

**EXECUTIVE OFFICER'S AGENDA REPORT**  
**August 23, 2017**

**TO: LAFCO Commissioners**

**FROM: Javier Camarena, Assistant Executive Officer**

**SUBJECT: Municipal Service Review and Sphere of Influence Update No. 2017-06: Empire Sanitary District**

**INTRODUCTION**

This proposal was initiated by the Local Agency Formation Commission in response to State mandates that required the Commission to conduct municipal service reviews and sphere of influence updates for all cities and special districts every five years, as needed. The current review covers the Empire Sanitary District in Stanislaus County. The previous update for this district was adopted August 24, 2011.

The proposed Municipal Service Review (MSR) and Sphere of Influence (SOI) Update document is attached to this report as Exhibit 1. The relevant factors as set forth by the Cortese-Knox-Hertzberg Act are discussed for the District. No changes are being proposed for the District's SOI at this time.

**DISCUSSION**

The Municipal Service Review and Sphere of Influence Update process provides an opportunity for districts to share accurate and current data, accomplishments and information regarding the services they provide. The City of Modesto is managing the District, which will be later discussed in this report. LAFCO Staff sent the City of Modesto requests for information, researched District reports and reviewed the District's most recent audits and financial statements. Once this data was collected, a revised Municipal Service Review and Sphere of Influence Update document was completed.

Minor changes have been made to the document since the previous update to reflect recent additions to State law, including the requirement that LAFCOs identify "disadvantaged unincorporated communities" (DUCs) within or contiguous to city and district spheres of influence. Based on the area within the Empire Sanitary District's Annual Median Household Income being below 80% of the statewide level, the District area is identified as a DUC.

In 2003, the City of Modesto conducted a six-week capacity study, which determined that the District's collection system was at 90-percent capacity. Daily volumes of sewage collected from the system during the study time period averaged 168,761 gallons per day. The City's study at that time revealed that the District's main pipeline, which connects to the City's system, was at 90% flow capacity, which could potentially result in sanitary sewer overflows. In addition, the majority of the sewage is distributed through old and undersized pipelines. Therefore, the District is required to receive prior written consent from the City before allowing additional users to connect to the District's system.

On December 15, 2015, the City of Modesto approved an expanded agreement with the Empire Sanitary District (ESD). Under the terms of the agreement, the City would accept the transfer of all ESD sewer infrastructure, and would take over maintenance, repair, and replacement obligations of all such infrastructure. ESD customers would continue to pay charges and rates to the City of Modesto.

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Empire Sanitary District (ESD) remitted the District's Reserve Fund of approximately \$500,000 to the City which has been dedicated to existing ESD infrastructure repairs and rehabilitation.

### **ENVIRONMENTAL REVIEW RECOMMENDATIONS**

Pursuant to the California Environmental Quality Act (CEQA), the adoption of a municipal service review is considered to be categorically exempt from the preparation of environmental documentation under a classification related to information gathering (Class 6 - Regulation §15306). Further, LAFCO's concurrent reaffirmation of an existing sphere of influence qualifies for a General Exemption as outlined in CEQA Regulation §15061(b)(3), which states:

*The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.*

As there are no land use changes, boundary changes, or environmental impacts associated with the Municipal Service Review and Sphere of Influence Update, an exemption from further environmental review is appropriate.

### **ALTERNATIVES FOR COMMISSION ACTION**

After consideration of this report and any testimony or additional materials that are submitted, the Commission should consider choosing one of the following options:

- Option 1:** APPROVE the Municipal Service Review and Sphere of Influence Update for the Empire Sanitary District.
- Option 2:** DENY the update.
- Option 3:** If the Commission needs more information, it should CONTINUE this matter to a future meeting (maximum 70 days).

### **RECOMMENDED ACTION**

**Approve Option 1.** Based on the information presented, Staff recommends approval of Municipal Service Review and Sphere of Influence Update for the Empire Sanitary District. Therefore, Staff recommends that the Commission adopt Resolution No. 2017-13 (See Exhibit 2), which:

1. Determines that the Municipal Service Review and Sphere of Influence Update qualifies for a General Exemption from further California Environmental Quality Act (CEQA) review based on CEQA Regulations Sections 15306 and 15061(b)(3).
2. Makes determinations related to the Municipal Service Review and Sphere of Influence Update as required by Government Code Sections 56425 and 56430.
3. Determines that the Sphere of Influence for Empire Sanitary District should be affirmed as it currently exists.

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4. Directs Staff to circulate the subject resolution depicting the District's adopted Sphere of Influence to all affected agencies.

*Attachments:*

*Exhibit 1* - Draft Municipal Service Review and Sphere of Influence Update for the Empire Sanitary District

*Exhibit 2* - Draft Resolution No. 2017-13 (Empire Sanitary District)

**DRAFT**



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***MUNICIPAL SERVICE REVIEW AND  
SPHERE OF INFLUENCE UPDATE FOR THE:***



**EMPIRE SANITARY DISTRICT**

*Prepared By:*

***Stanislaus Local Agency Formation Commission  
1010 Tenth Street, Third Floor  
Modesto, CA 95354  
Phone: (209) 525-7660***

***Adopted: \_\_\_\_\_***

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# **STANISLAUS**

## **LOCAL AGENCY FORMATION COMMISSION**

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### **COMMISSIONERS**

William Berryhill, Public Member  
Amy Bublak, City Member  
Tom Dunlop, City Member  
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Terry Withrow, County Member  
Michael Van Winkle, Alternate City Member  
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### **STAFF**

Sara Lytle-Pinhey, Executive Officer  
Javier Camarena, Assistant Executive Officer  
Rob Taro, Commission Counsel  
Jennifer Goss, Commission Clerk

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# **Municipal Service Review and Sphere of Influence Update For the Empire Sanitary District**

## **Introduction**

The Cortese/Knox/Hertzberg Local Government Reorganization Act of 2000 Act (CKH Act) requires the Local Agency Formation Commission (LAFCO) to update the Spheres of Influence (SOI) for all applicable jurisdictions in the County. A Sphere of Influence is defined by Government Code §56076 as "...a plan for the probable physical boundary and service area of a local agency, as determined by the Commission." The Act further requires that a Municipal Service Review (MSR) be conducted prior to or, in conjunction with, the update of a Sphere of Influence (SOI).

The legislative authority for conducting Service Reviews is provided in Government Code §56430 of the CKH Act. The Act states, that "in order to prepare and to update spheres of influence in accordance with §56425, the commission shall conduct a service review of the municipal services provided in the county or other appropriate area..." A Service Review must have written determinations that address the following factors:

## **Service Review Factors to be Addressed**

1. Growth and population projections for the affected area
2. The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence
3. Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged unincorporated communities within or contiguous to the sphere of influence.
4. Financial ability of agencies to provide services
5. Status of, and opportunities for, shared facilities
6. Accountability for community service needs, including governmental structure and operational efficiencies
7. Any other matter related to effective or efficient service delivery, as required by commission policy

This Service Review will analyze the Empire Sanitary District. The most recent Sphere of Influence (SOI) update for the Empire Sanitary District was adopted in 2011 and proposed no changes to the District's SOI. The current update serves to comply with Government Code §56425 and will reaffirm the SOI for the District.

## **Sphere of Influence Update Process**

A special district is a government agency that is required to have an adopted and updated Sphere of Influence. Section 56425(g) of the Cortese Knox Hertzberg Act calls for Spheres of Influence to be reviewed and updated every five years, as necessary. Stanislaus LAFCO processes the Service Review and Sphere of Influence Updates concurrently to ensure efficient use of resources. For rural special districts, which do not have the typical municipal level services to review, this Service Review will be used to determine what type of services each district is expected to provide and the extent to which they are actually able to do so. For these special districts, the spheres will delineate the service capability and expansion capacity of the agency, if applicable.

# **Service Review – Empire Sanitary District**

## **Authority**

This review will cover the Empire Sanitary District, which was organized under the Sanitary District Act of 1923, Health and Safety Code, Section 6400 et. seq. In addition, the District is considered a “registered voter district”, as the board members are elected by the registered voters residing within the district’s boundaries.

## **Background**

Special districts are local governments that are separate from cities and counties, yet provide public services such as fire protection, sewer, water, and street lighting. In California, there are over 3,300 special districts with a great diversity of purposes, governance structures, and financing mechanisms. There are 50 major types of special districts ranging from airports and fire protection to mosquito abatement and water conservation. Some districts are responsible for multiple public services or one specific type of public service, as is the case of the Empire Sanitary District.

## **Purpose**

The Empire Sanitary District was formed for the purpose of providing sanitary sewer services to the unincorporated community of Empire.

## **Governance**

In 2015, as part of an extended agreement, the City of Modesto became the ex-officio Board of the District. The extended agreement will be later discussed in this review.

## **Formation**

The Empire Sanitary District was formed on June 8, 1948.

## **Location and Size**

The District is located in central Stanislaus County, east of the City of Modesto. The District encompasses an area of approximately 428 acres. Of note, there is a residential tract approximately 1 acre in size, which, although it is within the District’s Sphere, according to LAFCO records, it has not been annexed to the District.

## **Sphere of Influence**

The District’s Sphere of Influence is approximately 428 acres. The entire District’s boundaries are within the City of Modesto’s Sphere of Influence. When the District’s SOI was initially established by LAFCO in November 1984, the following alternatives were proposed:

1. A LAFCO policy that no annexation of District territory except the entire District at once will be approved.
2. The inclusion of LAFCO conditions of annexation approval that require the City to provide sewer service to any problem areas left in the District.

3. An agreement between the City and District under which the City operates the District's collection system. This would be similar to the agreement between Ceres and the Ceres Fire District to alleviate a similar problem.

The Modesto Urban Area General Plan includes the Empire Sanitary District, and designates the area for residential and commercial land uses, which is consistent with the County's General Plan designations. At this time, the City has no plans in the foreseeable future to annex the area.

If and when the District territory is entirely annexed to the City, the District may be formally dissolved and merged with the City or continue as a subsidiary district, in which the City Council is designated and remain empowered to act as, ex-officio Board of Directors.

### **Personnel**

The District does not have employees at this time. Outside services are completed through contractors.

### **Classification of Services**

The District is authorized to provide the functions or classes of services (e.g. sewer services) as identified in this report. Due to recent changes in the Cortese-Knox-Hertzberg Act, the District would have to seek LAFCO approval to exercise other latent powers not currently provided

### **Services**

The District was formed for the purpose of providing sanitary sewer services to approximately 1,488 residential and commercial customers within the unincorporated community of Empire. However, since 1969, the District has had a contractual agreement with the City of Modesto for sewer disposal services. Under the terms of the agreement, the City agreed to accept and treat the sewage collected in the District's system and the District agreed to pay a service charge for said service.

In 2003, the City of Modesto conducted a six-week capacity study, which determined that the District's collection system was at 90-percent capacity. Daily volumes of sewage collected from the system during the study time period averaged 168,761 gallons per day. The City's study at that time revealed that the District's main pipeline, which connects to the City's system, was at 90% flow capacity, which could potentially result in sanitary sewer overflows. In addition, the majority of the sewage is distributed through old and undersized pipelines. Therefore, the District is required to receive prior written consent from the City before allowing additional users to connect to the District's system.

On December 15, 2015, the City of Modesto approved an expanded agreement with the Empire Sanitary District (ESD). Under the terms of the agreement, the City accepted the transfer of all ESD sewer infrastructure and took over maintenance, repair, and replacement obligations of all such infrastructure. ESD customers continue to pay charges and rates to the City of Modesto.

Empire Sanitary District (ESD) remitted the District's Reserve Fund of approximately \$500,000 to the City. The funds have been dedicated to existing ESD infrastructure repairs and rehabilitation.

### **Support Agencies**

The District is now being managed by the City of Modesto which maintains a collaborative relationship the Empire Municipal Advisory Council (MAC) and Stanislaus County.

### **Funding Sources**

The District's main source of revenue is derived from monthly service charges and connection fees. In 2010, the District adopted a monthly sewer service rate of \$35.75. The District also receives a small portion of the shared property tax revenues from Stanislaus County. The District has recently retained the accounting firm of Charles Strand, CPA to complete an independent audit of the District's financial statements for the last five years (2006-present), as mandated by Government Code Section 26909.

## **Service Review Determinations:**

The following provides an analysis of the six categories or components required by Section 56430 for a Service Review for the Empire Sanitary District.

### **1. Growth and Population Projections for the Affected Area**

The District serves the unincorporated community of Empire. The District currently serves approximately 1,488 residential and commercial customers with sanitary sewer service. According to the County's 2015-2023 Housing Element, the town of Empire has the potential to add an estimated 30 dwelling units, based on current vacant and/or underutilized parcels. However, due to limited infrastructure and resources, it is not expected that any significant population growth will occur within the District boundaries at this time.

### **2. The Location and Characteristics of Any Disadvantaged, Unincorporated Communities Within or Contiguous to the Sphere of Influence.**

Based on annual median household income, the area within the Empire Sanitary District is identified as a Disadvantaged Unincorporated Community (DUC) as defined in Section 56033.5 of the Cortese-Knox-Hertzberg Act of 2000. No additional DUCs have been identified within or contiguous to the District's sphere of influence.

### **3. Present and Planned Capacity of Public Facilities and Adequacy of Public Services, Including Infrastructure Needs or Deficiencies Including Needs or Deficiencies Related to Sewers, Municipal and Industrial Water, and Structural Fire Protection in Any Disadvantaged, Unincorporated Communities Within or Contiguous to the Sphere of Influence.**

The present condition of the District's sewer system is in need of improvement and upgrades. The main sewer connection line to the City of Modesto's outflow station is at capacity and undersized. Therefore, the District would need to complete the necessary infrastructure upgrades in order to add capacity to the District's system. Further, any additional connections to the District's sewer system would require prior written consent from the City of Modesto (e.g. Will Serve Letter).

The Empire Sanitary District provides sewer services. Additional services, such as water and structural fire protection are provided through the City of Modesto, other special districts, or by way of private systems.

### **4. Financial Ability of Agencies to Provide Services**

Under the terms of the agreement with the City of Modesto, the City accepted the transfer of all Empire Sanitary District (ESD) infrastructure, and took over maintenance, repair, and replacement obligations of all such infrastructure. Current ESD customers are effectively Modesto out-of-boundary customers. ESD residential ratepayers are currently charged a monthly rate of \$35.75 for collection and treatment service. Commercial ratepayers are charged for sewer service based on metered water use. In addition, the ESD has remitted the District's reserve fund of approximately \$500,000 to the City to be dedicated to existing ESD infrastructure repairs and rehabilitation.

**5. Status of, and Opportunities for, Shared Facilities**

The District does not currently share any facilities with other districts or agencies. However, as mentioned previously, the District has transferred management of the District to the City of Modesto.

**6. Accountability for Community Service Needs, Including Governmental Structure and Operational Efficiencies**

The City of Modesto is the ex officio Board of the District and, therefore, sits as the Board of the Empire Sanitary District (ESD). At a later date, the City could and most likely will file an application with LAFCO seeking approval of full dissolution of the ESD pursuant to the provisions of the Cortese-Knox Hertzberg Local Government Reorganization Act of 2000. However, at this time there is no plan to dissolve the District.

**7. Any Other Matter Related to Effective or Efficient Service Delivery, as Required by Commission Policy**

None

## **Sphere of Influence Update for the Empire Sanitary District**

In determining the Sphere of Influence (SOI) of each local agency, the Commission shall consider and prepare determinations with respect to each of the following factors pursuant to Government Code Section 56425:

1. The present and planned land uses in the area, including agricultural and open-space lands.
2. The present and probable need for public facilities and services in the area.
3. The present capacity of public facilities and adequacy of public services that the agency provides, or is authorized to provide.
4. The existence of any social or economic communities of interest in the area if the Commission determines they are relevant.
5. For an update of a sphere of influence of a city or special district that provides public facilities or services related to sewers, municipal and industrial water, or structural fire protection, the present and probable need for those public facilities and services of any disadvantaged unincorporated communities within the existing sphere of influence.

This document proposes no changes to the District's existing Sphere of Influence. Rather, it serves to reaffirm the existing SOI boundary. As part of this process, Staff researched the history of the establishment of the District's SOI. A map of the current District boundary and Sphere of Influence is attached in Appendix "A".

The following determinations for the Empire Sanitary District's Sphere of Influence update are made in conformance with Government Code §56425 and Commission policy.

### **Determinations:**

#### **1. The present and planned land uses in the area, including agricultural and open-space lands**

The District's Sphere of Influence (SOI) includes approximately 428 acres. Territory within the District's boundaries consists of residential and commercial land uses. The District does not have the authority to make land use decisions, nor does it have authority over present or planned land uses within its boundaries. The responsibility for land use decisions within the District boundaries is retained by Stanislaus County and the City of Modesto.

#### **2. The present and probable need for public facilities and services in the area**

The District was formed to provide sewer service within its boundary. The present and probable need for this service is not expected to diminish, as the residents within the District are dependent on the sewer services they receive.

**3. The present capacity of public facilities and adequacy of public services that the agency provides, or is authorized to provide.**

The present capacity of the District facilities is hindered by the fact that the sewer system is at capacity and in need of infrastructure improvements. Several of the District's current sewer lines are undersized and over 30 years old, which thereby limits the District's ability to provide new service connections within its existing boundaries.

**4. The existence of any social or economic communities of interest in the area if the Commission determines they are relevant.**

The unincorporated community of Empire is considered a community of interest within the District's boundaries.

Further, the City of Modesto is also considered to be a Community of Interest, as the entire District's boundaries are located within the City's Sphere of Influence. As previously mentioned, the City of Modesto is now managing all Empire Sanitary District (ESD) activity. In addition, there has been no indication by the City of their intent to annex all or a part of any territory within the District's boundaries in the near future.

**5. For an update of a sphere of influence of a city or special district that provides public facilities or services related to sewers, municipal and industrial water, or structural fire protection, the present and probable need for those public facilities and services of any disadvantaged unincorporated communities within the existing sphere of influence.**

There are no proposals to change the District's existing Sphere of Influence. The District's area covers the town of Empire, which is identified as a Disadvantaged Unincorporated Community (DUC) as defined in Section 56033.5 of the Cortese-Knox-Hertzberg Act of 2000.

The Empire Sanitary District provides sewer service for the District. Additional services, such as water and structural fire protection, are provided through the City of Modesto, other special districts, or by way of private systems.

## APPENDIX “A” DISTRICT SUMMARY PROFILE

District: **EMPIRE SANITARY DISTRICT**

Location: Approximately 3 miles southeast of the City of Modesto

Service Area: Approximately 428 acres

Population\*: 4,675 persons (Estimate)

Land Use: Low Density Residential and Commercial

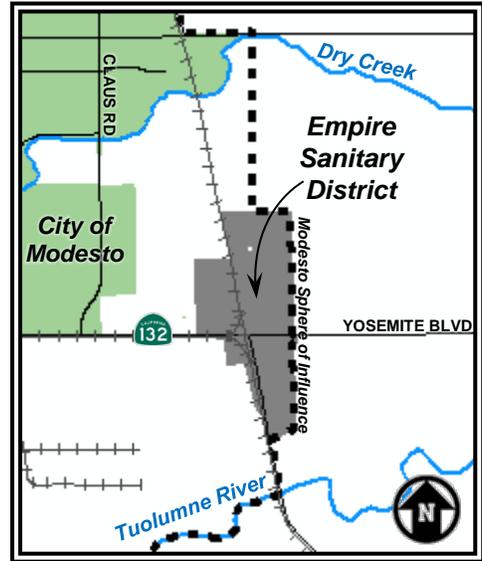
Date of Formation: June 18, 1948

Enabling Act: Sanitary District Act of 1923, Health and Safety Code, Section 6400 et seq

Governing Body: City of Modesto (Ex-Officio Board)

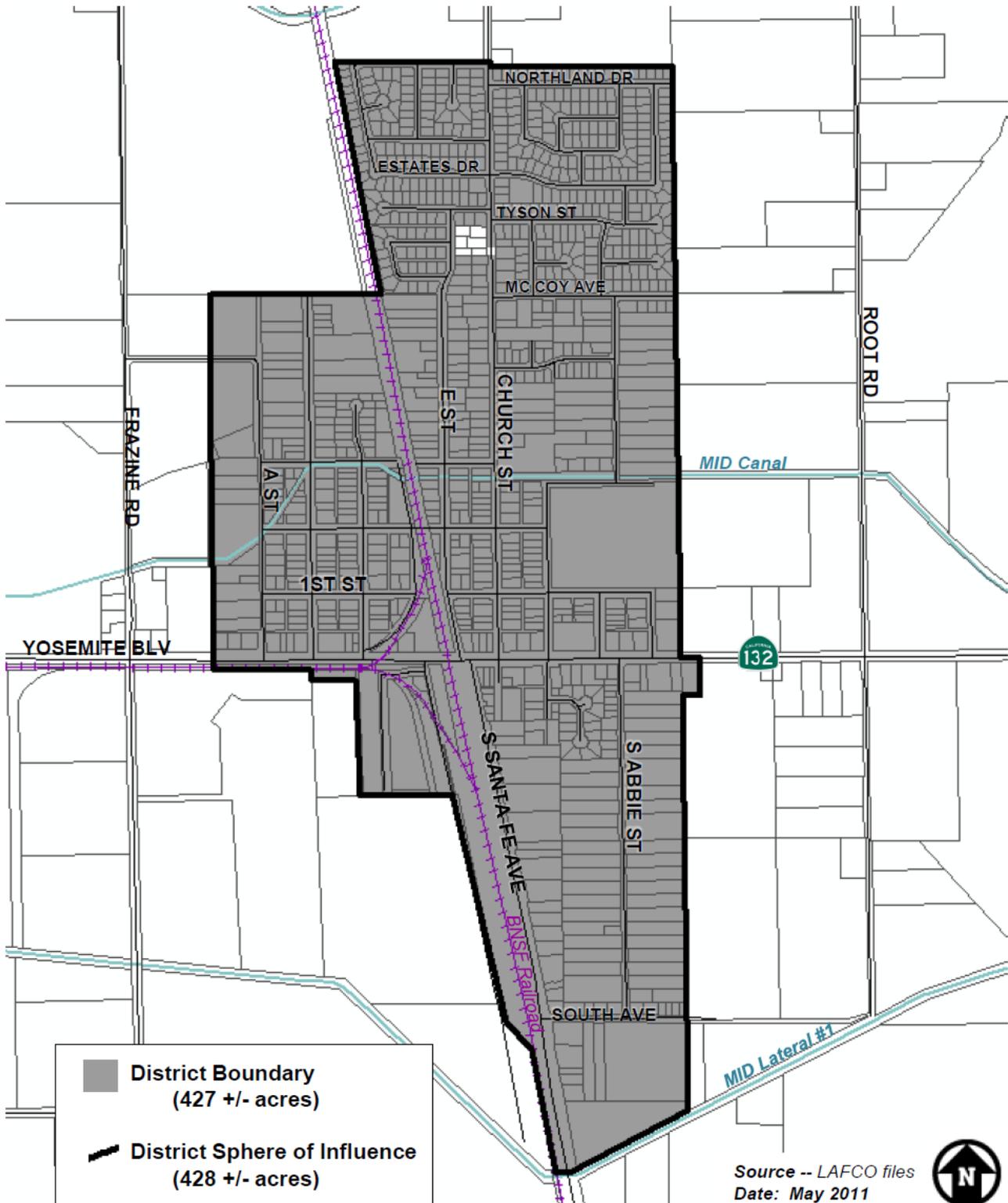
District Services: Domestic sewer service to the unincorporated community of Empire

Revenue Sources: Monthly service and connection fees; property taxes



*\*Source: American Community Survey 5-year Estimate 2011-2015*

**MAP 1:  
EMPIRE SANITARY DISTRICT  
BOUNDARIES AND SPHERE OF INFLUENCE**



## APPENDIX “B”

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### REFERENCES

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1. Previous MSR/SOI Update for the Empire Sanitary District, Adopted August 24, 2011.
2. Extended Agreement for Sewer Service signed in December 2015.
3. GEOTivity Letter dated January 29, 2003, regarding a capacity study, which monitored an existing Empire Sanitary District sewage pipe located on Hwy 132 & Codoni Road.
4. City of Modesto letter dated November 25, 2003, regarding “Sewer Connections to the City of Modesto’s Collection System”.
5. Stanislaus County Draft 2009-2014 Housing Element, adopted April 20, 2010.
6. 2009/2010 Stanislaus County Civil Grand Jury Report regarding the Empire Sanitary District, June 25, 2010.
7. Auditor-Controller Response to the 2009-2010 Stanislaus County Civil Grand Jury Report – Empire Sanitary District, dated July 16, 2010.
8. Empire Sanitary District’s Grand Jury Response Letter dated September, 8, 2010.
9. California State Controller’s Office, “Special District’s Annual Report”, April 26, 2011.
10. City of Modesto Council Agenda Report, November 30, 2015

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### INDIVIDUALS AND AGENCIES CONTACTED

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1. Jim Alves, Associate Civil Engineer, City of Modesto

**STANISLAUS COUNTY LOCAL AGENCY  
FORMATION COMMISSION**

**RESOLUTION**

**DATE:** August 23, 2017

**NO. 2017-13**

**SUBJECT:** Municipal Service Review and Sphere of influence Update No. 2017-06: Empire Sanitary District

On the motion of Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and approved by the following vote:

Ayes:           Commissioners:  
Noes:           Commissioners:  
Absent:         Commissioners:  
Ineligible:     Commissioners:

**THE FOLLOWING RESOLUTION WAS ADOPTED:**

**WHEREAS**, a Service Review mandated by California Government Code Section 56430 and a Sphere of Influence Update mandated by California Government Code Section 56425, has been conducted for the Empire Sanitary District, in accordance with the Cortese-Knox-Hertzberg Reorganization Act of 2000;

**WHEREAS**, at the time and in the form and manner provided by law, the Executive Officer has given notice of the August 23, 2017 public hearing by this Commission on this matter;

**WHEREAS**, the subject document is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State CEQA Guidelines;

**WHEREAS**, Staff has reviewed all existing and available information from the District and has prepared a report including recommendations thereon, and related information as presented to and considered by this Commission;

**WHEREAS**, the Commission has duly considered the draft Municipal Service Review and Sphere of Influence Update on the Empire Sanitary District and the determinations contained therein;

**WHEREAS**, the Empire Sanitary District was established to provide sewer services within its boundaries;

**WHEREAS**, pursuant to Government Code Section 56425(h), the range of services provided by the Empire Sanitary District are limited to those as identified above, and such range of services shall not be changed unless approved by this Commission; and

**WHEREAS**, no changes to the District's Sphere of Influence are proposed or contemplated through this review.

**NOW, THEREFORE, BE IT RESOLVED** by the Commission:

1. Certifies that the project is statutorily exempt under the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State CEQA Guidelines.
2. Approves the Service Review prepared in compliance with State law for the review and update of the Empire Sanitary District Sphere of Influence, and written determinations prepared by the Staff and contained herein.
3. Determines that except as otherwise stated, no new or different function or class of services shall be provided by the District, unless approved by the Commission.
4. Determines, based on presently existing evidence, facts, and circumstances filed and considered by the Commission, that the Sphere of Influence for the Empire Sanitary District should be affirmed as it currently exists, as more specifically described on the map contained within the Service Review document.
5. Directs the Executive Officer to circulate this resolution depicting the adopted Sphere of Influence Update to all affected agencies, including the Empire Sanitary District.

**ATTEST:** \_\_\_\_\_  
Sara Lytle-Pinhey, Executive Officer