



1901 FIRST AVENUE, SUITE 219
SAN DIEGO, CA 92101

TELEPHONE
(619) 702-7892

FACSIMILE
(619) 702-9291

May 4, 2018

Via Email

SAN DIEGO LAFCO

c/o John Traylor, Consultant (john.traylor@sdcounty.ca.gov)

c/o Keene Simonds, Executive Officer (keene.simonds@sdcounty.ca.gov)

c/o Tamaron Luckett, Clerk of the Board (tamaron.luckett@sdcounty.ca.gov)

9335 Hazard Way, Suite 200

San Diego, CA 92123

To Appointed Commissioners and Administrative Staff of LAFCO:

Re: *Objections to Premature Decision Regarding Application for Expansion of Latent Powers in Association with Special District Dissolution Agenda Item No. 10 – Business Action Item (Non-Public Hearing) Dissolution of the Julian-Cuyamaca Fire Protection District and Latent Power Expansion of County Service Area No. 135 (action)*

REQUESTED ACTION: DENY “CONCURRENT REQUEST” TO APPROVE THE REORGNIZATION (EXPANSION) OF CSA 135 AND ITS LATENT POWERS

EXPLANATION AND REASON FOR REQUESTED ACTION:

WHILE LAFCO CAN POLITICALLY GIFT THE COUNTY OVER \$150,000 VIA A “WAIVER OF FEES” TO ASSIST IN WRESTING THE JULIAN-CUYAMACA FIRE DISTRICT FROM THE LOCAL COMMUNITY

LAFCO CANNOT LEGALLY OR PRACTICALLY PROCEED WITH “CONCURRENT TRANSFER OF THE LATENT POWERS OF CSA-135” BECAUSE THAT IS THE HEART, AND ENTIRETY, OF THE ISSUE PENDING BEFORE LAFCO AS ONLY RECENTLY BEING FILED AND VETTED, AND THERE BEING NO OPPORTUNITY FOR REVIEW, COMMENT, AND PUBLIC HEARING

This office has been retained and represents the long-tenured local fire company (Julian Volunteer Fire Company Association, a statutorily recognized fire company) and numerous interested local firefighters, and local voting and taxpaying district citizens located within the Julian-Cuyamaca Fire Protection District.

Page Two

May 4, 2018

Agenda Item No. 10 – Business Action Item (Non-Public Hearing)

Dissolution of the Julian-Cuyamaca Fire Protection District and

Latent Power Expansion of County Service Area No. 135 (action)

Reasons to Reject the “CONCURRENT TRANSFER OF THE LATENT POWERS OF CSA-135”

A telephone discussion and written confirmation this morning from Executive Director, Keene Simonds (Attachment 1, hereto), clarified that Agenda Item 10 did not mean to say or intend as an action item:

“The proposal includes a condition for LAFCO to concurrently authorize County Service Area No. 135 to assume services.”

However, that is not what was written and noticed to the public. To the extent there was, and continues to be, any intent to approve interim or permanent authority from LAFCO for **“County Service Area No. 135 to assume services,”** the following comments, objections, and legal defects are applicable, and include but are not limited to:

1. First, as above, while LAFCO can politically gift the County over \$150,000 via a “Waiver of Fees” to assist in wresting the Julian-Cuyamaca Fire District from the local community, LAFCO cannot, at its May 7, 2018 meeting, legally or practically proceed with CONCURRENT TRANSFER OF THE LATENT POWERS OF CSA-135 because that is the heart, and entirety, of the formal reorganization issue pending before LAFCO that was only recently filed, and is being vetted, and there has been no opportunity for review, comment, and public hearing.

2. As should be generally and publicly known, my clients have initiated the Constitutionally available option of a referendum of the JCFPD April 10, 2018 decision to dissolve the JCFPD. Citizens are the penultimate power in the say of these political affairs under Cal. Const. Art. II, Sec. 9 and legislated codes and case law authorities thereunder. Therefore, in the next 6 to 9 months, the citizens and residents of the JCFPD will vote their rights. As soon as the petition protesting the adoption of the April 10, 2018 resolution to dissolve the JCFPD is filed and presented to the Board, the ordinance or legislation shall be suspended and the [JCFPD] shall reconsider the ordinance. (Cal Gov. Code § 9144)

3. As soon as the JCFPD petition is submitted, the dissolution resolution of the JCFPD is suspended. Such suspension also precludes both LAFCO and the County acting on the suspended resolution.

4. Despite publicly available information about the pending referendum, LAFCO and its staff was expediting (via the “concurrent request”) dissolution and transfer in a manner that would blatantly violate and undermine State (and LAFCO’s own notice and process laws).

Page Three

May 4, 2018

Agenda Item No. 10 – Business Action Item (Non-Public Hearing)

Dissolution of the Julian-Cuyamaca Fire Protection District and
Latent Power Expansion of County Service Area No. 135 (action)

5. The JCFPD never agreed to interim transfer of control and function of the JCFPD prior final review, processing, and LAFCO approval of the dissolution application.

6. There are significant procedural and substantive notice defects because LAFCO only recently circulated its request for information and comments in a “Notice of Proposal and Preliminary Staff Report” and gave the public and other agencies until May 31, 2018 to respond. As stated in the April 11, 2018 preliminary staff report and notice:

All interested agencies and related stakeholders are invited to review and submit comments on the proposal – including any requested terms – by Thursday, May 31, 2018. Comments should be directed to LAFCO Consultant John Traylor at. . . .

7. Information about the pending application, and LAFCO’s pending consideration about the conditional dissolution, and reorganization (expansion) of CSA 135, is not readily available and has not been adequately noticed and published. First, there has been no Government Code publication. Second, the Notice of Proposal “Preliminary Staff Report” is not readily available, as recently researched and as seen on LAFCO’s website as of May 3, 2018.



8. The public has been relying on time to review staff reports and information – with said time to do so expressly noticed and given until at least May 31, 2018. One or more persons have expressed a number of inaccuracies in the application materials and above-referenced Preliminary Staff Report. LAFCO has not been able to receive and process such information from interested persons and other agencies.

9. Consistent with laws, process, and timelines, news agencies have also been reporting to the public that LAFCO will hold a public hearing on the matter:

The district's application will pass through San Diego's Local Agency Formations Commission (LAFCO) and there will be a public hearing on whether to go through with the dissolution.

Page Four

May 4, 2018

Agenda Item No. 10 – Business Action Item (Non-Public Hearing)

Dissolution of the Julian-Cuyamaca Fire Protection District and

Latent Power Expansion of County Service Area No. 135 (action)

NBC News 7 report April 10, 2018 (<https://www.nbcsandiego.com/news/local/Julian-Fire-District-Takes-First-Step-Toward-Dissolution-479338233.html>) As mentioned above in Nos. 2 and 3, the “first step” is subject to a lawful referendum and rescission thereby making LAFCO’s current action additionally premature.

10. Any LAFCO action taken on Agenda Item No. 10 that allows interim or permanent action of **County Service Area No. 135 to assuming services** of the JCFPD will be a violation of due process and required statutory notice, and any decision taken shall be subject to being set aside and rendered null and void due to such procedural irregularity.

Thank you for your consideration of the above comments, concerns, and objections. If you need any clarification or would like to discuss any of the above matters, please do hesitate to contact this office.

Sincerely,



Craig A. Sherman

Enclosures: Attachment 1

cc: Rachel Witt, Special Legal Counsel, Office of County Counsel
(via email rachel.witt@sdcounty.ca.gov)



Craig Sherman <craigshermanapc@gmail.com>

SD LAFCO | Clarification on Agenda Item No. 10 set for May 7th Meeting | Fee Waiver Request

Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>
To: "craigshermanapc@gmail.com" <craigshermanapc@gmail.com>
Cc: "Traylor, John" <John.Traylor@sdcounty.ca.gov>

Fri, May 4, 2018 at 10:03 AM

Hi Craig –

It was nice speaking with you earlier today.

This email serves as confirmation SD LAFCO will only be considering the merits of a requested fee waiver associated with the proposed dissolution of the Julian-Cuyamaca FPD at its Monday, May 7th meeting. No action will or can be taken on the actual dissolution proposal itself at the May 7th meeting given it (i.e., the dissolution proposal) remains incomplete at this time pending – and among other items – careful analysis by staff relative to the factors required under Government Code Section 56668. The earliest I anticipate the dissolution proposal (and concurrent term to authorize CSA No. 135 to assume responsibilities thereafter) being considered by the Commission is August 2018. A mandatory 21 day public hearing notice will precede any scheduled action on the dissolution proposal.

Should you have any questions please let me know. Further, if you would like to submit a comment on the fee waiver request, please email me and I will make sure it gets to the Commission before it takes up the item at the Monday meeting.

Keene

Keene Simonds

San Diego Local Agency Formation Commission

Subdivision of the State of California | Regional Service Planning

9335 Hazard Way, Suite 200

San Diego, California 92123

T | 858.614.7755

E | keene.simonds@sdcounty.ca.gov