

# **LOCAL AGENCY FORMATION COMMISSION COUNTY OF SAN BERNARDINO**

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**DATE:** APRIL 7, 2009

**FROM:** KATHLEEN ROLLINGS-McDONALD, Executive Officer  
MICHAEL TUERPE, LAFCO Analyst

**TO:** LOCAL AGENCY FORMATION COMMISSION

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**SUBJECT:** Agenda Item #5: LAFCO 3102 - Municipal Service Review and Sphere of Influence Update for the Big River Community Services District

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**INITIATED BY:**

San Bernardino Local Agency Formation Commission

**RECOMMENDATION:**

Staff recommends that the Commission take the following actions related to LAFCO 3102:

1. Certify that LAFCO 3102 is statutorily exempt from environmental review and direct the Clerk to file a Notice of Exemption within five (5) days.
2. Receive and file the municipal service review for Big River Community Services District and make the findings related to the service review required by Government Code 56430 as outlined in the staff report.
3. Amend the "Rules and Regulations Affecting Special Districts" by removing the Water function and its related services for the Big River Community Services District to read as follows:

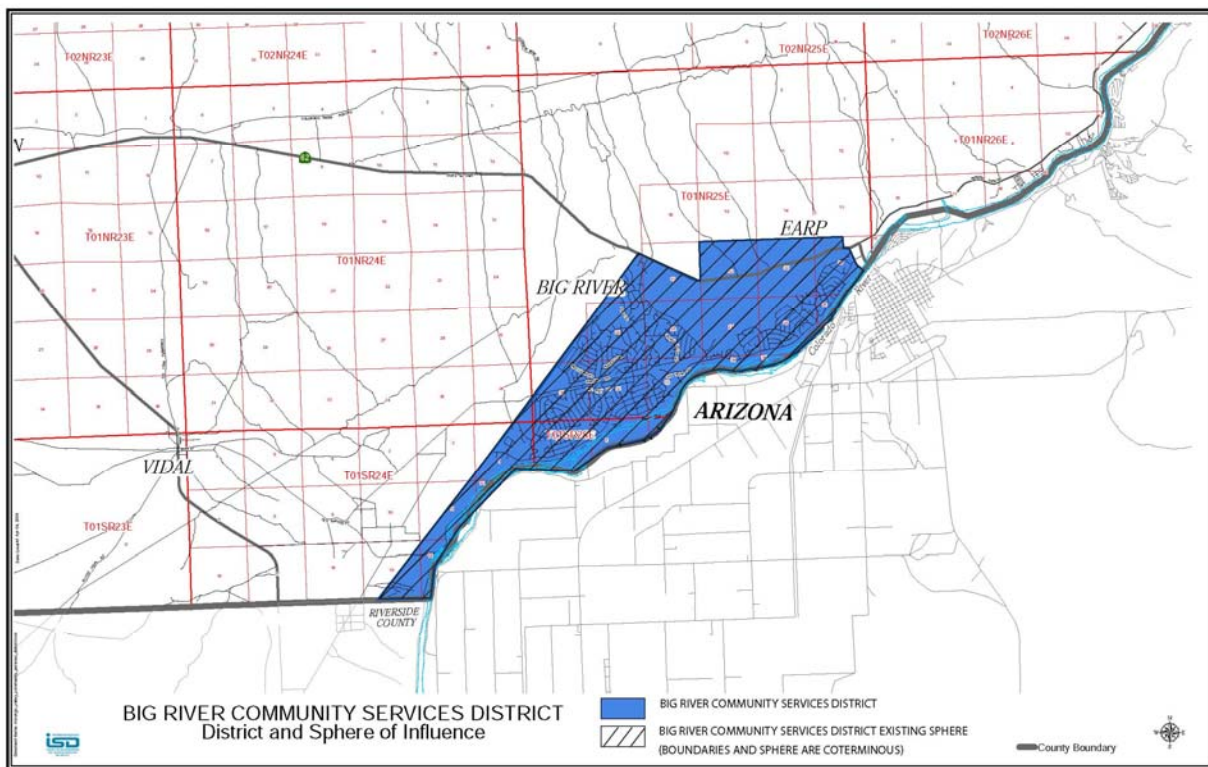
	<b>FUNCTIONS</b>	<b>SERVICES</b>
<b>Big River Community Services District</b>	Park and Recreation	Acquisition, maintenance
	Police	Security Patrol

4. Designate a zero sphere of influence for the Big River Community Services District.
5. Adopt LAFCO Resolution #3054 setting forth the Commission's findings and determinations.

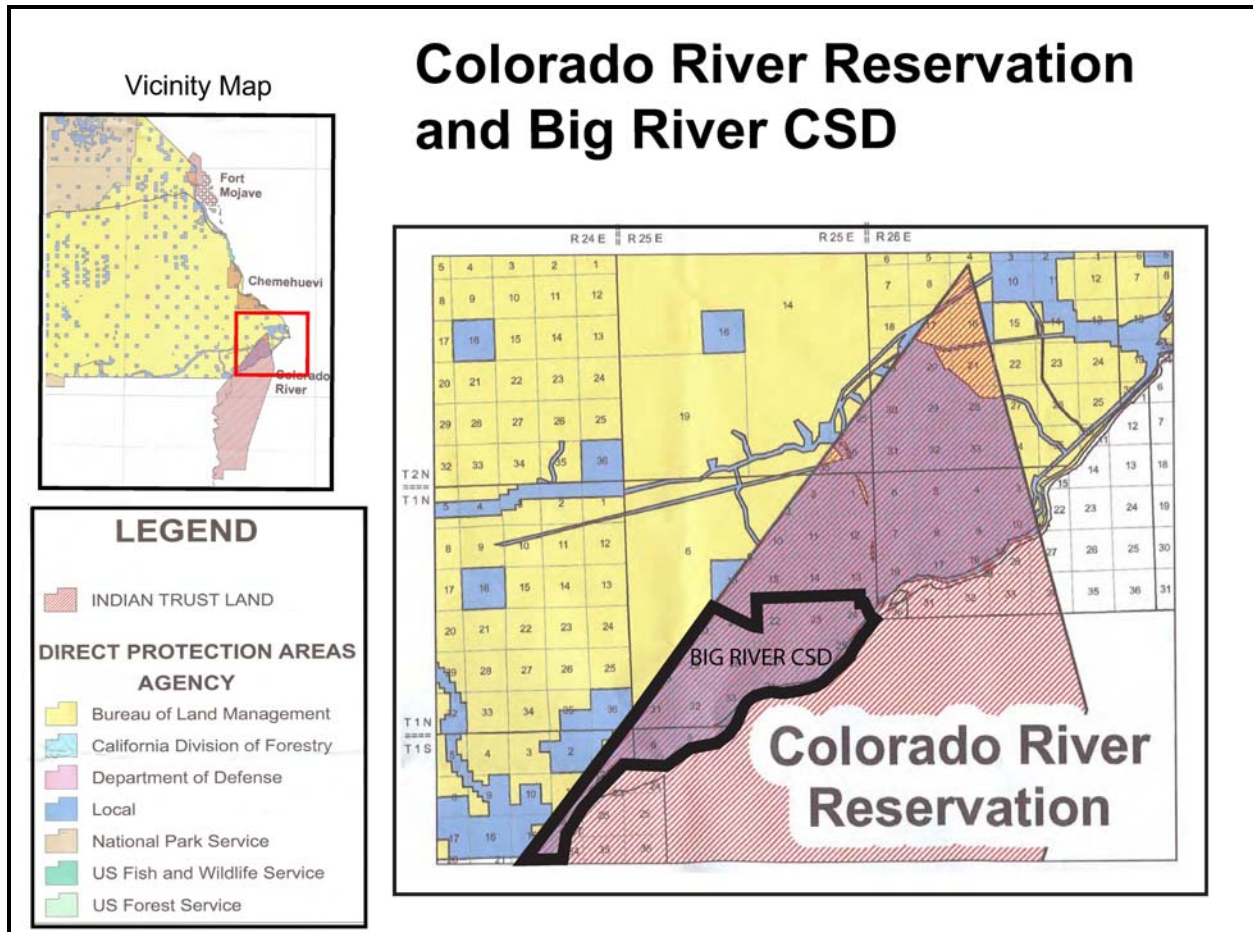
## **INTRODUCTION:**

San Bernardino LAFCO has chosen to undertake its Municipal Service Reviews on a regional basis. By action taken in November 2007, the Commission initiated the municipal service reviews and sphere of influence updates for the South Desert Region of the County. The Commission has further identified by policy declaration its community-by-community approach to sphere of influence identification. This report contains the municipal service review and sphere of influence update for the Big River community.

LAFCO has defined the Big River community as the sphere of influence of Big River Community Services District (District). Below is a map illustrating the District's sphere of influence, a copy of which is included in Attachment #1.



The map below shows the Colorado River Indian Tribe (CRIT) reservation as well as the boundaries of the Big River CSD. The CRIT reservation is identified by the red hatch line, and the Big River CSD is outlined in black. As identified on the map, the CRIT reservation extends southerly into the County of Riverside and easterly across the Colorado River into the State of Arizona.

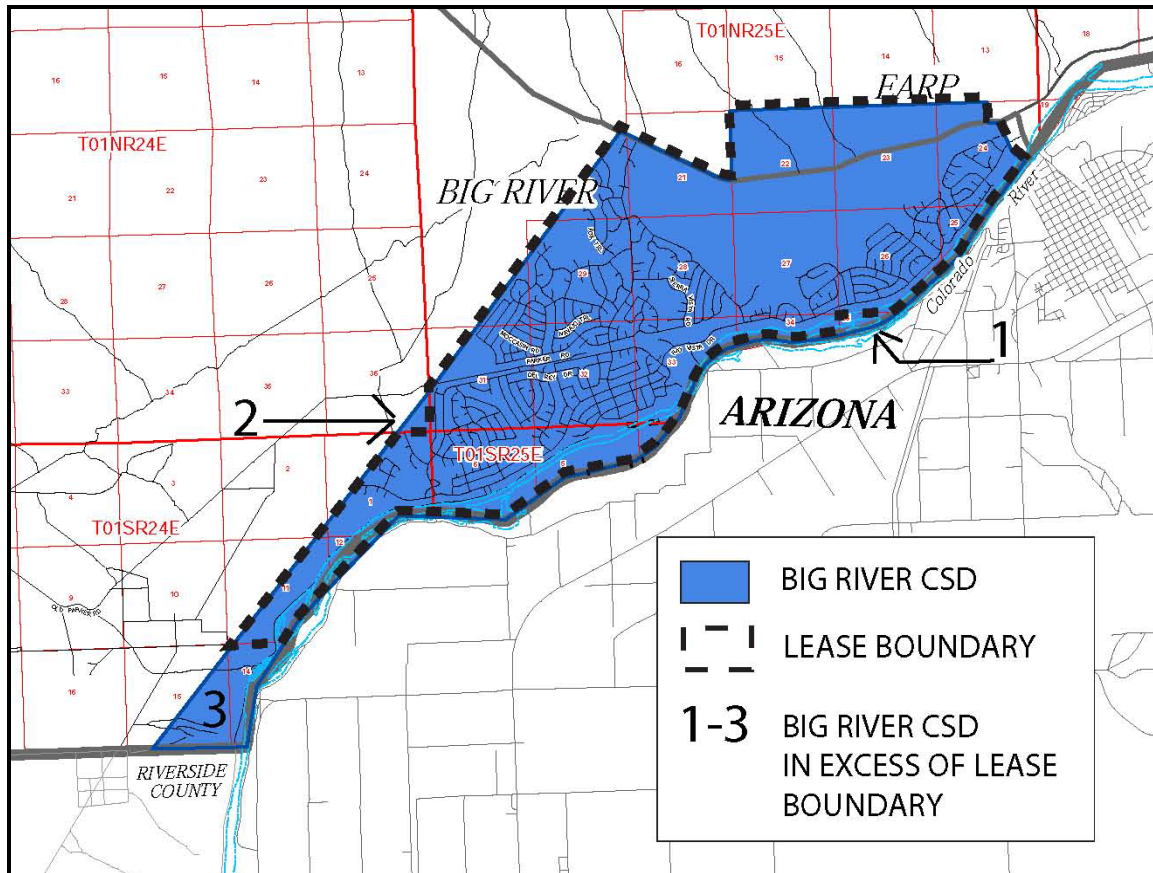


source: U.S. Department of Interior, Bureau of Indian Affairs, Division of Real Estate Services, Enterprise GIS. "Indian Trust Land and Direct Protection Areas in San Bernardino County 2005", 26 May 2006; with overlay of the Big River Community Services District.

The Big River community is served by multiple public agencies. The public agency providing direct services to the residents and landowners within the community is the Big River Community Services District. Regional service providers include the County Service Area 70 (unincorporated County-wide), Mojave Desert Resource Conservation District, San Bernardino County Fire Protection District and its South Desert Service Zone, and San Bernardino County Flood Control District. Consent from the Indians was provided by the CRIT on January 11, 2007 to the overlay of the San Bernardino County Fire Protection District (LAFCO 3000 – County Fire Reorganization).

The map below illustrates the boundary of the Big River CSD and superimposes the boundaries of the Master Lease with the Bureau of Indian Affairs on behalf of the CRIT. A review of the formation documents for the District does not provide information as to why the original boundary of the District included the lands not a part of the Master Lease. As shown on the map, there are three areas where the District extends beyond that of the Master Lease. County of San Bernardino landowner records identify the Colorado River

Indian Reservation as the landowner of Area 1 and United States of America as the landowner of Areas 2 and 3.



sources: County of San Bernardino and *Master Lease Agreement between United States Department of the Interior Bureau of Indian Affairs and the Central Land Development Company* as described in Item 2 (Land Description), Supplemental Agreement No. 4 Item 1, and Exhibit A (Legal Description) of Sublease.

### **COMMUNITY HISTORY:**

Big River is located approximately 70 miles south of the City of Needles along the western bank of the Colorado River and it is primarily comprised of residential, recreation, and vacant lands. Historically, the Indians of the Colorado Tribes have made Big River their home, but through the development of one of the earliest planned unit developments the community has grown to include a non-native population. The community was developed by the Colorado River Company primarily in the late 1960s, 70s and early 1980s. The District has indicated in the materials submitted that the population increases in the winter as those seeking a warmer climate migrate south and in the summer due to the Colorado River's attractiveness for water activities.



A brief history of the major events shaping the community is described below:

1964 As a part of the development proposal for the lands in the Big River area, the Central California Land Development Company (the original developer of the planned unit development), entered into a master lease agreement in 1964 with the Secretary of the Interior, on behalf of the Colorado River Indian Tribes. The master lease agreement designates the Central California Land Development Company as prime lessee with authority to divide the lands into leasehold estates. The master lease further allows the developer to execute, sell, and transfer property rights in the leasehold estates. The master lease is for a term of sixty-five years which will expire in 2029. The master lease identifies that the planned unit development would include a minimum of 1,500 lots (now identified to be 4,336 parcels). A copy of the master lease is included as a part of Attachment #3.

1976 In April 1976, the Big River Property Owners Association submitted an application, with a signed petition determined to represent 48% of the registered voters within the Big River community (224 voters) to initiate the formation of a community services district. The application states that formation of the district would provide for an orderly transfer from the development company, the Colorado River Company, administration to local government control for specific services. LAFCO reviewed and considered the application for formation of Big River CSD (LAFCO 1604) and approved the formation. The County Board of Supervisors placed the question of the formation of the Big River CSD (District) and on December 13, 1976 the voters approved the formation by a vote of 137 to 35. At the time of its formation, the district encompassed 14 square miles, was authorized to perform the full range of services available under its principal act at the time, and was authorized to levy a tax rate of up to \$1.00 per \$100 of assessed valuation on the leasehold interests.

At the same time, LAFCO processed an application to annex the Big River and Parker Dam communities to County Service Area 38 in order to receive fire protection services from the County (LAFCO 1614). The application also included the formation of an improvement zone to CSA 38 (formed as Zone J) to fund the service which included a supplemental tax rate. The Big River CSD formation proponents favored the annexation to CSA 38, and the Departmental Review Committee recommended that the CSA 38 annexation boundaries be adjusted to conform to those of the new proposed CSD in the Big River area. The annexation for CSA 38 was approved as modified.

As a part of the processing for the above proposals, LAFCO staff provided the CRIT with information regarding the proposals and requested a response indicating their position on the proposed actions. LAFCO staff received the response from the CRIT opposing the Big River CSD formation prior to the District's formation election, but after the approval by LAFCO and the County

Board of Supervisors' placement of the matter on the ballot for the electors to make a determination on the formation of the District.

- 1977 In 1977 the District Board of Directors provided documentation to LAFCO that its initial active functions would be water service and park and recreation.
- 1978 The Big River Property Owners Association submitted an application for detachment of the community from the Needles Desert Communities Hospital District and Needles Cemetery District (LAFCO 1810). The LAFCO staff report for this proposal states that although the community was taxed by these districts, they did not serve Big River to any significant degree. Most residents indicated that they received hospital and/or burial services from agencies in Parker Arizona rather than Needles. Even though the districts opposed the proposal, the Commission approved the detachments on the basis that it would not affect the districts' services and neither district showed that they did indeed provide direct service to the Big River community.
- 1981 The District initiated a proposal to activate its latent police powers (LAFCO 2088). However, when the District informed LAFCO in 1977 that its initial active functions would be water service and park and recreation, LAFCO was in the process of seating Special District Representatives and did not take action to formally recognize the district's functions.
- The Commission affirmed water and park and recreation and activated the District's latent police power authorizing the District to form, or contract for, a security patrol which would augment (not replace) existing County Sheriff services. The Commission made the recommendation that actual initiation of this service be closely coordinated with the Sheriff's Department so that no misunderstandings of responsibility, service area, or procedure occur between the agencies.
- 1982 LAFCO initiated and approved the sphere of influence establishment for the District (LAFCO 2205). The District responded that its sphere should be established as coterminous with its existing boundaries. According to the staff report, this determination was based upon the unlikelihood of the CRIT leasing additional land for development in the area, so that the boundary at that time (as well as today) can be viewed as the District's maximum possible service area.
- 1996 - 97 Within the Big River planned unit development, all lands owned by the CRIT were removed from the tax and assessment rolls in 1996 which also removed them from paying the ad valorem property tax or Big River CSD assessments. In 1997 the CRIT purchased the interest of the Big River Development Company (the successor to the Central California Land Development Company) and created Big River Development Enterprise (BRDE) an Arizona corporation. The BRDE exists as an instrumentality of the CRIT but operates as a separate business enterprise created under tribal

law. In turn, the leasehold interests in the name of Big River Development and/or the Central California Land Development Company were transferred to the BRDE and also removed from the tax rolls. This leaves only those leaseholds in private ownership currently paying ad valorem property taxes and the Big River CSD assessments.

- 2005 - 06 LAFCO staff apprised all the community services districts within the County of the rewrite of Community Services District Law (Senate Bill 135 [Kehoe]), effective January 1, 2006. The update of CSD Law included the new provisions related to governance and latent powers for community services districts. One provision specific to Big River CSD was the enforcement of covenants, conditions, and restrictions. Government Code Section 61105 (e) states that a community services district that was authorized to enforce covenants, conditions, and restrictions under the old 1995 CSD Law, but did not use that power, cannot enforce covenants, conditions, and restrictions under the new CSD Law. Big River CSD is one of those districts.

Pursuant to the 2006 rewrite of Community Services District Law, those services that LAFCO determined that a district did not actively provide prior to January 1, 2006 were to be designated as a “latent power” (Government Code Section 61002[h]). The LAFCO staff report for the January 2006 LAFCO hearing indicates that no response was received from the District. Correspondence from the District was received after publication of the LAFCO staff report, but not in time for inclusion at the hearing, stating that it provided police (security patrol) and park and recreation and did not provide water service as of January 17, 2006.

- 2007 - 08 In November 2007 the Commission initiated the municipal service reviews and sphere of influence updates for the South Desert region of the County. In April 2008, LAFCO staff conducted a general meeting for all the South Desert agencies to discuss the municipal service review and sphere of influence update process.

Pursuant to the reorganization of County Fire (LAFCO 3000), County Service Area 38 Improvement Zone J (Big River) was dissolved (effective July 1, 2008) and its general ad valorem property tax revenues were transferred to the South Desert Service Zone of County Fire for continued funding of fire services. The transfer of taxes applied only to the leaseholds not previously removed from the tax rolls. Because the County Fire Reorganization included tribal sovereign lands, consent was required from the CRIT with no opposition from the Bureau of Indian Affairs. Through resolution, the CRIT consented to the overlay.

## **COMMUNITY DISCUSSION:**

The Commission's policy guidelines for spheres of influence identify that its approach is defined as a "community-by-community" consideration.<sup>1</sup> This practice employs looking at the whole of the community as defined by the existence of inter-related economic, environmental, geographic and social interests and determining the sphere of influence of all service providers within the community.

The Big River community has been defined since 1976 by the Big River Community Services District. There are no other agencies confined to the boundaries of the Big River Community Services District. Therefore, the District is the sole agency that comprises the Big River community. The issue that requires resolution by the Commission as a part of this Municipal Service Review and Sphere of Influence Update is:

*"What is the Appropriate Sphere of Influence Designation for the Big River CSD?"*

The crux of the issue is that the Big River CSD is located on Indian lands and the determination of its future based upon its unique status of receiving its revenues through leaseholds which terminate in 2029.

As noted in the chronology the lands within Big River CSD were originally developed by the Central California Land Development Company, which had entered into a master lease agreement in 1964 with the Secretary of the Interior, on behalf of the Colorado River Indian Tribes (CRIT). The master lease is for a term of sixty-five years and will expire in 2029. In 1997 the CRIT purchased the remaining interests of the Big River Development Company (the successor to the Central California Land Development Company) and created the Big River Development Enterprise (BRDE), an Arizona registered corporation. The BRDE exists as an instrumentality of the CRIT but operates as a separate business enterprise created under tribal law.

County of San Bernardino 2007 General Plan maps identify the Big River area as within Indian lands. LAFCO staff has confirmed with the County Land Use Services Department that Indian lands are considered federally owned and the County General Plan land use designations or development process do not apply. As stated in the County General Plan on pages 1-12 and 1-13, these lands are outside the governing control of the County Board of Supervisors and are referenced as "non-jurisdiction" land or "non-jurisdiction" territory.

The information in the paragraphs above is not new. As stated in the formation application for the District as submitted by the Big River Property Owners Association, the area "is all Colorado River Indian Tribes reservation land." Further, according to the LAFCO staff report for the formation, interest in the land is protected by a Central California Land Development Company (the original developer of the area) lease of the entire 14 square mile land area that was entered into with the Colorado River Indian Tribes (CRIT) through the Department of the Interior- Bureau of Indian Affairs. A copy of the master lease

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<sup>1</sup> San Bernardino LAFCO Commission Policy Guidelines for Spheres of Influence.



agreement is included in Attachment #3. Moreover, according to both the LAFCO and County Board of Supervisors resolutions for the District formation (the formation documents for the District are included as Attachment #4):

“The following factors, while not sufficient to cause a rejection of the proposal, should be understood by the proponents: (1) There is a question whether ordinances passed by local governmental agencies are effective on Indian land; (2) There is a question whether possessory interests in [Indian] land may be taxed; (3) There is a question whether governmental entities may use tax money to construct capital improvements when the improvements will be lost at the end of the lease. County Counsel recommends that the proponents hire an attorney to advise and represent them on these and other issues.”

Staff would like to Commission to be aware that the United States District Court, District of Arizona has agreed to hear arguments regarding the CRIT Tribal Court’s jurisdiction within California [*Water Wheel Camp Recreational Area, Inc., et al, v Gary La Rance, et al*, 2:08-cv-00474 (U.S. District Court, AZ)]. Although LAFCO staff’s understanding is that this has been brought by landowners within the County of Riverside, this case has the potential to impact lease hold interests within the boundaries of the Big River CSD because the ruling would determine if either the CRIT Tribal Court or Federal Court is the appropriate jurisdictional authority to consider claims. At the time of this writing, the briefs and rebuttals have been filed and the Court has agreed to hear arguments. If additional material becomes available after publication of this staff report, staff will apprise the Commission at the hearing.

Within the Big River planned unit development, all lands owned by the CRIT were removed from the assessment rolls in 1996 and pay no property tax or assessments. LAFCO staff inquired into the process for the removal from the assessment rolls, and in a letter dated December 9, 2008 from the CRIT (included in Attachment #5) they state that the properties were removed from the assessment rolls in an informal manner. This process was verified by County Assessor representatives from the Needles office. Since that time, the process for removal from the assessment rolls is through forwarding the expiring sub-lease documents to the County Assessor for processing.

For those parcels that have possessory interests that are recorded, these possessory interests are on the assessment rolls and pay property taxes or assessments. At the departmental review committee meeting on September 10, 2008, CRIT representatives identified that in 2029 the balance of the development would revert back to the underlying ownership, the CRIT. This includes the developed portion of the Big River Park. If the CRIT actions in the past are maintained, this action would remove all property tax and assessment funding from the District. Therefore, as a public agency the District would lack a source of public funding. Since the planning horizon used in the municipal service reviews process is 2030, the withdrawal of this funding source needs to be taken into account by the Commission in its consideration of the District’s sphere of influence designation.

Given the concerns and information described above, it is staff's position that the Commission has two options for the sphere of influence update of the District:

1. Affirm the sphere of the district as currently configured: The District is anticipated to physically remain at least until the expiration of the lease. But it is not likely that the CRIT would retain any new leaseholds on the tax rolls to support the Big River CSD in the area. Therefore, the current boundary can be viewed as the District's maximum possible service area. Even though the District can plan for additional service capacity or additional services up to the expiration of the lease within its boundaries, given the uncertainty of its physical presence and primary funding source past the expiration of the master lease, significant planning not anticipated.
2. Designate a zero sphere for the district: CRIT representatives have identified that in 2029 the balance of the development will revert back to the underlying ownership, the CRIT. This includes the developed portion of the Big River Park. It is likely that this action would remove all property tax or assessment funding from the District; therefore, as a public agency the District will lack a steady source of public funding. Since the planning horizon used in the municipal service reviews process is 2030, the withdrawal of this funding source needs to be taken into account by the Commission in its consideration of the District's sphere of influence designation. In this case, a zero sphere of influence seems appropriate.

Based upon a review of the materials submitted to the Commission during this service review, additional information gathered by LAFCO staff, prior Commission considerations, and the policies for spheres of influence adopted by the Commission, it is the staff's position that the appropriation action is to assign a zero sphere of influence for the District (Option #2). Staff bases its recommendation on the uncertainty of the District's physical presence and primary funding source past the expiration of the master lease when the balance of the development is likely to revert back to the underlying ownership, the CRIT.

LAFCO staff provided the District with a draft copy of the staff report for their input and comment. The opinion of the District is that affirmation of the existing sphere (Option #1) is appropriate. The District's response is included as a part of Attachment #6. The District does acknowledge that the CRIT may not grant the District the option to renew its lease in 2029 but states that there are other variables for the Commission to take into account, such as the federal court case to take place this year. This case has the potential to impact lease hold interests within the boundaries of the Big River CSD because the ruling would determine if either the CRIT Tribal Court or Federal Court is the appropriate jurisdictional authority to consider claims. Given this, the District states that if municipal service reviews/sphere of influence updates are to be conducted every five years, then there are at least three more reviews for Commission consideration. Therefore, it is requesting that the Commission affirm its existing sphere at this time.

After considering the District's position, LAFCO staff's recommendation remains. Regardless of the outcome of the anticipated litigation, it is likely that when the lease reverts back to its underlying ownership this action will remove all property tax or assessment

funding from the District. Without funding the District will not be able to function properly and warrants assigning a zero sphere of influence.

Government Code Section 56076 defines a sphere of influence as a “plan for the probable physical boundaries and service area of a local agency, as determined by the commission”. Should the Commission accept staff’s recommendation and designate a zero sphere of influence for the District, this action would not affect the District’s current boundary or the services it actively provides as authorized by the Commission. Rather, it would signal the Commission’s position that the District should be dissolved upon the expiration of the master lease, given the likelihood of the removal of its primary funding source. The dissolution process would by necessity address the issues of succession to service provision and assets.

The evaluation of the balance of the municipal service review and sphere of influence update will be based upon the above described staff recommendation.

**BIG RIVER COMMUNITY SERVICES DISTRICT**  
**Municipal Service Review and Sphere of Influence Update**

**INTRODUCTION:**

LAFCO 3102 consists of a municipal service review pursuant to Government Code Section 56430 and sphere of influence update to include a sphere modification pursuant to Government Code 56425 for the Big River Community Services District (District). The District's response and supporting materials are included as Attachment #2 to this report and are included in the information below.

The District is an independent special district governed by a five member board of directors, elected at-large. The District was formed in 1976 following both LAFCO and voter approval. In 1977 the district informed LAFCO that its initial active functions would be water service and park and recreation. Currently, the District is authorized by LAFCO to provide water, park and recreation, and police protection (security patrol) pursuant to the *Rules and Regulations of the Local Agency Formation Commission of San Bernardino County Affecting Functions and Services of Special Districts*.

As discussed in this report, staff is recommending the designation of a zero sphere of influence for the District.

**LOCATION AND BOUNDARIES:**

The service review and study area is located in the South Desert region of the County and is generally bordered by the Colorado River Indian Tribes reservation boundary on the west, a combination of State Highway 62 and section lines on the north, the centerline of the Colorado River (the State of California boundary) on the east, and the Riverside County line on the south. The District is wholly within the territory of the Colorado River Indian Tribes reservation. The District encompasses approximately 14 square miles, and its sphere of influence is coterminous with its boundaries. A map of the District's current boundary and sphere is included in Attachment #1.

**MUNICIPAL SERVICE REVIEW SUMMARY**

The District prepared a service review consistent with LAFCO's policies and procedures and the factors required by Government Code Section 56430. The District's response to LAFCO's original and updated requests for materials includes, but is not limited to, the District's budgets and audits.

**Growth and population projections for the affected area.**

Big River is primarily a recreational and retirement community that is comprised of residential, recreation, and vacant lands. There is some commercial activity which includes car repair, storage units, church, beauty shop, and two restaurants.

According to the 2000 census, the Big River community had a permanent population of 1,266. In the materials provided as a part of this service review, the District had 434 registered voters as of April 1, 2008. The District states that the population increases in the winter as those seeking a warmer climate migrate south and in the summer due to the Colorado River's attractiveness for water activities. Due to the low population of the community and its distance from major population centers, updated population information is not available from the United States Census or transportation analysis zones, as identified in the Southern California Association of Governments Growth Forecast.

The chart below identifies landownership data within the District. The total acreage identified in the chart is particular to parcels only; it does not include roads or the Colorado River. As identified, 78.2% of parcel acreage is owned by the Colorado River Indian Reservation. Given the public and utility nature of the other landowners, future development would be anticipated to take place only on those parcels identified as Colorado River Indian Reservation (4,336 parcels). For the purposes of estimating the development potential of these parcels, LAFCO staff utilizes the County's General Plan calculation of 2.68 persons per household for the Desert region<sup>2</sup> (for estimation purposes only). This figure equates to a potential population of 11,620 persons within the District if occupied full-time.

Landowner	Parcels	Parcel Acreage	Acreage Percent
Arizona & California Railroad Company	6	98.43	1.4%
Colorado River Indian Reservation	4,336	5,665.42	78.2%
Continental Telephone Company of California/ Colorado River Indian Reservation	1	0.71	0%
Government Land	800	598.68	8.3%
United States of America	452	885.89	12.1%
<b>TOTAL</b>	<b>5,595</b>	<b>7,249.13</b>	<b>100%</b>

source: County of San Bernardino, Information Services, Geographic Information Systems

**Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies.**

Currently, the District is authorized by LAFCO to provide water, park and recreation, and police protection (security patrol). Other services provided by regional service providers include: Fire protection is provided by the San Bernardino County Fire Protection District and its South Desert Service Zone. Station 17 located at 150260 Capistrano Trail is within the boundaries of the District. According to County Fire's website<sup>3</sup>, Station 17 houses a single Type I engine company, one Type IV engine, and one water tender. This station serves as the Battalion Headquarters for the River area. Volunteers living or working in the community staff the station. Since the reorganization of County Fire, Station #17 receives revenues generated from within Big River and the South Desert Service Zone of the County Fire Protection District.

<sup>2</sup> County of San Bernardino County, 2007 General Plan, Land Use Element.

<sup>3</sup> San Bernardino County Fire. [www.sbcfire.org](http://www.sbcfire.org). Accessed March 17, 2009, Last update unknown.

## Water

Currently, the District is authorized by LAFCO the function of water with service descriptions of irrigation, sanitation, industrial, fire protection, recreation, and domestic. However, the District does not provide water service. Rather, the community receives water from the Big River Development Enterprise. As discussed further in the sphere of influence update portion of this staff report, staff is requesting the removal of the District's water function and its related service descriptions since there is no record that the District ever provided water service.

## Park and Recreation

The District maintains the "Big River Park" which includes a clubhouse, pagoda, open grass areas, picnic facilities, and two boat launch ramps. The clubhouse is for use by those within the community and is the meeting place for Alcoholics Anonymous meetings, the local garden club, wedding receptions, and other group activities. Recreational activities include youth activities during Christmas, Easter, and Halloween.

In 2006, the District received a \$3,500 Community Development Block Grant for a permanently installed barbeque grill and for maintenance and operation of the improvements. Pursuant to the contract to receive the funds, the District is to maintain and operate the improvement for five years from the date of completion of the improvements.

Big River Park is located on the bank of the Colorado River and is comprised of two parcels as shown on the map below.





The eastern parcel comprises three acres and is an open space area for park and recreation activities. According to the County assessment rolls, this parcel is owned by the Colorado River Indian Reservation with Big River CSD having a leasehold possessory interest. The western parcel comprises approximately 40 acres and contains the clubhouse, pagoda, and boat ramps. According to the County assessment rolls, this parcel is owned by the Colorado River Indian Reservation. Unlike the eastern parcel, the western parcel does not have a leasehold possessory interest in the name of the Big River CSD. LAFCO staff is of the understanding that it was the intent at the time of the District's formation that both of these parcels were to be transferred to the District. As indicated in the documents included in Attachment #7, the documents to transfer the leaseholds to the District were recorded by the County. However, the County assessment rolls do not reflect the transfer of the western parcel (identified as parcel #1 in the recorded documents) which remains in the name of the Colorado River Indian Reservation. Nonetheless, the District has operated the Big River Park utilizing both parcels since its formation.

The District has no park master plan or strategic plan to reference in order to provide information on park improvements or meeting the needs of the residents. However, as a part of its annual budget process the District discusses future plans and improvements for the park.

#### Police (Security Patrol)

The District organizes security patrol for the Big River Park and the District office. The program is comprised of volunteers and is called Citizens on Patrol. The District incurs no significant cost to organize this service.

#### **Financial ability of agencies to provide services.**

For this report, staff has reviewed the District's budgets, audits, and State Controller reports for special districts. For FY 2007-08, the District received \$140,636 in total revenues.<sup>4</sup> The primary source of revenue is from assessments on the possessory interests within Big River, and the current assessment rate is \$36.30 per parcel. Records from the Property Tax Division of the County Auditor-Controller/Recorder identify that during FY 2007-08 the District received \$103,352 from special assessments (\$84,621 current year and \$18,731 prior year). Other sources of revenue include its share of the one percent ad valorem property tax (\$14,928) and user fees (\$12,261). Another source of income for the District is through the rental/lease of its facility to the Dock Restaurant, which generates roughly \$4,600 a year in revenue for the District. Revenues have been sufficient in recent years to provide services, with the exception of FY 2004-05 when excess expenditures were incurred for improvements. According to the most recent audit submitted by the District, cash and cash equivalents totaled \$82,773 as of June 30, 2008.

The majority of expenses are for employee wages, park maintenance, and utilities. To control costs, the District uses seasonal labor from April to September, its high activity

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<sup>4</sup> Total Revenues taken from page 9 (Statement of Cash Flows) of the FY 2007-08 audit and does not include prior year adjustments.

season, to supplement its full-time staff. The District is also reviewing its sprinkler system, lights, and air conditioners to reduce utility costs. Expenditure activity for the District since FY 2004-05 has been relatively similar. For FY 2007-08, total operating expenses total \$172,914. Of this amount, the primary expenses are for salaries and benefits (\$78,871), repairs and maintenance (\$22,642), and utilities (\$19,092).

According to the FY 2007-08 audit, the District has an unusually high accounts receivable amount. As of June 30, 2008, accounts receivable totaled \$308,214. Of this amount \$261,015 has been classified as non-current. The District states that this figure represents the District's special park assessments that have not been collected from 2000-2007. The data was provided to the District through a County of San Bernardino report that ages special assessment receivables (Unpaid Special Assessment Report). Moreover, the audit has determined \$69,918 to be uncollectible, which calculates to total net accounts receivable amount of \$238,296. LAFCO's concern regarding the ability to receive assessments owed is expressed in the audit, which states that, "there is a concentration risk due to the amount of the receivable balance which consists entirely of special assessments collected by the County. Consequently, the collectibility of these monies could have a material impact on the revenues and the operations of the District." LAFCO staff is continuing to seek answers regarding this issue and is in contact with representatives at the County Assessor and Treasurer-Tax Collector offices.

The District's budget has two sections – one for its park services and one for the Board of Directors. The Park section of the budget contains the receipt of property assessments, park use fees, the expenses particular to the park, staff salaries and benefits, and the expenses for the general operation of the District. The Board section of the budget contains the receipts from its share of the one percent general levy and expenses incurred for the activities of its board of directors.

### State Controller Reports

As shown in the chart below, the State Controller report identify services of Lighting and Lighting Maintenance and Park and Recreation. However, the District is authorized by LAFCO to provide water, police (security services) and park and recreation. The District is not authorized by LAFCO to provide Lighting services and the District has confirmed that it does not provide streetlighting. The only lighting provided is for the park, which are internal lighting for park activities, not streetlights. Moreover, the District has identified that organizing security services does not incur any significant expenses, if any.

LAFCO staff has compared the amounts and categories for revenues and expenses from the most recent District budget and the State Controller report, each of which have two sections. The amounts and categories for Park and Recreation from the budget and State Controller report are nearly the same. Further, the amounts and categories for the Board of Directors section of the budget in comparison with the Lighting and Lighting Maintenance section of the State Controller's report are nearly the same. It appears to LAFCO staff that the District has attempted to address its separate budgets within the context of the State Controller reporting requirements. LAFCO staff has provided the District with contact information at the State Controller-Local Government Reporting Section to assist with

reporting procedures, and staff recommends that the District adopt reporting procedures consistent with the directives of the State Controller for Financial Transaction Reports.

Activity	Total Revenues	Total Expenditures	Transfer In (Out)	Net Income (Loss)	Total Debt
<b>FY 2006-07</b>					
Lighting and Maintenance	\$ 22,871	\$ 11,332	\$ -	\$ 11,539	\$ -
Park and Recreation	\$ 158,194	\$ 165,138	\$ -	\$ (6,944)	\$ -
<b>Total</b>	<b>\$ 181,065</b>	<b>\$ 176,470</b>	<b>\$ -</b>	<b>\$ 4,595</b>	<b>\$ -</b>
<b>FY 2005-06</b>					
Lighting and Maintenance	\$ 24,206	\$ 6,000	\$ -	\$ 18,206	\$ -
Park and Recreation	\$ 190,290	\$ 179,276	\$ -	\$ 11,014	\$ -
<b>Total</b>	<b>\$ 214,496</b>	<b>\$ 185,276</b>	<b>\$ -</b>	<b>\$ 29,220</b>	<b>\$ -</b>
<b>FY 2004-05</b>					
Lighting and Maintenance	\$ 17,903	\$ 6,000	\$ -	\$ 11,903	\$ -
Park and Recreation	\$ 131,154	\$ 175,705	\$ -	\$ (44,551)	\$ -
<b>Total</b>	<b>\$ 149,057</b>	<b>\$ 181,705</b>	<b>\$ -</b>	<b>\$ (32,648)</b>	<b>\$ -</b>
<b>FY 2003-04</b>					
Lighting and Maintenance	\$ 18,325	\$ 5,500	\$ -	\$ 12,825	\$ -
Park and Recreation	\$ 163,396	\$ 126,244	\$ -	\$ 37,152	\$ -
<b>Total</b>	<b>\$ 181,721</b>	<b>\$ 131,744</b>	<b>\$ -</b>	<b>\$ 49,977</b>	<b>\$ -</b>

source: State of California. California State Controller. *Special Districts Annual Report*, for fiscal years 2003-04, 2004-05, 2005-06, and 2006-07.

### Requirements of CSD Law

Community Services District Law (Government Code Section 61000 et seq.) promotes financial accountability by requiring:

- An adopted budget (§61110 et seq.) – CSD Law requires the adoption of an annual budget and requires the general manager to forward a copy of the final budget to the county auditor. The District adopts annual budgets according to generally accepted accounting and budgeting procedures for special districts. According to staff at the County Auditor-Controller/Recorder, on April 6, 2009 the budget for FY 2008-09 was received.
- Adoption of annual appropriations limits under the Gann Initiative <sup>5</sup> (Article XIII B of the State Constitution and Government Code 61113) – The District does not have nor has it ever adopted an annual appropriations limit according to the materials provided and confirmation from District staff. Article XIII B of the State Constitution (Gann Limit) mandates local Government agencies to establish an appropriations limit, which is further acknowledged by Government Code 61113.

<sup>5</sup> In 1979 the voters amended the California Constitution by passing Proposition 4 (the Gann Initiative), requiring each local Government to set an annual appropriations limit (the Gann Limit).

Without an appropriations limit, agencies are not authorized to expend the proceeds of taxes. Section 9 of this Article provides exemptions to the appropriations limit such as Section 9 (c) exempts the appropriations limit for special districts which existed on January 1, 1978 and which did not levy an ad valorem tax on property in excess of 12 ½ cents per \$100 of assessed value for the 1977-78 fiscal year. A copy of the FY 1977-78 property tax rates is included as Attachment #8, with the District highlighted for reference, identifies a 1977-78 tax rate of 45 cents. Being over the 12 ½-cent tax rate, the District does not qualify for an exemption from the requirement of an appropriations limit. Therefore, the District must have an appropriations limit.

After meeting with LAFCO staff, the District is now aware of the requirement for an annual appropriations limit. LAFCO staff has provided the District with information regarding the establishment of an appropriations limit.

- Regular audits and annual financial reports (Sections 26909 and 61118) – Section 26909 of the Government Code requires regular audits of district accounts and records, which is further acknowledged by Government Code Section 61118. Additionally, CSDs are required to forward their audits to the State Controller and county auditor. According to records from the County Auditor and State Controller, the last audit received for Big River CSD was for FY 2007-08.
- Requirement to have a Designated Treasurer who is bonded (Government Code 61050 61052 and 61053) – Current CSD law and its predecessor provisions have required that CSDs have an appointed Treasurer (Finance Officer prior to January 1, 2006) and that the revenues of the CSD be deposited into the County Treasury for payment of charges unless the CSD takes specific action to place them in either a bank or savings and loan. Current provisions require that the appointed Treasurer be bonded. The District has indicated that it originally took action in 1977 to remove itself from the County Treasury. The General Manager position at the District has historically performed the function of the Treasurer, but the District has not formally taken action to include the duties of Treasurer as a part of the General Manager position. The District has indicated that at its April 16, 2009 board hearing it intends to formally take action on this requirement and will contact its insurance provider regarding bonding of the General Manager/Treasurer position.
- The District complies with Government Code Section 61047 and has adopted a resolution and policy stating that board members may receive compensation in an amount not to exceed \$100 for each day of service, not to exceed six days of service per month.

### Capital Improvements

Big River CSD has no adopted documents identifying any capital improvements. However, it has stated that it intends to add playground equipment and additional picnic tables to the

upriver side of the park, which will enable people who do not have boats to have a separate place to hold picnics.

#### Outstanding Debt

The financial documents do not indicate that the District has outstanding debt.

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

The District has indicated that it does not currently share facilities with other public agencies.

#### **Accountability for Community Service Needs, including Governmental Structure and Operational Efficiencies.**

##### Local Government Structure and Community Service Needs

Big River CSD is an independent district and is governed by a five-member board of directors. Representation on the board of directors is at-large and members are voted by the electorate or are appointed by the County Board of Supervisors. The District has indicated and LAFCO staff has verified that there have been three elections over the past decade. As of April 1, 2008, the District had 434 registered voters. One issue identified during LAFCO staff review is that there appears to be the ability of registered voters who do not pay the assessment for the CSD to vote on its governance or serve on its board. When LAFCO staff reviewed this issue with the District, it was relayed that a former board member was elected to the board even though that person did not pay their taxes or assessments for some years. Consequently, the board member resigned and has been replaced by an appointment in lieu of election. Below is the current composition of the board, their positions, and terms of office:

Board Member	Title	Term
Judy McMenamon-Sands	President	2010
Terry Conaway	Director	2010
Robyn Gaffney	Vice President	2012
Joan Hall	Director	2012
Nelson Harvey	Director	2012

The District employs one general manager who also performs the functions of the secretary and clerk. There are also three full-time positions during the year (which are the General Manager and two maintenance staff), and two seasonal positions for summer activities at the Big River Park.

Office hours for the District are 9:00a.m. to 1:00p.m., Monday through Friday. Board hearings are held on the third Thursday of the month at 7:00 p.m. at the Big River Park Clubhouse. The District does not have a website for the public to seek information or voice concerns, but it does have an adopted policy through which complaints or issues can be

addressed by the public (a copy of the policy is on-file at the LAFCO staff office). However, the District has indicated that it plans to utilize the California Special Districts Association's (CSDA) website program where CSDA remotely operates websites for special districts. The District operates with an annual balanced budget. A budget workshop is conducted in May and the public is invited to attend the budget workshops. The budget is adopted at a public hearing, and the board is provided with a monthly finance report.

### Operational Efficiency

No joint-agency practices have been identified by the District. However, the elections for District representation have been consolidated with the statewide general elections in November of each even-numbered year. This change was approved by the District on November 16, 2006 and approved by the County Board of Supervisors on January 23, 2007.

Risk management and workers' compensation insurance is provided by the Special Districts Risk Management Authority (SDRMA) of the California Special Districts Association.

### Government Structure Options

There are two types of government structure options:

1. Areas served by the agency outside its boundaries through "out-of-agency" service contracts;
2. Other potential government structure changes such as consolidations, reorganizations, dissolutions, etc.

#### Out-of-Agency Service Agreements:

There are no out-of-agency service contracts on file with LAFCO, and the District has indicated in the materials submitted for this review that it provides no services outside of its boundaries.

#### Government Structure Options:

While the discussion of some government structure options may be theoretical, a service review should address possible options.

- Expansion of the District. Expansion of the District in either of the directions outlined below is not likely given the surrounding geographical barriers and the CRIT's intent not to additionally allow for leasehold interests which support the Big River CSD. Therefore, the current boundary can be viewed as the District's maximum possible service area.
  - To the east. Expansion to the east into the State of Arizona cannot occur pursuant to State of California Law.



- To the south. It is unlikely that the District would expand southerly into the County of Riverside on the basis that the CRIT would not consent to the expansion of the District's boundaries or sphere of influence into additional CRIT territory.
- To the west. Lands to the west are of elevated terrain, are managed by the Bureau of Land Management, and would not benefit from the services provided by the District.
- To the north. Based upon written documentation, it is unlikely that the CRIT would consent to the expansion of the District's boundaries or sphere of influence into additional CRIT territory.
- Dissolution of the District. While the physical existence of the District and its funding source past the expiration of the master lease in 2029 is questionable, the District currently provides services to those within its boundaries. Without a clear successor to this service provision, this option is unlikely at this time.
- Maintenance of the status quo. The District has stated that at this time it has no recommendations as to government structure options. As discussed in the *Community Discussion* section of this staff report, LAFCO staff recommends a zero sphere of influence designation. Staff bases its recommendation on the uncertainty of the District's physical presence past 2029 due to expiration of the master lease and primary funding source when the balance of the development is likely to revert back to the underlying ownership, the CRIT.

## SPHERE OF INFLUENCE REVIEW

***LAFCO staff recommends that the Commission designate a zero sphere of influence for the District as outlined in the Community Discussion section of this report.***

***LAFCO staff recommends that the Commission amend the "Rules and Regulations Affecting Special Districts" by removing the Water function and its related service descriptions for the Big River Community District as follows (changes in bold italic):***

	FUNCTIONS	SERVICES
Big River Community Services District	<del><b><i>Water</i></b></del>	<del><b><i>Irrigation, sanitation, industrial, fire protection, recreation, domestic</i></b></del>
	Park and Recreation	Acquisition, maintenance
	Police	Security Patrol

### Sphere of Influence

The District's boundary and sphere are coterminous and comprise approximately 14 square miles.

CRIT representatives have identified that in 2029 the balance of the development will revert back to its underlying ownership. This includes the developed portion of the Big River Park. It is likely that this action would remove all property tax or assessment funding from the District; therefore, as a public agency the District will lack a source of public funding. Since the planning horizon used in the municipal service reviews process is 2030, the withdrawal of this funding source needs to be taken into account by the Commission in its consideration of the District's sphere of influence designation. Therefore, staff recommends that the Commission designate a zero sphere of influence for the District. Staff bases its recommendation on the uncertainty of the District's physical presence and primary funding source past the expiration of the master lease when the balance of the development is likely to revert back to its underlying ownership, the CRIT.

### Functions or classes of services

When updating a sphere of influence for a special district, the Commission is required to establish the nature, location, and extent of any functions or classes of services provided by the district (Government Code §56425(i)).

Currently, the District is authorized by LAFCO the function of water with service descriptions of irrigation, sanitation, industrial, fire protection, recreation, and domestic. However, in correspondence from the District (dated January 17, 2006 and included in the materials provided as Attachment #9) indicates that it provides police (security patrol) and park and recreation and does not provide water service. Rather, the community receives water from the Department of the Interior. Therefore, staff is requesting that the Commission remove the District's water function and its related service descriptions since there is no record that the District ever provided the service.

This District has requested that its "Committee of Architecture" powers be reinstated as a part of this municipal service review and sphere of influence update on the basis that it believes it is in a position to better serve the community rather than the Big River Development Enterprise. By stating "Architecture", the District is referring to the power for enforcement of Covenants, Conditions, and Restrictions (CC&Rs) before the 2006 rewrite of Community Services District Law. The principal act for Community Services Districts was amended during the 1980s to allow for specific CSDs, including the Big River CSD, to provide for enforcement of CC&Rs following an election within the agency. It has been determined that CC&Rs were in effect for the Big River development when it was originally approved in the 1960s. The Big River CSD had been operating as the Architectural Review Board associated with those CC&Rs by the special legislative act of the State of California taken during the 1980s.

However, the update of Community Services District Law (Senate Bill 135 [Kehoe]), effective January 1, 2006, included a provision specific to Big River CSD. Government Code Section 61105(e) states that specific community services district that were authorized and were enforcing CC&Rs under the old 1995 CSD Law could continue to do so. The Big River CSD was not one of the enumerated CSDs. During the period the legislation was being drafted, the Working Group on Revising the Community Services District Law attempted to contact the Big River CSD regarding its enforcement of its CC&R powers but did not receive a response. Therefore, the enforcement of CC&Rs is not a power available to the District and is not eligible for consideration by the Commission.

### **FACTORS OF CONSIDERATION:**

The District was requested to provide information regarding the sphere of influence update as required by State law. Staff responses to the mandatory factors of consideration for a sphere of influence review (as required by Government Code Section 56425) are identified as follows:

#### **The Present and Planned Uses in the Area**

The District's boundary and sphere are coterminous and comprise approximately 14 square miles. Big River is a rural community that is primarily comprised of residential, recreation, and vacant lands. There is some commercial activity which includes car repair, storage units, church, beauty shop, and two restaurants. No change in land use for the area will occur through the proposed zero sphere of influence designation.

As identified in the County of San Bernardino 2007 General Plan maps, the District is within Indian lands. LAFCO staff has confirmed with the County Land Use Services Department that Indian lands are considered federally owned and the General Plan land use designations do not apply. As stated in the County General Plan on pages 1-12 and 1-13, these lands are outside the governing control of the County Board of Supervisors and are referenced as "non-jurisdiction" land or "non-jurisdiction" territory. Therefore, as identified on the County General land maps, "County designated Land Use Zoning Districts do not apply to Federal or State owned property."

#### **The Present and Probable Need for Public Facilities and Services in the Area**

There is a need for those who live in the community to receive municipal services. The District provides park and recreation and security patrol services within its boundaries.

Water and electricity is provided either by the CRIT or the Department of the Interior. Fire protection is provided by the San Bernardino County Fire Protection District and its South Desert Service Zone. Station 17 located at 150260 Capistrano Trail is within the boundaries of the District. Station 17 houses a single Type I engine company, one Type IV engine, and one water tender. This station serves as the Battalion Headquarters for the River area. Volunteers living or working in the community staff the station.

It is not likely that the Colorado River Indian Tribes would lease additional lands in the area and impose the assessments for service by the Big River CSD in the area. Therefore, the current boundary can be viewed as the District's maximum possible service area. Even though the District can plan for additional service capacity or additional services through the expiration of the lease within its boundaries, given the uncertainty of its physical presence and primary funding source past the expiration of the master lease, significant planning is not anticipated.

#### The Present Capacity of Public Facilities and Adequacy of Public Services that the Agency Provides

Currently, the District actively provides park and recreation and security patrol services to the Big River Park. These services generally meet the service needs of those within its boundaries of the District.

The District maintains the Big River Park which includes a clubhouse, pagoda, open grass areas, picnic facilities, and two boat launch ramps. The clubhouse is for use by those within the community and is the meeting place for Alcoholics Anonymous meetings, the local garden club, wedding receptions, and other group activities. The Big River Park is located on the bank of the Colorado River and is comprised of two parcels. The eastern parcel comprises three acres and is an open space area for park and recreation. As noted earlier in this report, according to County land use records, this parcel is owned by the Colorado River Indian Reservation with Big River CSD having a possessory interest. The western parcel comprises approximately 40 acres and contains the clubhouse, pagoda, and boat ramps and according to County land use records, this parcel is owned by the Colorado River Indian Reservation and the Big River CSD does not have a possessory interest. The District has no park master plan or strategic plan to reference in order to provide information on park improvements or meeting the needs of the residents.

The District organizes security patrol for the Big River Park and the District office. The program is comprised of volunteers and is called Citizens on Patrol. The District incurs no significant cost to organize this service.

#### The Existence of any Social or Economic Communities of Interest

Social communities of interest include the Big River Community Services District and its residents, which includes a high senior population, and the transient recreational interests. Economic communities of interest are limited in the area due to its service nature.

#### **ADDITIONAL DETERMINATIONS:**

- The Commission's Environmental Consultant, Tom Dodson and Associates, has determined that the municipal service review and sphere of influence modification is statutorily exempt from environmental review. The basis for this determination is that either affirmation of the existing sphere of influence or the designation of a zero sphere influence does not appear to have any potential for causing physical changes in the environment, and therefore does not constitute a project as defined by CEQA. He

further states that a decision by the Commission to designate a zero sphere of influence does not substantially alter the existing operations or obligations of Big River Community Services District and does not adversely affect any existing physical facilities. Mr. Dodson's response is included as Attachment #10.

- As required by State Law notice of the hearing was provided through publication in a newspaper of general circulation, *The Sun*. Individual notice was not provided as allowed under Government Code Section 56157 as such mailing would include more than 1,000 individual notices. As outlined in Commission Policy #27, in-lieu of individual notice the publication was provided through an eighth-page legal ad, the *Parker Pioneer*.
- As required by State Law, individual notification was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.
- Comments from landowners/registered voters and any affected agency will need to be reviewed and considered by the Commission in making its determinations.

### **CONCLUSION:**

Staff recommends that the Commission receive and file the municipal service review and make the related determinations to the municipal service review and sphere of influence update. Staff also recommends that the Commission:

- Designate a zero sphere of influence for the District on the uncertainty of the District's physical presence and primary funding source past the expiration of the master lease when the balance of the development is likely to revert back to the underlying ownership, the CRIT.
- Remove the authorized function of Water and its related service descriptions from the "Rules and Regulations Affecting Special Districts" since there is no record that the District ever provided water service.

### **Attachments:**

1. Map of the District and LAFCO Staff Proposed Zero Sphere Designation
2. Municipal Service Review Information and Financial Information
3. Master Lease Agreement between United States Department of the Interior Bureau of Indian Affairs and the Central California Land Development Company with Supplemental Agreements and Sublease
4. Formation Documents for Big River CSD
5. Correspondence dated December 9, 2008 and August 15, 2008 from the Colorado River Indian Tribes and Correspondence from the Department of the Interior-Bureau of Indian Affairs to the Big River CSD
6. Big River CSD Response to LAFCO Draft Staff Report dated April 2, 2009

7. Documents Pertaining to the Recordation and Transfer of the Big River Park to the Big River CSD
8. Fiscal Year 1977-78 Tax Rates
9. Response to LAFCO Staff's 2006 Request to List Services Actively Provided as required by CSD Law
10. Response from the Commission's Environmental Consultant, Tom Dodson and Associates
11. Draft Resolution #3054

KRM/MT