

Heber Public Utility District BOARD OF DIRECTORS

MEETING DATE: October 21, 2021

FROM: Laura Fischer, General Manager

SUBJECT: Consider adoption of Resolution Number 2021-14 requesting Independent Special District Membership on the Imperial County Local Agency Formation Commission and Approving the Memorandum of Understanding Regarding Membership and Funding.

ISSUE:

Shall the Board of Directors consider adoption of Resolution Number 2021-14 requesting Independent Special District Membership on the Imperial County Local Agency Formation Commission and Approving the Memorandum of Understanding Regarding Membership and Funding?

GENERAL MANAGER'S RECOMMENDATION:

Do Not Approve; Table for later meeting.

Although the IID and Special Districts, including the HPUD Board of Directors, has agreed to the cost share proposal, the MOU that was presented to the Special District at our last meeting has some language that gives me some concern about our ability to terminate participation in LAFCO.

Language in Question:

This MOU shall be in full force and effect until such time as an effective majority of the independent special districts, **representing a majority of their combined populations**, votes to terminate their participation.

Questions about Combined Population Numbers:

- 1) IID has stated that 60% of their energy customers are in Riverside County. If that population is taken into the combined populations of Special District, then we will never have the number to achieve a majority of the combined population. Thus, all twelve of the smaller Special Districts could not vote to terminate our participation on LAFCO without the IID.
- 2) Assuming the Riverside County population are NOT counted in the total population. What are the populations of each Special District? The IID serves the entire Imperial County, what combination of other Special District's populations will be needed to terminate participation on LAFCO? Example, HPUD serves 6,600, so we would need to have the vote of several large Special Districts to achieve the majority of the combined population.
- 3) Is the language part of the statute or mandated? If not, can it be revised to just a majority vote of the Special Districts regardless of population?

I have emailed and called Mr. Jurg Heuberger, Executive Director of LAFCO, to ask the question and he said he would research the issue and get back to me. I talked with the Executive Director of the Evergreen Cemetery District who called the attorney for IID to bring our concerns to the IID so they are aware of the issue. Additionally, I called Mr. Chris Palmer, Senior Public Affairs Field Coordinator, who represents our area and asked him the question. He and his legal team will also be reviewing the issue and getting back to me.

For this reason, I am recommending that this item be tabled until it can be researched to determine how HPUD could (if the need arose) terminate our participation on LAFCO.

FISCAL IMPACT: Included in the FY 2021-22 budget is \$5,000, which is split across all budgets according to HPUD’s administration cost allocation.

HPUD Budget for LAFCO	
water	2,080.80
sewer	2,080.80
parks	832.32
trash	208.08
TOTAL	5,202.00

DISCUSSION:

In September the HPUD Board of Directors voted to direct staff to continue to negotiate with Special Districts to support Special Districts joining LAFCO, and to accept the IID’s offer to pay 92.5% of the Special District share of LAFCO budget.

Since that meeting, the IID and LAFCO drafted the MOU and Resolution that is attached to your report. The documents were sent to Special Districts on Friday at 9pm and a meeting was requested for the following Wednesday. I had a concern with some language in the MOU and called to speak with Mr. Heuberger about them. He said that my interpretation was correct and that the IID could decide (without a majority vote of all Special Districts) to not take the assigned seat on the LAFCO Board and with that decision, only pay 50% of the total LAFCO budget.

If they were to take that action, the remaining Special District would have to pay the balance. This decision would force us (Special Districts) to either come up with the money or exit LAFCO.

After some discussion, Mr. Hamby removed the language that allowed for that action.

When preparing for this meeting, I reviewed the language again, and noticed the section that states “This MOU shall be in full force and effect until such time as an effective majority of the independent special districts, **representing a majority of their combined populations**, votes to terminate their participation.” I didn’t recognize it prior to last week.

HISTORY AND BACKUP:

In March 2018, Board President, Mr. Nolasco, and I attended a meeting with LAFCO and other Special District representatives. At that meeting we were told that with a simple affirmative vote from local Special District’s representatives, then Special Districts will have two seats on the LAFCO Board. The cost share formula to have a seat on the LAFCO Board was discussed. When we left the meeting, we understood that since IID is a Special District and their revenues are much greater than any other Special District in the area, they would pay the greatest share of the Special District’s portion of LAFCO’s total budget.

SPECIAL DISTRICTS	PRO-RATED COST
Imperial Irrigation District	116,668
Pioneers Memorial Healthcare District	0
Heber Public Utility District	32,333
Salton Community Services District	21,254
Bard Water District	17,193
Heffernan Memorial Healthcare District	11,060
Central Valley Cemetery District	10,974
Niland Sanitary District (Imperial)	7,666
Seeley County Water District	6,995
Riverview Cemetery District	4,630
Winterhaven Water District	2,914
Palo Verde County Water District	1,272
Bombay Beach Community Service District	351
Bard Resource Conservation District	28
Winterhaven Fire Protection District (Dissolved)	0
Brawley County Water District (Dependent)	0
TOTAL SPECIAL DISTRICT SHARE OF BUDGET	\$ 233,335

In 2018 during negotiations, IID stated they would only pay 50% of 1/3 of the total LAFCO Budget of \$700,005. The cost share table is below.

As you can see, the cost that HPDU would have to bear was \$32,333 per year. This is a huge amount for our District and we did not agree to this cost, as it is out of proportion for a community of our size. For example, a city like Holtville that has about the same population, pays \$4,000 per year. Keep in mind that this is not a one time cost, it will be reoccurring every year and will most likely increase every year. The formula that is used to determine the cost share isn't changed easily.

Shortly after it was determined that Special Districts did not agree to joining LAFCO with IID paying 50%, the IID Board voted to pay a specific amount of the total cost. Again, HPUD and other Special Districts did not agree as the increase in the LAFCO budget would fall upon the 12 small Special Districts and IID's contribution would not change.

After Special Districts again did not approve joining LAFCO with the IID's proposal, the talks were tabled for a couple of years.

Recently the IID has expressed desire to join LAFCO and has once again opened discussions with Special Districts. I have been providing you with email updates after our meetings. I have attached these emails for your consideration.

Should the vote of Special District representatives (50% plus 1) vote in favor of having seats on the LAFCO Board, the IID would be guaranteed one seat on the Board. The remaining seat would be filled via a majority vote of Special Districts. It could be possible for IID to secure two seats if they receive the majority votes from remaining Special Districts. However, every year they would have one seat secured.

During all of the meetings with Special Districts, I have told the assembled Special Districts that HPUD's board authorized the expenditure of \$5,000 as a shared cost to join LAFCO. I did not support any of the IID's proposals to share a set percentage of the cost that would result in HPUD paying more than our budget.

During the last meeting of Special Districts, the IID stated that they would take a proposal to their Board that IID would pay 90% of the total cost. I did not support that proposal as it is not equitable and would result in HPUD paying a greater amount than our budget.

At the IID Board meeting on September 7th, I presented the following information in written form to the IID Board. I had just stepped out of the meeting, when President Hanks moved the item forward on the agenda.

Director Hamby was not pleased with my presentation, however he moved his position from IID paying 90% to a proposal that IID pay 92.5% of the Special District's cost share. This motion passed 3-1 with 1 absent.

Immediately after the meeting, Director Hamby sent a couple of emails to IID staff and management, two HPUD Board members, and staff. IID Director Hamby stated he has pulled his proposed IID Local Entity funding in the amount of \$5,000. Additionally, he stated that Director Gonzalez has pulled his proposed IID Local Entity funding in the amount of \$5,000. These emails are attached for your consideration.

At the September 2021 meeting the HPUD Board gave direction to staff to accept the IID paying 92.5%, continue to negotiate terms to join LAFCO.

With the IID's agreement to pay 92.5% the remaining share is as follows:

SPECIAL DISTRICT'S CONTRIBUTION WITH IID PAYING	92.5%	contribution as a % of gross revenue
Imperial Irrigation District	210,668	0.03%
Pioneers Memorial Healthcare District	0	0.00%
Heber Public Utility District	5,202	0.13%
Salton Community Services District	2,951	0.13%
Bard Water District	2,946	0.13%
Central Valley Cemetery District	1,995	0.13%
Heffernan Memorial Healthcare District	1,281	0.13%
Seeley County Water District	1,213	0.13%
Riverview Cemetery District	801	0.13%
Winterhaven Water District	377	0.13%
Palo Verde County Water District	236	0.13%
Bombay Beach Community Service District	59	0.13%
Niland Sanitary District (Imperial)	17	0.13%
Bard Resource Conservation District	5	0.13%
	\$ 227,750	

CONCLUSION:

The language in the MOU can be resolved, but it is not acceptable without answers to the questions presented above. Because of the uncertainty on our ability to terminate our participation with LAFCO, I recommend postponing this item until the questions can be answered to our satisfaction.

ALTERNATIVES:

- 1) Table this item for our next meeting, or once the issue has been resolved, hold a Special Meeting to take action.
- 2) Authorize the Adoption of Resolution 2021-14 upon the General Manager and Legal Counsel's acceptance of modifications to the MOU that resolves the issues addressed in this report.
- 3) Approve the Resolution and MOU as presented, which may limit our ability to terminate participation in LAFCO.

Respectfully Submitted,

Laura Fischer, General Manager

Attachments:

Memorandum of Understanding Concerning Special District Membership and Funding of the Imperial Local Agency Formation Commission (LAFCO)
 Resolution Number 2021-14 Requesting Independent Special District Membership on the Imperial County LAFCO and Approving the MOU.

**HEBER PUBLIC UTILITY DISTRICT
RESOLUTION NUMBER 2021-14**

*A resolution requesting independent special district membership on the
Imperial County Local Agency Formation Commission.*

WHEREAS, Imperial County is the final southern California county without special district representation on its Local Agency Formation Commission (LAFCO); and

WHEREAS, the Heber Public Utility District believes that it is important for the Imperial Local Agency Formation Commission to have equal voice, perspective, and votes from the independent special districts in its deliberations and affairs; and

WHEREAS, the independent special districts of Imperial County seek to obtain equal participation as their city and county peers on the Commission over policy development and decisions that may affect special districts; and

WHEREAS, on March 22, 2018, the Imperial Local Agency Formation Commission passed, adopted, and approved Resolution #2018-06 directing its Executive Officer to initiate the process of having special districts represented on the Commission by following the requirements of the Government Code including the revisions passed under Assembly Bill 970 in accordance with Government Code, Section 56332.5 (2); and

WHEREAS, the Heber Public Utility District supports representation of independent special districts on the Imperial Local Agency Formation Commission as provided for in the Cortese-Knox-Hertzberg Act of 2000.

NOW, THEREFORE, BE IT RESOLVED, that the Heber Public Utility District hereby casts its vote in favor of independent special districts to be represented on the Imperial County Local Agency Formation Commission; and

BE IT FURTHER RESOLVED, that the Heber Public Utility District hereby approves the attached memorandum of understanding concerning independent special district membership and funding of the Imperial Local Agency Formation Commission; and

BE IT FURTHER RESOLVED, that the Heber Public Utility District authorizes the Board President to execute the memorandum of understanding on behalf of the district.

PASSED AND ADOPTED this 21st day of October, 2021.

AYE: _____

NO: _____

ABSTAIN: _____

ABSENT: _____

Pompeyo Tabarez, Jr. President/Chairperson

ATTEST:

Raquel Carrillo, Clerk of the Board

APPROVE AS TO FORM:

Steven M. Walker, General Counsel

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL)
HEBER PUBLIC UTILITY)
DISTRICT)

I, Raquel Carrillo, Clerk of the Board of the Heber Public Utility District, County of Imperial, State of California, DO HEREBY CERTIFY that the foregoing resolution was dully passed, approved and adopted by the Board of Directors of the Heber Public Utility District at its regularly scheduled meeting held on the 21st day of October 2021.

By _____
Raquel Carrillo, Clerk of the Board

**MEMORANDUM OF UNDERSTANDING CONCERNING
SPECIAL DISTRICT MEMBERSHIP AND FUNDING OF THE
IMPERIAL LOCAL AGENCY FORMATION COMMISSION (LAFCO)**

RECITALS

A. With Imperial County being the final southern California county without independent special district representation on its Local Agency Formation Commission, the independent special districts of Imperial County seek to obtain equal participation on the Commission as their city and county peers over policy development and decisions that uniquely affect special districts.

B. On March 22, 2018, the Imperial Local Agency Formation Commission (LAFCO) passed, adopted, and approved Resolution #2018-06 directing its Executive Officer to initiate the process of having special districts represented on the Commission by following the requirements of the Government Code including the revisions passed under Assembly Bill 970 in accordance with Government Code, Section 56332.5 (2).

C. The following independent special districts hereby voluntarily agree to enter into this memorandum of understanding (MOU) concerning their rights and responsibilities regarding independent special district representation at LAFCO.

D. It is acknowledged that the right of independent special district membership on LAFCO requires substantial financial contributions to LAFCO's annual budget and that the contribution level of the parties hereto requires a waiver of contribution limits and merits a change in the manner of selection of the LAFCO special district members.

E. By this MOU, the parties agree to alter the statutory limits set forth in Gov. Code Section 56381 on single member contributions and the statutory selection methods of independent district membership on LAFCO.

AGREEMENT

1. The parties to this agreement are as follows:

- Bard Resource Conservation District
- Bard Water District
- Bombay Beach Community Service District
- Central Valley Cemetery District
- Heber Public Utility District
- Heffernan Memorial Healthcare District
- Imperial Irrigation District
- Palo Verde County Water District
- Pioneers Memorial Healthcare District
- Riverview Cemetery District
- Salton Community Service District

- Seeley County Water District
- Winterhaven County Water District

2. The parties hereto acknowledge and agree that independent special districts, upon gaining membership to LAFCO, are responsible for a one-third share of LAFCO's annual operational costs as required by Government Code, Section 56381 (b) (1) (A). During the first fiscal year of special district membership at LAFCO, the special districts' one-third share of LAFCO's annual operational costs shall be prorated in accordance with the number of days in the fiscal year during which the special districts enjoyed representation on the Commission commencing the date of the first meeting with seated membership.

3. The Imperial Irrigation District (IID) hereby waives the 50 percent apportionment limit established by Government Code, Section 56381 (b) (1) (F), conditioned on the agreement of the parties as to the membership rights as stated in this MOU. The Imperial Irrigation District agrees to contribute 92.5 percent of the independent special districts' one-third share of LAFCO's annual operational costs. The remaining independent special districts will share, in proportion to each district's total revenue, the remaining 7.5 percent of the independent special districts' one-third share of LAFCO's annual operational costs under the method established by Government Code, Section 56381 (b) (1) (C).

4. Notwithstanding the provisions of Government Code, Section 56325 and 56332, one of the two independent special district members shall be appointed by the Imperial Irrigation District Board of Directors. The independent special district selection committee shall act in accordance with the foregoing and shall appoint the remaining special district member and a special district alternate member in accordance with Government Code, Sections 56325 and 56332.

5. This MOU shall serve as the "alternative method" of apportionment and shall become binding on all Imperial County independent special districts once approved by a majority of the governing boards of each of the independent special districts, representing a majority of their combined populations, as provided in Government Code, Section 56381 (b) (1) (C), with each individual signing on behalf of their respective independent special district having been duly authorized to execute this MOU. LAFCO and/or independent special districts may seek necessary and proper remedies to ensure full and continued compliance by all parties with this agreement, including required annual contributions by independent special districts toward the independent special districts' one-third share of LAFCO's annual operational costs.

6. This MOU shall be in full force and effect until such time as an effective majority of the independent special districts, representing a majority of their combined populations, votes to terminate their participation. The Executive Officer of LAFCO shall be given written notice of the termination identifying which district voted for termination and which district voted against. The termination shall have an effective date of no less than 24 months from the date of the independent districts' action in favor of termination and shall be served to the executive officer by U.S. mail and email no later than 10 business days after the vote is taken. The respective rights, responsibilities, and obligations of all parties, as

provided in this agreement and the Government Code, shall continue unimpaired until the effective date of termination.

AYE: _____
(print names of board members)

NO: _____
(print names of board members)

ABSTAIN: _____
(print names of board members)

ABSENT: _____
(print names of board members)

By: _____
(Signature)

Print Name: _____

DISTRICT: _____
(Print Districts official name)

Date: _____