Government Code Section 56895 which allows for any person or affected agency to file a written request with the executive officer requesting amendments to or reconsideration of a LAFCO Resolution. The written request must be submitted with 30 days of adoption of the Resolution. The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration.

Here, there was no reconsideration on February 21, 2019 of the LAFCO action taken on November 15, 2018 pursuant to Government Code Section 56895. Instead, on February 21, 2019, as it was legally entitled to do, LAFCO conducted a further condition compliance review of the Conditions of Resolution 2017-02 including the proposed replacement of Condition 11. After conducting this condition compliance review, LAFCO adopted No. 2019-02 finding that EPCWD was in compliance with the conditions of approval.

### CONCLUSION

For the foregoing reasons, LAFCO did have the power on February 21, 2019 to adopt Resolution No 2019-02 finding that the EPCWD had complied with all of the Conditions of Approval including the replacement language for Condition No. 11.

Respectfully submitted,

Brian A. Pierik  
LAFCO Legal Counsel