



**Local Agency Formation Commission**  
**LAFCO of Napa County**

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**October 1, 2007**  
**Agenda Item No. 7a**

September 19, 2007

**TO:** Local Agency Formation Commission

**FROM:** Keene Simonds, Executive Officer  
Jacqueline Gong, Commission Counsel

**SUBJECT: California Government Code §56133 (Action)**

The Commission will receive a report evaluating two policy options addressing its role as it relates to the City of American Canyon providing water and sewer services outside its jurisdictional boundary under California Government Code §56133. The Commission will consider draft resolutions adopting one of the two policy options.

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California Government Code (G.C.) §56133 directs cities and special districts to receive written approval from Local Agency Formation Commissions (LAFCOs) to provide new or extended services by contract or agreement outside their jurisdictional boundaries. G.C. §56133 was enacted by the Legislature in 1993 in response to cities and special districts circumventing LAFCO by contractually extending services outside their jurisdictions to property owners instead of annexing the affected lands. LAFCOs are restricted to approving agency requests to extend services outside their spheres of influence only to address threats to public health and safety. In 2003, the Legislature grandfathered the effective date of G.C. §56133 to January 1, 2001.

The intent of G.C. §56133 is to strengthen the ability of LAFCOs to fulfill their mandate to plan the orderly formation and development of local governmental agencies in a manner that protects agricultural and open-space resources and discourages urban sprawl. G.C. §56133 also reflects the desire of the Legislature that LAFCOs participate in the decision-making process with respect to the extension of governmental services in unincorporated areas. Administering G.C. §56133, however, remains challenging because the statute as currently written limits the discretion of LAFCOs in approving otherwise logical extension of services that are appropriate given local conditions.

This report evaluates two separate policy options aimed at addressing the role of the Commission under G.C. §56133 as it relates to the City of American Canyon entering into contracts or agreements to provide water and sewer services outside its jurisdiction, hereinafter referred to as “outside services.” These options were outlined and briefly reviewed as part of an earlier report presented at the March 5, 2007 meeting. Staff has expanded its outline and review of both options and offers a recommendation for Commission consideration.

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Mark Luce, Alternate Commissioner  
County of Napa Supervisor, 2nd District

Keene Simonds  
Executive Officer

## Background

At the March 5, 2007 meeting, staff presented a report to the Commission regarding an inconsistency between the provisions of G.C. §56133 and the current practices underlying outside water and sewer services in unincorporated south Napa County. The inconsistency, which was initially highlighted in two recent municipal service reviews, is generated by American Canyon providing what appears to constitute new and extended outside services without Commission approval. The source of the inconsistency is drawn from American Canyon serving as successor agency to the American Canyon County Water District (ACCWD). Specifically, as successor agency, American Canyon has inherited agreements defining water and sewer service areas for the City that extend beyond its jurisdiction and sphere.

The March report noted the established practice of the Commission is not to require American Canyon to receive approval in providing new or extended outside water and sewer services based on an initial reading of G.C. §56133. Markedly, at the time enacted, G.C. §56133 included a broad exemption involving contracts or agreements involving two or more public agencies under subsection (e). Drawing on this original text, the Commission concluded that American Canyon could continue to provide new or extended outside water and sewer services based on the agreements it inherited with Napa County Flood Control and Water Conservation District (NCFWCWD) and the Napa Sanitation District (NSD).<sup>1</sup> These agreements establish “agency-defined” water and sewer service areas for American Canyon that extend north of its jurisdiction and sphere to Soscol Ridge and Fagan Creek, respectively, and include properties located in the Napa County Airport Industrial Area Specific Plan.<sup>2</sup>

In 2001, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 was enacted and made substantial changes to LAFCO law. This included amending G.C. §56133 to restrict the exemption under subsection (e) to instances where “the services to be provided are an alternative or substitute for services that are already being provided.” Substantively, the amendment precludes the Commission from continuing its established practice because several properties in American Canyon’s agency-defined service areas remain without water or sewer service.

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<sup>1</sup> At its February 9, 1994 meeting, the Commission received a report from staff regarding the changes in LAFCO law resulting from the implementation of Assembly Bill 1335, including the enactment of G.C. §56133. The staff report was presented for information and did not make any specific comments or recommendations regarding the application of G.C. §56133 in Napa County. On February 23, 2007, staff contacted former LAFCO Executive Officer Charles Wilson to discuss the Commission’s initial review of G.C. §56133. Mr. Wilson stated that the Commission did discuss and conclude that the agreement American Canyon inherited with the NCFWCWD authorized the City to continue to provide extraterritorial water service north to Soscol Ridge without LAFCO approval under G.C. §56133 based on the exemption involving agreements between two or more public agencies. Although he did not recall any specific discussions regarding sewer provision, Mr. Wilson believes that the Commission did discuss and conclude that the agreement between American Canyon and NSD also authorized the City to continue to provide extraterritorial sewer service north to Fagan Creek without LAFCO approval.

<sup>2</sup> American Canyon’s agreement with NSD designating Fagan Creek as the boundary line between their respective sewer service areas was established in practice in the 1960s. In 1983, ACCWD and NSD adopted similar resolutions requesting the Commission designate each agency’s sphere to reflect Fagan Creek as the dividing line between their sewer service areas. In 1994, as part of a dissolution agreement involving the Napa-American Canyon Wastewater Management Authority, American Canyon and NSD further formalized and expanded the above-referenced agreement by specifying that Fagan Creek serve as the dividing line between each agency’s sewer and recycled water service areas.

With the goal of initiating discussion and identifying preferences, the March report outlined five broad options for the Commission in addressing its role as it relates to American Canyon providing outside water and sewer services under G.C. §56133. Options outlined in March ranged from strict enforcement of G.C. §56133 to adopting a policy to exempt American Canyon from requiring Commission approval. All five options were briefly analyzed in terms of advantages and disadvantages as well as possible policy outcomes. At the conclusion of its discussion, the Commission directed staff to further develop and evaluate the two options proposing local policies, identified as Options “D” and “E.”

## **Discussion**

Options D and E represent distinct policy alternatives that provide measurably different roles for the Commission in administering G.C. §56133. Options D and E would both incorporate local conditions recognizing American Canyon as the primary water and sewer service provider in unincorporated south Napa County.<sup>3</sup> However, Option D establishes a role for the Commission in authorizing American Canyon to continue to provide new or extended outside services. Option D also provides controls against the extension of outside services in agricultural and open-space designated lands. In contrast, Option E determines that American Canyon does not require Commission approval to continue to provide outside services within the service areas defined in its agreements with NCFCWCD and NSD because they are not considered new or extended under G.C. §56133. Expanded summaries of both options follow.

### **Option D**

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The Commission would establish a policy allowing American Canyon to continue to provide new or extended outside water and sewer services based upon LAFCO review and approval. Approval would be granted either through a comprehensive (area-wide) or incremental (individual application) approach. Specific components comprising Option D are outlined below.

- The Commission would adopt a water service area for American Canyon. The water service area would be distinct from American Canyon’s sphere and generally reflect its agreement with NCFCWCD, but exclude lands designated for non-urban use under the current County General Plan.
- The Commission would adopt a sewer service area for American Canyon. The sewer service area would be distinct from American Canyon’s sphere and generally reflect its agreement with NSD, but exclude lands designated for non-urban use under the current County General Plan.

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<sup>3</sup> NSD provides sewer service in south unincorporated Napa County north of Fagan Creek. NSD’s sewer services in south unincorporated Napa County are contained within its jurisdictional boundary.

- American Canyon would be restricted from providing new or extended outside water and sewer services beyond its service areas defined by LAFCO. Individual exemptions would be considered by the Commission in response to special circumstances.
- The Commission would recognize and designate American Canyon as the appropriate public water and sewer service provider within its service areas defined by LAFCO. The Commission would also recognize that American Canyon may establish terms and conditions relating to the provision of new or extended outside services within its service areas.
- The Commission would determine that the provision of new or extended outside water and sewer services by American Canyon within its service areas defined by LAFCO abates potential threats to public health and safety.
- If a comprehensive approach is preferred, as part of an area-wide approval, the Commission would authorize American Canyon to provide new or extended outside water and sewer services within its service areas defined by LAFCO. Approval would be based upon information analyzed and determinations adopted by the Commission as part of the *Comprehensive Water Service Study* (2004) and *Comprehensive Study of Sanitation and Wastewater Treatment Providers* (2006). These determinations collectively state that American Canyon has established adequate service capacities and administrative controls to provide an adequate level of water and sewer within its service areas.
- If an incremental approach is preferred, the Commission would authorize American Canyon to provide new or extended outside water and sewer services within its service areas defined by LAFCO on an application-by-application basis. The applicant would pay the costs of processing the application as specified in the Commission's Schedule of Fees and Deposits. The Executive Officer would prepare a report on the application with a recommendation for Commission consideration at a public meeting. LAFCO would use the following definitions for new and extended services:

“New” services would be triggered with the extension of water or sewer to previously unserved land.

“Extended” services would be triggered with the intensification of water or sewer uses to previously served land as a result of redesignation or rezoning by the affected land use authority.

### **Option E**

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The Commission would establish a policy determining that American Canyon does not require approval under G.C. §56133 to continue to provide outside water or sewer services within the service areas defined in its agreements with NCFWCD and NSD. This policy would be premised on the Commission determining that American Canyon's agreements with NCFWCD and NSD adequately provides for the provision of water and sewer within its agency-defined service areas, and is therefore not considered new or extended under G.C. §56133.

- \* Staff has expanded the scope of Option E from the original outline presented to the Commission in March. Specifically, the March report outlined a policy determining that American Canyon does not require Commission approval to provide outside water services based on the City's agreement with NCFWCD. In preparing this report, staff has expanded the scope of Option E to further exempt American Canyon from Commission approval with respect to providing outside sewer services based on the City's agreement with NSD defining Fagan Creek as the dividing line between their respective sewer service areas. This addition reflects staff's determination that both agreements are similar in terms of equally contemplating that American Canyon, as successor agency to ACCWD, will provide future water and sewer within its agency-defined service areas.

### **Analysis**

As mentioned, Options D and E reflect separate policy alternatives for the Commission to clarify its role in addressing the inconsistencies between the provisions of G.C. §56133 and the current practices of American Canyon in providing outside water and sewer services. The key components as well as advantages and disadvantages underlying these options, including distinguishing between comprehensive or incremental approval under Option D, are summarized below.

#### **Option D (Comprehensive Approval)**

The Commission establishes water and sewer service areas for American Canyon that are distinct from its sphere and exclude lands designated for non-urban use under the current County General Plan. The Commission authorizes American Canyon to provide new or extended outside water and sewer services within these service areas without further review by determining the City has adequate service capacities and administrative controls.

#### *Advantages*

- Reconciles the provisions of G.C. §56133 with local conditions and circumstances underlying outside water and sewer service arrangements inherited by American Canyon at the time of its incorporation in 1992.
- Establishes water and sewer service areas for American Canyon that are generally consistent with its agreements with NCFWCD and NSD.

- Is compatible with the County's expectation as the affected land use authority that American Canyon is the designated public water and sewer provider for unincorporated lands north to Soscol Ridge and Fagan Creek, respectively.
- Provides effective controls for the Commission to fulfill its mandate to discourage the expansion of governmental services to agricultural and open-space designated lands.
- Is consistent with written determinations adopted as part of the Commission's *Comprehensive Water Service Study* and *Comprehensive Study of Sanitation/Wastewater Treatment Providers*.
- Is consistent with an underlying tenet of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 that the Commission consider local conditions and circumstances in planning the orderly formation and development of governmental agencies and services.

#### *Disadvantages*

- Eliminates opportunities for the Commission to individually examine capacities and controls for American Canyon relating to the timing of new or extended water and sewer services within its service areas defined by LAFCO.
- Creates uncertainties with respect to potential conflicts with Article 11, Section 9 of the California Constitution by establishing restrictions on the ability of American Canyon to provide water service outside its jurisdiction.<sup>4</sup>

#### **Option D (Incremental Approval)**

The Commission establishes water and sewer service areas for American Canyon that are distinct from its sphere and exclude lands designated for non-urban use under the current County General Plan. The Commission authorizes American Canyon to provide new or extended services within these service areas on an application-by-application basis.

#### *Advantages*

- Along with the advantages listed under comprehensive approval, the incremental approach allows the Commission to individually examine American Canyon's capacities and controls in providing new or extended outside water or sewer services to lands within its service areas defined by LAFCO. This would provide greater controls for the Commission in determining whether the timing of new or extended services is appropriate.

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<sup>4</sup> Article 11, Section 9 of the California Constitution states that a "municipal corporation" may establish and provide light, water, power, heat, and transportation services outside its boundaries. There is no case law addressing the potential conflict between this constitution provision and G.C. §56133.

### *Disadvantages*

- Along with the disadvantage listed under the comprehensive approval relating to potential conflict with the constitutional authority of the City to provide services, the incremental approach requires the Commission expend considerable resources to administer. Incremental approval also requires the Commission establish evaluation standards in reviewing application requests under G.C. §56133.

### **Option E**

The Commission determines that American Canyon does not require approval under G.C. §56133 in providing outside water or sewer within its service areas defined in its agreements with NCFWCWD and NSD. The Commission determines that these agreements adequately provide for American Canyon to deliver outside water and sewer services within its agency-defined service areas and are not considered new or extended under G.C. §56133.

### *Advantages*

- Effectively formalizes the established practice of the Commission not to require American Canyon to receive LAFCO approval to provide outside water and sewer services within its agency-defined service areas.
- Eliminates the need to dedicate Commission resources to administer.
- Is responsive to local conditions and circumstances underlying outside water and sewer service arrangements inherited by American Canyon at the time of its incorporation in 1992.

### *Disadvantages*

- Diminishes the intent of G.C. §56133 for the Commission to participate in the decision-making process involving the extension of outside water and sewer services by American Canyon in unincorporated south Napa County.
- Precludes the Commission from establishing controls to protect against the extension of outside water and sewer services by American Canyon in surrounding agricultural and open-space designated lands.
- Establishes a policy precedent with respect to deferring to similar local service agreements in administering G.C. §56133 with unknown outcomes.

## **Conclusion**

Options D and E are measured policy alternatives for the Commission to address its role under G.C. §56133 as it relates to American Canyon. Both alternatives are reasonable attempts to clarify the Commission's responsibilities in a manner that is responsive to local conditions and circumstances. Staff believes that Option D is the more effective of the two alternatives with respect to fulfilling the legislative intent of G.C. §56133. Notably, Option D reconciles the responsibilities of the Commission while recognizing existing service arrangements and provides controls against the extension of urban services into agricultural and open-space designated lands.

Option D could be implemented by authorizing American Canyon to continue to provide new or extended outside water or sewer services within its service areas defined by LAFCO in a comprehensive or incremental approach. Staff believes that a comprehensive approach to Option D is preferable because it achieves the Commission's interests in meeting the legislative intent of G.C. §56133 without creating additional administrative processes in approving the logical extension of services within urban designated lands.

## **Alternatives for Commission Action**

After consideration of this report, the Commission should consider approving one of the following alternatives:

**Alternative One: Approve Option D, comprehensive approach. This would include taking the following action:**

- 1) Adopt the attached draft resolution identified as "Attachment Five-A."

**Alternative Two: Approve Option D, incremental approach. This would include taking the following action:**

- 1) Adopt the attached draft resolution identified as "Attachment Five-B."

**Alternative Three: Approve Option E. This would include taking the following action:**

- 1) Adopt the attached draft resolution identified as "Attachment Five-C."

**Alternative Four: If the Commission requires more discussion or information, continue this matter to a future meeting.**



## Recommendation

Staff recommends Alternative One. This alternative approves the comprehensive approach in implementing Option D.

Respectfully submitted,

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Keene Simonds  
Executive Officer

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Jacqueline Gong  
Commission Counsel

### Attachments:

1. California Government Code §56133
2. Maps
  - a) ~~American Canyon (depicting inherited water and sewer service areas)~~
  - b) ~~American Canyon County Water District (at the time of its merger into American Canyon)~~
  - c) ~~American Canyon (metered outside water and sewer service connections)~~
  - d) ~~County of Napa Airport Industrial Area Specific Plan Boundary~~
  - e) ~~Proposed Outside Water and Sewer Service Areas for American Canyon under Option D~~
3. Agreements
  - a) ~~Napa County Flood Control and Water Conservation District: Water Supply (1966)~~
  - b) ~~Napa-American Canyon Wastewater Management Authority: Dissolution (1994)~~
4. Written Comments
  - a) ~~Letter from Robert Westmeyer, County Counsel, County of Napa, dated February 26, 2007~~
  - b) ~~Letter from William Ross, City Attorney, American Canyon, dated March 5, 2007~~
  - c) ~~Letter from Iris Yang on behalf of American Canyon, dated June 4, 2007~~
  - d) ~~Letter from Alan Lilly on behalf of the County of Napa, dated July 23, 2007~~
5. Draft LAFCO Resolutions
  - a) ~~Alternative One: Option D (comprehensive approval)~~
  - b) ~~Alternative Two: Option D (incremental approval)~~
  - c) ~~Alternative Three: Option E~~

### **California Government Code Section 56133**

(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the commission in the affected county.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.

(c) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:

- (1) The entity applying for the contract approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.
- (2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district of a contract to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of those requests to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the contract for extended services. If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider. This section does not apply to contracts for the transfer of nonpotable or nontreated water. This section does not apply to contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county. This section does not apply to an extended service that a city or district was providing on or before January 1, 2001. This section does not apply to a local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries.