

Governance Summaries

Introduction

There are a number of different governance structures that a community can choose from, to provide water or wastewater services. Governance structures have different characteristics of formation, operation, and ability to obtain funding. In this section, some of the more common types of local agency governance structures often referred to as special districts as well as non-profit organizations, which can provide water and wastewater service are summarized.

Governance structures are divided into four categories: Tribal Water Systems, Independent Districts, Dependent Districts, and Non-Profit Corporations. Independent Districts are special districts that have their own independently elected governing board of directors. Dependent Districts are special districts that are governed by other, existing legislative bodies (either a city council or a county board of supervisors) but are still considered separate legal entities. Non-Profit Corporations are private entities formed to provide service to a specific area, typically a residential subdivision, under non-profit corporation laws. Each type is discussed in the following sections.

Tribal Water Systems

Tribal water systems are often operated and maintained (O&M) by the Tribe themselves. The local Indian Health Service (IHS) offices in Ukiah and Eureka provide a limited amount of O&M technical assistance to the Tribes when required. However, the responsibility usually lies with the Tribe to handle the day-to-day operations and costs. The US EPA provides support via RCAC by providing funds to have circuit riders assist Tribal water operators and management. Some Tribes use a Utility Board to assist with the oversight of Tribal systems. But most do not, and this falls on the Tribal Councils who usually dedicate Tribal priorities to issues such as education, housing and economic development rather than to ongoing maintenance.

For questions on the health and safety of tribal water and wastewater systems, contact [Indian Health Service](#)¹.

The Role of LAFCo

Governance options may include forming a new Independent or Dependent District or a Non-Profit Corporation, or annexing into an existing district or non-profit. Considerations could include whether or not there is a nearby system that has the capacity to provide service to your area or a management and operations structure that can operate your system. The most appropriate type of governance structure for a particular community and service need will depend on the specific local circumstances. A county's Local Agency Formation Commission (LAFCo) should be consulted early when evaluating the range of governance options.

There are 58 LAFCo's in California, one representing each county. LAFCo's review proposals for the formation of new local governmental agencies (special districts) and proposals for changes in the organization of existing agencies. LAFCo's are responsible for coordinating logical and timely changes in

¹ <http://www.ihs.gov/California/>

local governmental boundaries, conducting special studies that review ways to reorganize, simplify, and streamline governmental structure and preparing a sphere of influence for each city and special district within each county. LAFCo's regulate, through approval, approval with conditions, or denial, the boundary changes proposed by other public agencies or individuals. The LAFCo for the county where a service area is located should be contacted regarding the formation or modification of a special district. A different process for forming private non-profit corporations (mutuals) is discussed in this section as well.

As with many aspects of operating a water or wastewater system, communities or system operators should contact neighbouring communities that have recently established a new governance structure for advice and guidance. In addition, early in the process communities or system operators should engage experts with experience in special district or Non-Profit Corporation formation, including engineers, attorneys, and financial advisors.

Independent Districts

[The California Department of Water Resources, General Comparison of Water District Acts](#)² (Bulletin 155-77,) lists a number of district types that have the authority to provide water and or wastewater service. It should be noted that many of the district types have the authority to provide a number of other services that relate to water and wastewater, such as storm drainage, irrigation, levee maintenance, and groundwater replenishment, while others can provide unrelated community services, such as fire protection, parks and recreation, and electric utility services. Only a few of the more common special district types are discussed in this Appendix.

- Community Service District (water and sewer - Government Code 61000)
- County Water District (water and sewer - Water Code 30000)
- Municipal Utility District (water and sewer – Public Utilities Code 11501)
- Municipal Water District (water and sewer – Water Code 71000)
- Public Utility District (water and sewer – Public Utilities Code 15501)

Independent district governance structures provide the following advantages and potential disadvantages to system operators which generally do not vary significantly according to district type:

Advantages

- Eligible for most federal and state grant and loan programs
- Authorized to establish taxes, special assessments, and fees
- Able to issue tax exempt bonds at lower interest rates
- Possess the power of eminent domain
- Exempt from property and income tax
- Clear accountability to the community through elections, government accounting standards, and open meeting laws

² http://www.water.ca.gov/waterdatalibrary/docs/historic/Bulletins/Bulletin_155/Bulletin_155__1965.pdf

Disadvantages

- Formation procedures may be more burdensome than non-profit incorporations, especially the initial formation election and ongoing board member election requirements
- Governing board members must be registered voters within the district boundaries and, if a landowner voter district, must own land within the district
- Limited flexibility to establish standards and procedures, such as budgeting, accounting, purchasing, and contracting, as they may be established in California law
- State mandated open meeting requirements may reduce management flexibility

Communities or system operators that are considering forming as a special district should evaluate the special district principal acts listed in the information below. Although subtle, there are differences in authority between the district types that may provide or limit flexibility. The following list is not exhaustive, but describes where there may be differences between district types:

- Procedure for initiating district formation or reorganization
- Method of selecting or electing boards of directors – landowner voter versus registered voter elections
- Number of directors
- Range of services that the district can provide
 - Community Services Districts can provide approximately 30 separate services, whereas California Water Districts are generally limited to water related services
- California Public Contract Code places some contracting limits on most special district types, except County Water Districts

The following information is summarized from the [Water Status Report - Governance Options](#)³, April 17, 2014, from the San Luis Obispo LAFCo. A LAFCo Commission may approve, modify, or deny the proposal. If LAFCo approves the formation of the district, a protest process is then conducted, if necessary. Sometimes the protest process is not called for in the principal act. The formation of a district usually culminates in the vote of the registered voters or land owners, depending on the type of district being formed.

When evaluating the formation of a new district, the LAFCo Commission is required to determine whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner. LAFCo policies indicate that a demonstrated need for the service must be documented and that another agency cannot perform similar services.

The principal acts under which special Districts are formed vary widely both in terms of the nature of the agency that is formed, and the procedures that are followed in the formation. The individual, agency, or community group that is initiating a formation should explore this diversity to find a special district that fulfills their specific set of needs. A review of the actual statutes or enabling acts would help in making the decision about what district type is appropriate.

³ http://www.slolafco.com/Staff_Reports/NEW_Governance

LAFCO PROCESS

Application. In general, to start the process of forming a district, a petition by registered voters or landowners (depending upon the requirements of the specific principal act) needs to be completed and submitted and verified before LAFCo can evaluate the application. In some cases, an affected local agency (such as the county Board of Supervisors, city council, or a special district) can submit a Resolution of Application to get the formation process started. In some instances, procedures for formation are found in the principal act that guides the process and the administration of a new district. Principal acts are part of California State law that provides the legal structure for a special district. In addition to a petition or resolution, a LAFCo application (depends upon the local LAFCo requirements) with a “plan for providing services” is required, and, potentially, environmental review pursuant to the California Environmental Quality Act (CEQA). This will likely include:

- Listing of the district type and principal act under which the formation would occur;
- Listing and description of the services to be provided/extended accompanied by a justification, including level, range, and timing of those services;
- A discussion of any improvements or upgrading of structures, sewer or water facilities or other conditions the new district would impose or require within its boundaries upon formation;
- Information about how improvements would be financed, an operating budget for the proposed district, and revenues and expenditures; and,
- A discussion of alternative boundaries and rationale for the boundaries proposed.

Commission Proceedings. After receiving a formation proposal by petition or resolution of application, LAFCo staff conducts an analysis of the proposal. LAFCo shall determine the following:

- The proposed district will have sufficient revenues to carry out its purposes; or if necessary, condition its approval on the concurrent approval of special taxes or benefit assessments.
- There is a demonstrated need for services or controls which can be provided by a Special District.
- There is no alternative which would provide for the required service in a more reasonable manner.
- There will be sufficient revenue to adequately finance the required services or controls.
- The proposal does not represent a conflict with the reasonable and logical expansion of adjacent governmental agencies.
- The boundary configuration will not create or result in areas difficult to serve.
- The boundaries of the proposed formation must be definite and certain and must conform to lines of assessment whenever possible. The boundaries must not conflict with boundaries of other public agencies possessing the same powers unless properly justified

The Commission conducts a hearing to review this analysis and to receive oral or written testimony (Government Code 56666). When the formation of a new governmental entity is proposed, LAFCo must make a determination as to whether existing agencies can feasibly provide the needed service(s) in a more efficient and accountable manner. If a single-purpose agency is deemed necessary, then LAFCo

must consider the formation is approved, the Commission determines the final boundaries, an appropriations limit (56811) if necessary, and any terms and conditions of approval (Government Code 56885 and 56886). If the Commission wholly disapproves a proposal, no new proposal involving the same or substantially the same territory shall be initiated for one year after the date of the Commission's resolution, unless this provision is waived by the Commission (Government Code 56884).

Conducting Authority Protest Proceedings. Generally, the LAFCo Commission serves as the conducting authority for the formation of a district. Please refer to Government Code Section 56036 for a list of the exceptions to this procedure. When forming a district, the procedural requirements of the principal act are followed (56100 and 57007), unless there is a conflict between the procedural requirements of the district principal act and the Cortese-Knox- Hertzberg Act.

The range of actions that may be taken by the conducting authority depends upon the principal act under which formation is proposed. Under some provisions, the conducting authority may determine the formation is infeasible and terminate the proceedings. If processed under the Cortese-Knox-Hertzberg Local Government Reorganization Act, the Commission may take on of the following three actions:

1. Approve the formation without an election, if the formation is part of a reorganization or consolidation where two or more districts are proceeding under the adoption of substantially similar initiating resolutions (56125, 56853& 57007.3);
2. Approve the formation subject to confirmation at an election; or
3. Terminate the formation proceedings if protest are filed by (57078):
 - a. Landowners owning 50% or more of the assessed value of the land within the territory (In the case of uninhabited territory)
 - b. 50% or more of the registered voters within the territory (In the case of inhabited territory)
 - c. 50% or more of the voting power of the voters entitled to vote as a result of owning land within the proposed district (In the case of landowner-voter districts)

Election. If an election is held and a majority of the votes is cast for formation of the district, the conducting authority shall pass a resolution confirming the order of formation. The election may also decide the membership of the district's governing body, and any other issues provided for in the principal act under which formation is occurring (57115). If the election contains a special tax necessary to fund district operations, then the threshold vote for the new tax, 2/3rds majority, will determine whether or not the new district is formed.

The following is a comparison of Independent District types that can provide water and wastewater services. In particular, information is provided regarding the initiation procedure, governing body, and the powers and functions available to the special district type. Much of the information is excerpted from the [Water Status Report - Governance Options](#)⁴, April 17, 2014, from the San Luis Obispo LAFCo.

COMMUNITY SERVICE DISTRICTS (GOVERNMENT CODE 61000)

Governing Body: The governing body is composed of a five-member board of directors comprised of voters of the district, who may be elected by divisions (Government Code 61040), and who serve four year terms of office (Government Code 61042).

⁴ http://www.slolafco.com/Staff_Reports/NEW_Governance_Options.pdf

Functions: A CSD may provide one or more of approximately 30 different services enumerated in Government Code 61100, including water; wastewater; solid waste; parks and recreation; fire protection, roads, street lighting, hydroelectric power generating facilities and transmission lines; and many more.

Formation: The formation process is initiated by resolution of application to the legislative body of any county, city, or special district that contains any of the territory proposed to be included in the district or a petition signed by 25% of the number of registered voters. Contents of the petition are specified in Government Code 61011 and LAFCo law. Prior to circulating petitions, the proponent shall file with the LAFCo Executive Officer a Notice of Intention that includes the name and mailing address of the proponent and a written statement not to exceed 500 words in length, setting forth the reasons for the proposal. After filing the notice, the petition may be circulated for signatures (Government Code 56700.4).

After the formation proceedings have been initiated, LAFCo must conduct a noticed public hearing. After hearing public testimony, the LAFCo Commission may approve, modify or deny the proposed formation. If it is approved, the Commission will also adopt terms and conditions for the formation, and establish a Sphere of Influence for the new district.

Then the proposed formation is scheduled for a conducting authority (protest process) hearing where no further modifications may be made. If a majority protest exists in accordance with Government Code 57078, the commission shall terminate proceedings. If no majority protest exists, the Commission shall either order the formation, subject to the approval by the voters; order the formation subject to the approval by the voters of a special tax or the approval by the property owners of a special benefit assessment. The new district shall not be formed unless the new tax or assessment is approved.

COUNTY WATER DISTRICT (Water Code 30000)

Governing Body: The governing body, which is established by law to administer the operation of a County Water District, is composed of a five-member board of directors. These directors whether appointed or elected shall be voters within the district (Water Code 30500).

Functions: The possible functions of a County Water District are the following: water for beneficial use, electricity power generation and sales in connection with a water conservation project; sewage, waste, and stormwater collection, treatment and disposal; land drainage and reclamation; fire protection; recreation related to the use of water. For a full listing of these general powers, it is advisable to review Sections 31000 - 31182 of the Water Code.

Formation: The formation process is initiated by a petition to LAFCo signed by 10% of the number of voters registered 30 days prior to the petition filing date. However, if one or more municipal corporations are included in the proposed district, the petition must be signed by 10% of the voters of the unincorporated area and 10% of the voters of each municipal corporation or part thereof (Water Code 30202 & 30203). Prior to circulating petitions, the proponent shall file with the LAFCo Executive Officer a Notice of Intention that includes the name and mailing address of the proponent and a written statement not to exceed 500 words in length, setting forth the reasons for the proposal. After filing the notice, the petition may be circulated for signatures (Government Code 56700.4).

After the formation proceedings have been initiated, LAFCo must conduct a noticed public hearing. After hearing public testimony, the Commission may approve, modify or deny the proposed formation. If it is approved, the Commission will also adopt terms and conditions for the formation, and establish a Sphere of Influence for the new district. Then the proposed formation is scheduled for a conducting authority (Protest Process) hearing where no further modifications may be made.

MUNICIPAL UTILITY DISTRICT (Water Code 11501)

Governing Body: The governing body of a Municipal Utility District is composed of a five-member board of directors representing five wards, who shall be residents and voters of the respective wards from which they are nominated (Water Code 11801).

Functions: The district may provide utility services including light, water, power, heat, transportation, telephone service, or other means of communication, or means for the collection, treatment, or disposition of garbage, sewage, or refuse matter (Water Code 12801).

Formation: The formation of a Municipal Utility District may be initiated by half or more of the public agencies proposed to be included in the proposed district that pass resolutions declaring that in their opinion public interest or necessity demands the creation and maintenance of a municipal utility district to be known as the (giving the name) municipal utility district. The resolutions may state the kind of utility proposed to be first acquired, but failure to acquire such utility shall not affect the validity of the district. They shall describe the exterior boundaries of the proposed district (Water Code Sections 11561 through 11583). A petition signed by voters within the proposed district equal in number to at least 10 percent of the voters containing substantially the same declarations and statements required to be contained in the resolutions may also be used to initiate district formation (Water Code 11611).

Prior to circulating petitions, the proponent shall file with the LAFCo Executive Officer a Notice of Intention that includes the name and mailing address of the proponent and a written statement not to exceed 500 words in length, setting forth the reasons for the proposal. After filing the notice, the petition may be circulated for signatures (Government Code 56700.4).

After the formation proceedings have been initiated, LAFCo must conduct a noticed public hearing. After hearing public testimony, the Commission may approve, modify or deny the proposed formation. If it is approved, the Commission also will adopt terms and conditions for the formation, and establish a Sphere of Influence for the new district. Then the proposed formation is scheduled for a conducting authority (Protest Process) hearing where no further modifications may be made.

Before calling the election the board of supervisors shall divide the proposed district into five wards, the boundaries of which shall be so drawn that each shall contain approximately an equal number of voters, as nearly as may be. The public agencies and any other territory included in the proposed district, may be divided for the purpose of establishing ward boundaries (Water Code 11642). The board of supervisors shall declare a district created and established of those public agencies and parcels of unincorporated territory in which a majority of those persons who voted did so in favor of the creation of the district. Those public agencies and parcels of unincorporated territory in which a majority of those persons voting did not vote in favor of the creation of the district shall be excluded from the district. A district may be created and established only if the number of registered voters in the approving public agencies and parcels of unincorporated territory is two-thirds or more of the total number of registered voters within the district as proposed to the voters. (Water Code 11652)

MUNICIPAL WATER DISTRICT (Water Code 71000)

Governing Body: The board of directors shall consist of five members. Each director shall be a resident of the division from which they are elected (Water Code 71250).

Functions: The district may provide water; recreation; electrical power; sewage, wastewater and stormwater disposal, fire protection, water replenishment assessment, and sanitation services (Water Code 71610 through 71689).

Formation: The formation of a Municipal Water District may be initiated by a petition signed by voters equal in number to at least 10% of the voters registered within the boundaries of the proposed district 30 days prior to the date the petition is filed. If one or more cities are included in the proposed district, the formation petition shall, in addition, be signed by at least 10 percent of the voters of each such city registered to vote 30 days prior to the date the petition is filed. (Water Code 71121).

Prior to circulating petitions, the proponent shall file with the LAFCo Executive Officer a Notice of Intention that includes the name and mailing address of the proponent and a written statement not to exceed 500 words in length, setting forth the reasons for the proposal. After filing the notice, the petition may be circulated for signatures (Government Code 56700.4).

After the formation proceedings have been initiated, LAFCo must conduct a noticed public hearing. After hearing public testimony, the Commission may approve, modify or deny the proposed formation. If it is approved, the Commission will also adopt terms and conditions for the formation, and establish a Sphere of Influence for the new district. Then the proposed formation is scheduled for a conducting authority (Protest Process) hearing where no further modifications may be made.

If a majority of the votes cast, in each affected county at the formation election, favour the formation of the district, the board of supervisors shall, by an order entered on its minutes, declare the territory included within the proposed boundaries to be formed as a municipal water district under the designated name. (Water Code 71190).

PUBLIC UTILITY DISTRICTS (Public Utilities Code 15501)

Governing Body: The board of directors shall be elected, to consist of as many members as there are territorial units in the district and as many additional members, not less than three nor more than four, as are required to constitute a board composed of an odd number of directors. Where the district lies entirely in one county, the number of directors shall be three, elected at large. A director at large shall be a resident and qualified elector of the district (Public Utilities Code 15951, 15952).

Functions: The district may provide light, water, power, heat, transportation, telephone service, or other means of communication, or means for the disposition of garbage, sewage, or refuse matter (Public Utilities Code 16461).

Formation: A Public Utility District may be initiated by petition signed by registered voters of the territory equal to 15% of all votes cast for all candidates for governor in the last election at which a governor was elected (Public Utilities Code 15702). Petitions shall set forth the boundaries and name the district (Public Utilities Code 15704).

Prior to circulating petitions, the proponent shall file with the LAFCo Executive Officer a Notice of Intention that includes the name and mailing address of the proponent and a written statement not to exceed 500 words in length, setting forth the reasons for the proposal. After filing the notice, the petition may be circulated for signatures (Government Code 56700.4).

After the formation proceedings have been initiated, LAFCo must conduct a noticed public hearing. After hearing public testimony, the Commission may approve, modify or deny the proposed formation. If it is approved, the Commission will also adopt terms and conditions for the formation, and establish a Sphere

of Influence for the new district. Then the proposed formation is scheduled for a conducting authority (Protest Process) hearing where no further modifications may be made.

The board of supervisors shall call an election by ordinance and the election shall be held on the next established election date, not less than 74 days after ordinance publication (Public Utilities Code 15761). If a majority vote is cast in favour, the district shall be formed (Public Utilities Code 15791), unless a special tax measure accompanies the formation ballot question.

DEPENDENT DISTRICTS:

Dependent districts are governed by other, existing legislative bodies (either a city council or a county board of supervisors). All County Service Areas, for example, are dependent districts because the county board of supervisors govern them. The following is a discussion of the formation process for County Service Areas, the most common type of dependent special district.

Given that most Dependent Districts are county service areas, a community should work closely with the county to determine if this is the most appropriate governance structure. If the particular county operates other water and wastewater systems through county service areas and has operational and administrative capacity to manage additional service areas, this may be a viable option.

COUNTY SERVICE AREAS (Government Code Section 25210)

Governing Body: The governing body, which is established by law to administer the operation of a County Service Area (CSA) is the Board of Supervisors. The original intent of the county service area law was to give an alternative method for providing governmental services by counties within unincorporated areas, many of which have had large population growth as well as commercial and industrial development (Government Code 25210.1).

Functions: County Service Areas can provide a number of different functions including water service to a specifically designated area. The full range of services is provided in the government code. Other services that might be provided include: water, fire, sewer (Government Code 25213).

Formation: The formation process may be initiated by: 1) a resolution of the Board of Supervisors or a City Council, 2) petition of 25% of the registered voters within an area or 25% of the number of landowners who own not less than 25 percent of the assessed value of land to be included (Government Code 25211.1). If the LAFCo Commission approves the formation, the protest process is completed. If more than 50% of the Registered Voters or Land Owners who own over 50% of the land value in the area protest the action it shall be terminated. The Commission can approve, deny, or approve with an election the formation of the CSA. If all landowners consent to the formation of the CSA and no special tax is proposed, the CSA may be approved without an election (Government Code 25214.4).

NON-PROFIT CORPORATIONS

Non-Profit Corporations may be formed for the purposes of providing utility services to an area. For the purposes of this summary, Non-Profit Corporations are limited to the following:

- Mutual Water Company

There are between approximately 500 and 1,000 mutuals in the state of California, serving approximately 1.3 million people. Although there are some mutuals that serve more than 10,000, most serve only hundreds.

Non-Profit Corporation governance structures provide the following advantages and potential disadvantages to system operators:

Advantages

- Mutuels are non-profit corporations and typically not subject to income tax
- A mutual water system facilities is not subject to property tax as they are appurtenances to the land of the shareholders
- Mutuels are governed like other California corporations and each establish their own internal governance rules and bylaws
- Eligible for many federal and state grant and loan programs, however, some programs require that a local agency sponsor the grant application
- Mutuels do not establish rates, rather they provide service to shareholders at actual cost based on the number of shares held and the corporate bylaws
- The community retains responsibility and control of the water system through a local board of directors regularly elected pursuant to the corporate bylaws.

Disadvantages

- The formation of a non-profit corporation may be complex
- Sale of water at more than cost or outside the mutual water system boundaries may subject the system to regulation by the Public Utilities Commission
- Some types of public financing may not be available to a mutual
- No government based powers (such as Eminent Domain)

MUTUAL WATER COMPANY (PUBLIC UTILITIES CODE 2700)

Much of the following information was excerpted from [California Mutual Water Company Basics, the Private Water Law Blog](#)⁵. In California, there is no specific statute under which mutual water companies are formed or governed. Also known simply as mutuels, these entities are created pursuant to the various general corporation statutes. Mutuels are most commonly formed as general corporations (Corp. Code §§ 100 *et seq.*) or as non-profit mutual benefit corporations (Corp. Code §§ 7110 *et seq.*), although other structures are also available and other special corporate laws may apply. The typical corporate governance rules apply to board elections and actions, ownership of property, assessments and other corporate activities.

Mutuels may operate under the jurisdiction of the California Public Utilities Commission (CPUC), or outside of it, depending on how they are organized and operated. To be outside of CPUC jurisdiction, a mutual 1) deliver water exclusively to its shareholders at cost (there are limited allowances for delivering water to some others under special circumstances), and 2) that the mutual serves the public at large, or has dedicated its assets to public use.

Mutual Water Companies (MWC or company) must first be incorporated as a non-profit mutual benefit corporation pursuant to California Corporations Code §14310. Next, the mutual must obtain permission

⁵ <http://privatewaterlaw.com/2011/02/18/california-mutual-water-company-basics/>

to issue memberships. Which agency grants that authority depends on the number of lots the company will serve as summarized below:

- Mutual Water Companies formed for four or fewer lots, must apply to the Department of Corporations for permission to issue securities (memberships) as set forth in Corporations Code §25100(f).
- Mutual Water Companies formed for five or more lots must apply to the Department of Real Estate for permission to issue memberships, and must follow the requirements set forth in Corporations Code §14310.

The forms necessary to form the non-profit mutual benefit corporation start with the Articles of Incorporation and bylaws and include a series of other documents necessary to complete the process. When properly completed, the mutual's related business income will not be taxable, nor will the corporation have to pay the annual California corporate franchise tax. However, there are certain types of unrelated income, which may be taxable to the non-profit corporation and an attorney specializing in formation of mutuals should be consulted.

