

## Executive Officer's Report

MEETING DATE: January 20, 2021 9:30 a.m.

TO: Lake Local Agency Formation Commission

FROM: John Benoit, Executive Officer

SUBJECT: Executive Officer's Report regarding Reconsideration Request for the Konocti County Water District Sphere of Influence: LAFCo Resolution 2020-0007

### Attachments:

- A. **Adopted Resolution 2020-0007**
- B. **Reconsideration Letter from William L. Adams, Esq. on behalf of the Highlands Mutual Water Company**
- C. **Resolution 2021-0001 - A Resolution making determinations**

### ALTERNATIVE ACTIONS BY THE COMMISSION

The Commission has the following alternatives for action after closure of the Public hearing:

Alternative #1 Affirm the decision to grant the reconsideration request. If the Commission determines that the Appellant has presented grounds requiring reversal of the previous decision, then the Commission may affirm its previous decision in the Sphere of Influence resolution, which is attached as Exhibit C to this staff report.

Alternative #2 Reconsider its November 18, 2020 decision and deny the reconsideration.

Alternative #3 Continue the Hearing. The Commission may determine that it does not have sufficient information to make a decision at this time, and continue the matter to a date and time certain since Section 56895 only allows continuances for a maximum of 35 days, the continued hearing would have to occur no later than February 24, 2021, the continued hearing would therefore be held at LAFCo's alternative meeting date of February 17, 2021.

Alternative #4 Approve the Sphere of Influence and amend the terms and conditions adopted on November 18, 2020 based on the reconsideration request.

Alternative #5 Grant the Reconsideration Request, rescind resolution 2020-0007 and direct staff to include all domestic water service providers in an updated service review within the City of Clearlake and within 6 months more or less bring back an amended updated Sphere of Influence update for the Konocti County Water District for LAFCo consideration.

### I. Background on the Request for Reconsideration

On November 18, 2020, the Commission adopted Resolution 2020-0007 making determinations and approving a Sphere of Influence update for the Konocti County Water District (KCWD). The Executive Officer's report dated November 18, 2020 is incorporated by reference into this report. **Please bring your copy of the November 18, 2020 Executive Officer's report to the Hearing.**

## Staff Report Re: Reconsideration Request for the Konocti County Water District SOI

Thereafter, a request for reconsideration of this actions was timely submitted by William L Adams on behalf of the Highlands Mutual Water Company (See Letter for consideration dated December 4, 2020 (Attachment B). The party requesting reconsideration will be referred to as "Appellant" and the request for reconsideration of the Konocti County Water District SOI will be referred to as the "Request." The Petition raises numerous issues and alleged defects in the approval of the KCWD SOI..

The following analysis more particularly discusses the issues raised by the Appellant on a point-by-point basis, organizing them by general subject matter. A map showing the Domestic Water Service Providers (herein referred to as Water Service Providers) within the incorporated area of the City of Clearlake and a map showing the adopted Sphere of Influence for the Konocti County Water District are at the end of this report.

### II. Items Raised in the Reconsideration Request

***A discussion of the following points were brought up in the letter (Attachment B), as follows:***

1. As shown in the attached map entitled "Lake Local Agency Formation Commission Clearlake Water Service Provider", included on page 66 of the Draft September 2020 Municipal Service Review for Konocti Water ("Konocti Water MSR"), there are several areas in the proposed expansion of the Konocti Water sphere of influence that overlap into the existing Highlands Water service area. This encroachment into existing Highlands Water service areas is Expressly prohibited by findings in section 3.1.1.c of the Konocti Water MSR, which states on page 11: "LAFCO does not have the authority to change boundaries or service areas for the Golden State Water Company or the Highlands Mutual Water Company."

**RESPONSE:** LAFCo is not permitted to overlap spheres of influence for public agencies subject to its jurisdiction, for example, the Lower Lake County Water District. LAFCo may not change the boundaries of the Highlands Mutual Water Company or the Golden State Mutual Water Company since these entities are not subject to LAFCo. All the agencies (KCWD and the Lower Lake County Water District) as well as the entities including the Highlands Mutual Water Company and Golden State Mutual Water Company are subject to a water rights agreement whereby amounts of water to be extracted from Clear Lake and the location where water is to provided to customers are regulated. Of concern is there are several areas where water rights user areas have overlapping water rights mapping. The most pronounced example is the area discussed in item 4 below.

2. In the northwest corner of the expanded Konocti Water sphere of influence map, the property west of Highway 53 and north of Austin Drive, including Fillmore Avenue and Lincoln Avenue, and surrounding the Highlands Water Fillmore Tank, is currently within and being served by the Highlands Water service area. What is the rationale for the apparent duplication of service and an overlapping of jurisdiction arising from Resolution 2020-0007?"

**RESPONSE:** This area is within the current Sphere of Influence for the KCWD as well as the updated Sphere of Influence. This area is within the geographic area in the current Yolo County Flood Control water rights agreement for the Highlands Mutual Water Company and not within the Konocti County Water District Water

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Rights Map. The area is currently served by the Highlands Mutual Water Company.

3. On the western edge of the expanded Konocti Water sphere of influence map, the property west of Highway 53 around Lakeshore Drive and north of Dixon Street is currently within and being served by the Highlands Water service area. Highlands Water has tasked future developments with improving the system to meet current required fire flow needs, as required of Konocti Water in determination 3-4 on page 46 of the Konocti Water MSR.

**RESPONSE:** This area is within the current Sphere of Influence for the KCWD as well as the updated Sphere of Influence. This area is within the geographic area in the current Yolo County Flood Control water rights agreement for the Highlands Mutual Water Company and not within the Konocti County Water District Water Rights Map. The area is currently served by the Highlands Mutual Water Company.

4. On the southwestern edge of the expanded Konocti Water sphere of influence map, the property east of Highway 53 in area east of the Dam Road Extension (which includes Konocti Education Center, Woodland College, Walmart, McDonalds, Big 5 Sporting Goods and Tractor Supply) is currently within and being served by Highlands Water with good pressure from its 0.88 million gallon tank. Again, what is the rationale for the apparent duplication of service and an overlapping of jurisdiction arising from Resolution 2020-0007?

**RESPONSE:** This area is within the both the present and updated Sphere of Influence for the Konocti County Water District and District Boundary as well as within the Yolo County Water Rights Service Area Map. Highlands Mutual Water Company provides water service in this area. This area and is not within the Yolo County Flood Control Water Rights Service Area Map.

5. In the expanded Konocti Water sphere of influence map, the property west of Highway 53 between Davis and Austin/Duncan is more easily served by Highlands Water 10" main at Duncan and Fillmore coming from the 2.2 million-gallon Fillmore Tank.

**RESPONSE:** This area is within the both the present and updated Sphere of Influence for the Konocti County Water District. This area is within the Yolo County Water Rights service area for the Highlands Mutual Water Company and appears not to be within the Konocti County Water District Water Rights service area.

6. With regard to the specific findings and determinations in Resolution 2020-0007, findings 2, 6 and 8 regarding the encroachments into the Highlands Water service area are without factual and legal justification and should be rescinded as part of the reconsideration.

**RESPONSE:** There is nothing illegal about a public agency overlapping with non-public agency service areas. The Konocti County Water District has included many of the disputed areas in its Sphere of Influence since before 1985 when Lake LAFCo adopted its first Spheres of Influence. Some of the overlap areas include areas within the KCWD district boundary itself where the Highlands Mutual Water District provides water services. In addition the overlapping area between the Highlands Mutual Water Company and the Golden State Water Company needs further analysis. An analysis of which water provider is the best service provider in a

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given area should occur. Since the City of Clearlake has four water service providers. The Service Review needs to be amended to include an analysis of all four water service providers, more thoroughly review areas where either a Sphere of Water Service Boundary overlap and an examination of the Yolo County Flood Control water rights agreements.

Regarding finding #3 of resolution 2020-0007 the annexable area within the KCWD includes areas in addition to the Highlands Mutual Water Co. For example, an expandable sphere to the north and southeast of the existing KCWD boundary.

Regarding finding #6 of resolution 2020-0007 the words “the Konocti County Water District is authorized to provide domestic water within the territory set forth in Attachment “A”” should be amended to read as follows “ The Konocti County Water District is authorized to provide domestic water services within its boundaries”.

Regarding finding #8 LAFCo adopted the Sphere of Influence Report and Map. Encroachments into both the Highlands Mutual Water Company and the KCWD should be re-examined and action taken after a comprehensive review is completed.

**III. Conclusion:**

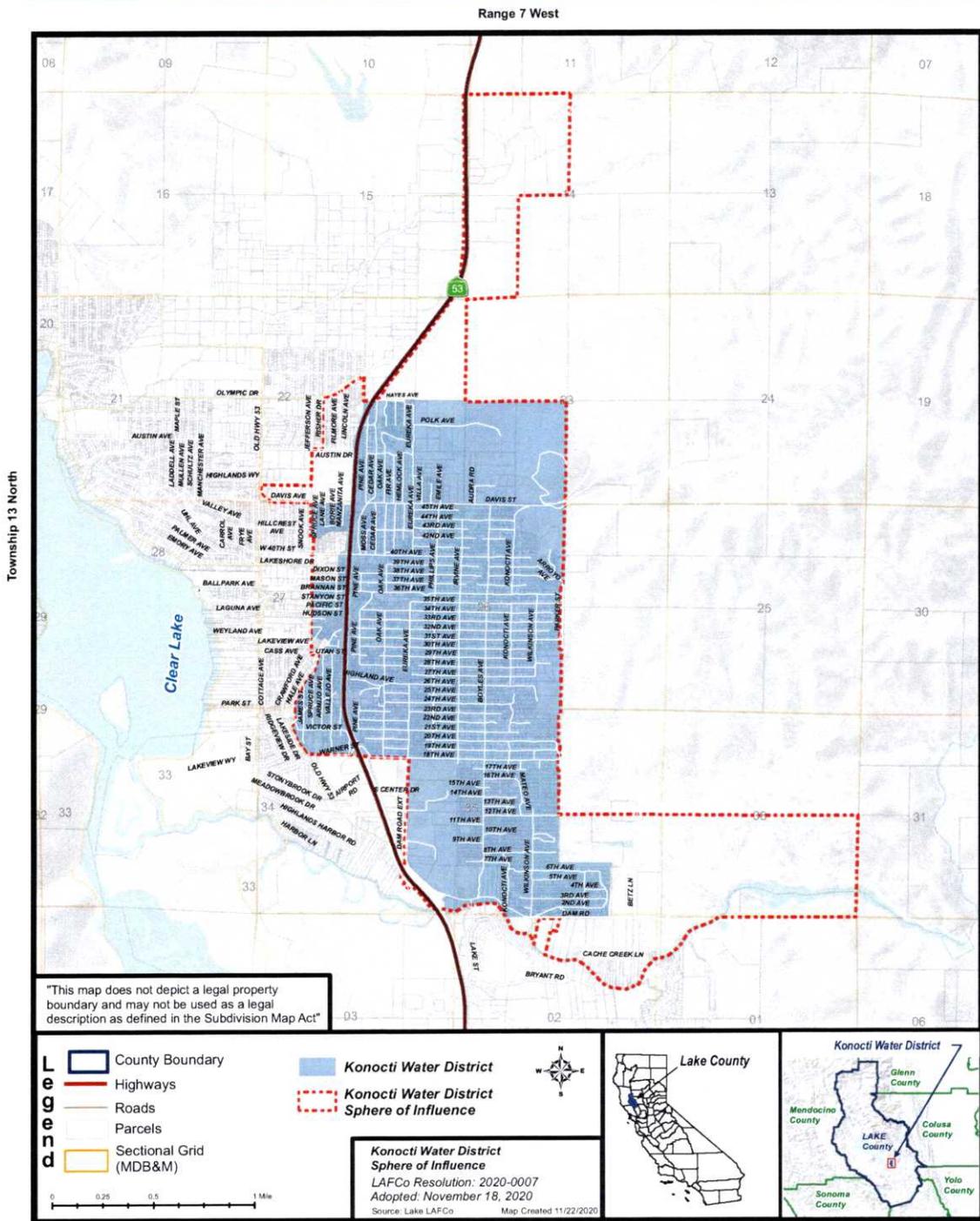
Staff recommends the Commission Consider Alternative 5 - Grant the Reconsideration Request, Rescind Resolution 2020-0007 and direct staff to include all domestic water service providers within the City of Clearlake in an updated service review and within 6 months more or less bring back an amended updated Service Review and Sphere of Influence Update for the Konocti County Water District for LAFCo consideration. Staff recommend the Commission adopt Resolution 2021-0001.

Respectfully Submitted,

John Benoit,  
Executive Officer



# LAKE LOCAL AGENCY FORMATION COMMISSION KONOCTI WATER DISTRICT



A

**Resolution No. 2020-0007**

**LAKE LOCAL AGENCY FORMATION COMMISSION**

*A Resolution Making Determinations and Approving A Sphere of Influence Update for the Konocti County Water District*

**WHEREAS**, Government Code Section 56425 requires each Local Agency Formation Commission to adopt and periodically review and update a sphere of influence for each local governmental agency within its jurisdiction; and

**WHEREAS**, the Lake Local Agency Formation Commission, in compliance with the aforementioned requirement, is providing a "plan for the probable physical boundaries and service " for the Konocti County Water District; and

**WHEREAS**, the Commission has set the initial hearing date of November 18, 2020 for the update of the sphere of influence for the Konocti County Water District and has noticed this hearing at the times and as otherwise prescribed by Government Code Section 56150, et seq.; and

**WHEREAS**, the Commission has heard and adopted a Municipal Services Review of services provided by the Konocti County Water District in accordance with Gov. Code section 56430; and

**WHEREAS**, the Commission has reviewed and considered the proposed Sphere of Influence update report and the proposed Sphere of Influence Update Map which are attached hereto and incorporated herein; and

**WHEREAS**, the Commission has considered those factors determined by it to be relevant to the proposed sphere of influence update, including, but not limited to, those factors specified in Government Code Section 56425, et seq., and has heard from interested parties and considered requests for amendment and/or revision of the proposed updated sphere boundary, if any;

**NOW, THEREFORE, BE IT RESOLVED** that the Lake Local Agency Formation Commission does hereby find and determine as follows:

1. That the proposed sphere of influence update with respect to the Konocti County Water District, complies with the provisions of Government Code Section 56000, et seq.
2. That the Konocti County Water District shall have an annexable Sphere of Influence.
3. That no significant protests have been received regarding the establishment of this Sphere of Influence update.
4. That, pursuant to Government Code Section 56425, the Commission makes and adopts those determinations set forth in the Sphere of Influence Study are attached hereto and incorporated herein.
5. The Commission has reviewed and adopts a Notice of Exemption prepared for this Sphere of Influence update and makes a specific finding that there is no substantial evidence in light of the whole record before the Lake Local Agency Formation Commission that this Sphere Update for the Konocti County Water District may have a significant adverse effect on the environment and no unusual circumstances exist.
6. Pursuant to Government Code Section 56425 (i) the Konocti County Water District is

authorized to provide domestic water within the territory set forth in Attachment "A". Other services a County Water District may provide shall be considered a new service and LAFCO approval shall be required.

7. All previously adopted Sphere of Influence updates and (or) amendments are hereby repealed in favor of this Sphere of Influence Update.
8. That the Sphere of Influence Update Report, Executive Officer's Report, and Map for the Konocti County Water District updated Sphere is hereby adopted and approved as set forth in Attachment "A".

The foregoing resolution was duly passed by the Lake Local Agency Formation Commission at a regular meeting held on November 18, 2020, by the following roll call vote:

Ayes: Mattina, Slooten, Archacki, Robey, Simon, Scholz & Sabatier

Noes: -

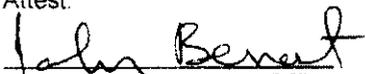
Abstentions: -

Absent: -

Signed and approved by me after its passage this 18<sup>th</sup> day of November 2020

  
\_\_\_\_\_  
Bruno Sabatier, Chair, Lake LAFCO

Attest.

  
\_\_\_\_\_  
John Benoit, Executive Officer  
LAKE LOCAL AGENCY FORMATION COMMISSION



B

December 3, 2020

VIA FIRST CLASS MAIL AND EMAIL [j.benoit4@icloud.com](mailto:j.benoit4@icloud.com)

Lake County LAFCO  
c/o Bruno Sabatier, Commission Chair  
John Benoit, Executive Officer  
P.O. Box 2694  
Granite Bay, CA 95746

Re: *Request for Reconsideration of Lake County LAFCO  
Sphere of Influence amendments for the Konocti County Water District*

Dear Chair Sabatier and Executive Officer Benoit:

This office has been retained by the Highlands Mutual Water Company (“Highlands Water”). As you know, Highlands Water provides water service in the central portion of the City of Clearlake and is one of three water service providers to the City.

Pursuant to Government Code section 56895 of the Cortese-Knox-Hertzberg LAFCO Act, the purpose of this letter is to submit written request for reconsideration of sphere of influence amendments for the Konocti County Water District (“Konocti Water”), approved in Resolution 2020-0007 by the Lake County LAFCO at its meeting on November 18, 2020. Konocti Water provides water service for the western portion of the City of Clearlake, primary on the east side of Highway 53.

There are several specific areas of Resolution 2020-0007 and the sphere of influence map included as Attachment “A” thereto that need to be reconsidered and revised. There include:

1. As shown in the attached map entitled “Lake Local Agency Formation Commission Clearlake Water Service Provider”, included on page 66 of the Draft September 2020 Municipal Service Review for Konocti Water (“Konocti Water MSR”), there are several areas in the proposed expansion of the Konocti Water sphere of influence that overlap into the existing Highlands Water service area. This encroachment into existing Highlands Water service areas is expressly prohibited by findings in section 3.1.1.c of the Konocti Water MSR, which states on page 11: “LAFCO does not have the authority to change boundaries or service areas for the Golden State Water Company or the Highlands Mutual Water Company.”
2. In the northwest corner of the expanded Konocti Water sphere of influence map, the property west of Highway 53 and north of Austin Drive, including Filmore Avenue and Lincoln Avenue, and surrounding the Highlands Water Fillmore Tank, is currently within and being served by the Highlands Water service area. What is the rationale for the apparent duplication of service and an overlapping of jurisdiction arising from Resolution 2020-0007?

LAW OFFICES

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Re: *Request for Reconsideration of Lake County LAFCO  
Sphere of Influence amendments for the Konocti County Water District*

3. On the western edge of the expanded Konocti Water sphere of influence map, the property west of Highway 53 around Lakeshore Drive and north of Dixon Street is currently within and being served by the Highlands Water service area. Highlands Water has tasked future developments with improving the system to meet current required fire flow needs, as required of Konocti Water in determination 3-4 on page 46 of the Konocti Water MSR.
4. On the southwestern edge of the expanded Konocti Water sphere of influence map, the property east of Highway 53 in area east of the Dam Road Extension (which includes Konocti Education Center, Woodland College, Walmart, McDonalds, Big 5 Sporting Goods and Tractor Supply) is currently within and being served by Highlands Water with good pressure from its 0.88 million gallon tank. Again, what is the rationale for the apparent duplication of service and an overlapping of jurisdiction arising from Resolution 2020-0007?
5. In the expanded Konocti Water sphere of influence map, the property west of Highway 53 between Davis and Austin/Duncan is more easily served by Highlands Water 10" main at Duncan and Fillmore coming from the 2.2 million-gallon Fillmore Tank.
6. With regard to the specific findings and determinations in Resolution 2020-0007, findings 2, 6 and 8 regarding the encroachments into the Highlands Water service area are without factual and legal justification and should be rescinded as part of the reconsideration.

As we understand the procedural provisions of section 56895, no further action shall be taken concerning the proposed sphere of influence amendment pending this reconsideration, and the requested reconsideration must be placed on the agenda for the next Commission meeting in January 2021. Please confirm that LAFCO will comply with these procedural requirements.

Thank you for your consideration action on this reconsideration request. I am available at your convenience to discuss this matter with you or your counsel. My direct email is [wadams@majlaw.com](mailto:wadams@majlaw.com).

Sincerely,



William L. Adams

CC: Highlands Water

C

BEFORE THE LAKE LOCAL AGENCY FORMATION COMMISSION

COUNTY OF LAKE, STATE OF CALIFORNIA

**RESOLUTION 2021-0001**

*A Resolution making determinations regarding the reconsideration of LAFCo's approval of the Konocti County Water District Sphere of Influence Update*

WHEREAS, the Lake Local Agency Formation Commission pursuant to the requirements of the Cortese-Knox-Hertzberg Local Government Reorganization Act (Section 56000 *et seq.* of the California Government Code) prepared a Sphere of Influence Update for the Konocti County Water District; and

WHEREAS, the Executive Officer prepared and filed his report with this Commission at least five (5) days prior to the meeting during which this Sphere was to be considered; and

WHEREAS, on November 18, 2020, the Lake Local Agency Formation Commission approved this Sphere of Influence Update and adopted Resolution 2020-0007; and

WHEREAS, the Commission has considered those factors determined by it to be relevant to the Sphere of Influence Update, including, but not limited to the report of the Executive Officer, the applicable General Plan, and Service Review for the Konocti County Water District; and

WHEREAS, on or about December 3, 2020, William L. Adams, attorney for the Highlands Mutual Water Company, submitted a timely request for reconsideration to reconsider the Commission's November 18, 2020 decision pursuant to Government Code section 56895; and

WHEREAS, the reconsideration request is based on several areas where the Konocti County Water District Sphere overlaps Highlands Mutual Water Company service areas; and

WHEREAS, the Commission, held a hearing on January 20, 2021, and upon the request for reconsideration of the detachment and has noticed that hearing at the times and as otherwise prescribed by Government Code Section 56150, *et seq.*; and

WHEREAS, all interested parties and proponents of the proposal were heard at a public hearing held on January 20, 2021; and

WHEREAS, all correspondence, documents, testimony and submissions presented by the party seeking reconsideration of the November 18, 2020, approval of the Sphere of Influence update as well as the Executive Officer's reports dated January 20, 2021.

NOW, THEREFORE, IT IS HEREBY RESOLVED, DETERMINED AND ORDERED by the Lake Local Agency Formation Commission as follows:

1. The foregoing recitals are true and correct.
2. LAFCo Resolution 2020-0007 is hereby rescinded. Lake LAFCo hereby grants the reconsideration request as documented in the Executive Officer's Report Dated January 20, 2021 and will prepare a comprehensive review of domestic water service providers operating within the City of Clearlake.
3. LAFCO desires to work with all domestic water service providers within the City and update the adopted Service Review to be more comprehensive in nature prior to re-visiting the KCWD Sphere Update.
4. Lake LAFCo hereby finds that the following facts regarding the detachment proceedings are true and correct:
  - a. That there is an overwhelming need for LAFCo to comprehensively review all domestic water service providers within the City Limits of Clearlake.
  - b. That the Konocti County Water District does not provide domestic water service to the affected territory in dispute.
  - c. The Highlands Mutual Water company provides domestic water services in many of the disputed areas.
  - d. LAFCo has identified several areas of overlap and inconsistencies regarding water rights for domestic water services and providers within the City of Clearlake.
  - e. There is nothing illegal for a public agency to include areas served by a mutual water company within its Sphere of Influence.
5. In reviewing the request for reconsideration, the Commission has considered all factors required by Government Code Sections 56895 and LAFCO's policies as well as issues raised in the December 3, 2020 request for reconsideration. The Commission determines that each factor has been adequately analyzed by the documents within the record before the Commission, including but not limited to the Sphere of Influence

Documents and hereby affirms the determinations adopted in Resolution 2020-0007 on November 18, 2020.

6. The Executive Officer's report and recommendation are hereby incorporated by reference and adopted.
7. The Executive Officer of this Commission is instructed to mail this resolution to those persons so indicated on the application, affected agencies, and as required by Government Code Section 56882.

PASSED AND ADOPTED at a regular meeting of the Lake Local Agency Formation Commission on the 20<sup>th</sup> day of January 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Bruno Sabatier, Chair  
LAKE LOCAL AGENCY FORMATION  
COMMISSION

ATTEST:

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John Benoit  
LAFCO Executive Officer