



**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF JUNE 17, 2009**

Item 4. Ratify Payments as Reconciled for Month of May 2009 and Note Cash Receipts

Item 5. Initiation of Sphere of Influence Establishment for Phelan-Piñon Hills Community Services District

Item 6. Consideration of Amendment to Rules of Order to Place Approval of Minutes on Consent Calendar

Item 7. Note Receipt of Proposal Initiated by Resolution of Victorville Fire Protection District – LAFCO 3139 – Reorganization to Include Annexation to San Bernardino County Fire Protection District and its North Desert Service Zone

A Visa Justification for the Executive Officer's expense report, as well as a staff report outlining the staff recommendation for the reconciled payments, have been prepared and copies of each are on file in the LAFCO office and are made a part of the record by their reference here. Kathleen Rollings-McDonald, Executive Officer, states that her expense report is distributed to the Commission today and that expense report should be included in the motion.

Commissioner McCallon moves approval of the consent calendar as modified, second by Commissioner Cox. Vice-Chairman Mitzelfelt calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Biane, Cox, McCallon, Mitzelfelt, Pearson, Smith, Williams. Noes: None. Abstain: None. Absent: Curatalo (Commissioner Smith voting in his stead), Nuaimi (Commissioner Williams voting in his stead).

**CONTINUED/DISCUSSION ITEMS:**

**REQUEST FOR CLARIFICATION OF COMMISSION DIRECTION ON FILING WITH GRAND JURY RELATED TO MUNICIPAL SERVICE REVIEW FOR BARSTOW CEMETERY DISTRICT – APPROVE STAFF RECOMMENDATION**

LAFCO Analyst Michael Tuerpe presents the staff report requesting Commission direction on filing with the Grand Jury related to the Municipal Service Review (MSR) for Barstow Cemetery District, a copy of which is on file in the LAFCO office and is made a part of the record by reference herein. He says that at the October 2008 hearing the Commission considered the MSR and Sphere of Influence Update, as required by state law, for the Barstow Cemetery District, and at the November hearing the Commission adopted the resolution assigning a zero sphere of influence to the District and directing LAFCO staff to refer concerns regarding the District's financial matters to the County Auditor/Controller-Recorder to determine if those financial concerns can be resolved. He states that if this effort was unsuccessful, staff was directed to refer the matter to the District Attorney Public Integrity Unit with notification to the Grand Jury. The Commission also recommended that the District be dissolved with succession being either to the County (through a County Service Area) or to the City of Barstow, which would require special legislation. He states that LAFCO staff met with representatives of the City and the County and to date neither has provided a response as to succession to the operations of the District. He explains that the County Auditor/Controller-Recorder, in discussions with County Counsel, has indicated that it cannot assist further in this matter. He says that the District Attorney's Public Integrity Unit has not responded to LAFCO staff's request for information. The Grand Jury is the remaining mechanism which can bring resolution to the Commission's concerns, and the Grand Jury has notified LAFCO staff that it requires a formal filing in order to consider the issue. He describes two options available to the Commission: 1) direct staff to file a formal request for review with the Grand Jury citing its concerns; or 2) direct staff to maintain a watch over the District until its next mandated service review and sphere of influence update in four and one-half years. He states that staff recommends that the Commission direct staff to

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF JUNE 17, 2009**

complete the form requesting review by the Grand Jury. He states that representatives from the District are in the audience. He adds that the District has submitted a letter to the Commission which was distributed today asking that this item be placed on the discussion calendar.

Vice-Chairman Mitzelfelt summarizes the options and calls for questions from the Commission. Commissioner Cox expresses her disappointment and comments that she finds it disheartening that the Commission is considering this issue because of lack of communication from this District as LAFCO tried to provide answers and resolution for the public benefit. She believes that withholding information from another entity that has the best interests of the public in mind is disingenuous and does not serve the public's best interest.

Vice-Chairman Mitzelfelt asks if there is anyone wishing to address the Commission on this item. There is no one.

Commissioner McCallon moves approval of staff recommendation to file a formal complaint with the Grand Jury, second by Commissioner Williams. Vice-Chairman Mitzelfelt calls for opposition to the motion.

Commissioner Smith states that he agrees with Commissioner Cox that there may be a lack of diligence in getting the job done appropriately; however, he does not believe it would be in the best interest to escalate this to the Grand Jury level. He believes that if the District can provide assurance that this will not happen in the future, understanding that this was an oversight, he recommends the Commission direct staff to watch over the District and not ask for a Grand Jury investigation. Commissioner Williams states that waiting four and one-half to five years could potentially result in a worse situation and would be irresponsible on the part of the Commission. She expresses concern that there appears to be a lack of integrity on the part of the District and believes a Grand Jury investigation is appropriate. Commissioner McCallon states that in the initial review of this District there were considerable financial irregularities that were uncovered in addition to the lack of communication and he believes the only way to resolve that issue is through a Grand Jury investigation.

Vice-Chairman Mitzelfelt asks if there is further comment. There being none, the motion passes with the following vote: Ayes: Biane, Cox, McCallon, Mitzelfelt, Pearson, Williams. Noes: Smith. Abstain: None. Absent: Curatalo (Commissioner Smith voting in his stead), Nuaimi (Commissioner Williams voting in his stead).

(It is noted that Commissioner Biane leaves the dais at 9:09 a.m.)

**MUNICIPAL SERVICE REVIEW FOR THE COMMUNITIES OF YERMO, DAGGETT AND NEWBERRY SPRINGS, AND THE FOLLOWING SPHERE OF INFLUENCE**

**UPDATE/AMENDMENT REVIEWS: (CONTINUED FROM MAY 20, 2009 HEARING)**

**A. CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3008; AND (2) LAFCO 3008 - SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR YERMO CSD;**

**B. CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3045; AND (2) LAFCO 3045 - SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR DAGGETT CSD;**

**C. CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3046; AND (2) LAFCO 3046 - SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR NEWBERRY CSD**

**- APPROVE STAFF RECOMMENDATION AS MODIFIED**

LAFCO conducts a public hearing to consider Municipal Service Review for the Communities of

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF JUNE 17, 2009**

Yermo, Daggett, Harvard and Newberry Springs. Notice of the original hearing was advertised as required by law through publication of a 1/8<sup>th</sup> page ad in the *Desert Dispatch*, a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, and those individuals and agencies requesting mailed notice.

(It is noted that Commissioner Smith leaves the dais and is seated in the audience at 9:17 a.m.)

Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by reference herein. Ms. McDonald states that this MSR began in 2005. In light of the County Fire Reorganization and the annexation of 45-plus islands to various cities in the County, the Commission made the determination to defer moving forward with the service reviews until those proposals were completed.

Ms. McDonald states that additional information is provided today, including a resolution from the Daggett CSD expressing its opposition to staff's recommendation, and a response from the Newberry CSD. She says that many questions arose regarding the need for a single report for the three districts. She explains that it is staff's belief that the location of the districts along the I-15/I-40 corridor, their historic divide from the community of Barstow, the major rail lines in the area and the relationship of public and private land supports reviewing the three communities together. She points out the districts on the overhead maps and provides a flyover of the areas noting that there is a major effort by the Mojave Desert Resource Conservation District to work with farmers in the Newberry area to provide efficient irrigation systems. She adds that the Newberry area has a number of private water ski lakes and a water ski school. She points out the Barstow-Daggett County Airport, the Yermo Annex Marine Corps Base, Solar One, the first major solar energy producing plant developed by Southern California Edison, and other major utility ownership areas. She points out the exclusion area of the Barstow-Daggett Airport. She says that the boundary and sphere for Newberry CSD are generally coterminous, however, there are some exclusions including utility rights-of-way and the railroad which are in the existing sphere of influence. She points out the Yermo CSD and its sphere of influence which includes a portion of the Harvard community. Within the district boundary are exclusions of railroads and utility rights-of-way. LAFCO staff has no background information on why those exclusions exist.

Ms. McDonald identifies several changes which staff proposes. First is an expansion to the west of the Daggett CSD. In reviewing the City of Barstow it was discovered that there was territory which was excluded from any sphere of influence; however, it is not accessible by the City of Barstow because it is on the eastern edge of the Nebo base. Therefore, the City could not serve the territory, so it is more appropriately a part of the Daggett CSD sphere and should be part of the Daggett CSD planning area.

Ms. McDonald states that for many years the Yermo Marine Corps Base facility has been excluded from the sphere of influence; however, the updated parcel data indicates that some territory is privately owned and has never been placed within the sphere of influence of the service agencies. Ms. McDonald states that the private lands should be within the Yermo sphere. She states that there are two exclusions to the north that have never been a part of the Yermo CSD sphere of influence. The only access to the private lands is through the Yermo CSD, so LAFCO staff recommends that those territories be included within the sphere of influence.

Ms. McDonald states that six factors are required of every municipal service review. The first factor relates to growth and population projections. An outline of the transportation analysis zones was provided to the Commission for the territory within the four communities as well as SCAG projection for growth in the area. She states these areas are low-growth areas and many have agricultural pursuits. The Harvard community, although a part of Yermo CSD sphere, has

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF JUNE 17, 2009**

always been counted with the Newberry Springs community and has a Newberry Springs mailing address. She says that a breakdown of the type of land ownership was provided in the staff report as an indicator of the potential for growth within the three communities. Daggett CSD is 24 square miles and 64 percent is privately owned; Newberry CSD is 114 square miles and 78 percent privately owner; and Yermo CSD is 48 square miles and 53 percent privately owned.

Ms. McDonald states that the Commission has been provided materials relating to the development projects being processed through the County, which is the land use authority for the entire region. She points out projects within Yermo, Daggett, Newberry, and a few in the Harvard community. She states that the Lake Dolores project within the Harvard community is the largest and it anticipates at least 1,408 lots with 33 lettered lots for development. In addition, 27 lots are planned for commercial development along the I-15 corridor.

She states that the Commission is required to review the present and planned capacity of public facilities. Water is the first and foremost issue for consideration and in this case there are two water systems. Those are the Daggett CSD, which provides water service within its boundaries and, since 1982, the western portion of the Yermo CSD, where it provides water service to the Silver Valley School District and its high school, as well as other facilities. The other water provider in the region is the Yermo Water Company. Ms. McDonald reports that over the past twenty plus years the residents served by this water company have suffered from inadequate service in that the system has not been maintained adequately, upgrades have not been made to the system, and the PUC rules for operating a water company have not been followed. For example, for a period of time, the elementary school students were not permitted to flush toilets because there was insufficient water supply. She says that the PUC has taken action to place the water company in receivership.

She states these districts are in the Baja Basin and pursuant to the Mojave Adjudication have a free production allowance that has been ramped down. In 2007-08 Daggett's verified production exceeded its free production allowance and carryover from prior years requiring Daggett CSD to pay a replacement water obligation for seven acre feet. Of concern is that there is no carryover in water production and the Daggett CSD will be confronted with the possibility, if current production levels remain, to pay for usage over 213 acre feet. She states the cost is \$337 per acre foot, creating a potential obligation of \$19,209. Ms. McDonald states Newberry CSD's water production carries forward a full year's allocation. Yermo Water Company has carried forward significant amounts of water production capacity available and its verified production is 137 acre feet. She explains that if the water company had chosen, it could have leased the use of that water to others in the Baja Basin and could have gained \$68,000 per year for leasing unused water.

Ms. McDonald reports that fire protection is of concern for the general area. She points out the full-time manned stations on the map as well as volunteer stations. Full-time stations include the Harvard station, which is operated by County Fire, the Yermo Annex Fire Station, and the fire station at the Barstow-Daggett Airport which is manned by Fort Irwin personnel. Volunteer stations include two in Yermo, three in Daggett, of which one is inactive, and two in Newberry. She states that the letter from the Newberry CSD expresses dismay at the staff report's description of its fire protection; however, LAFCO staff believes that significant benefits have been derived from the Newberry CSD fire service, as it is the only agency that has forward-thinking fire planning. Staff is disconcerted that the CSD believes that this diminishes the role of fire service in any way. Further, of the three agencies, it is the only one that provides fire protection planning, an outline of its projections and a master plan for the future.

(It is noted that Commissioner Biane returns at 9:38 a.m.)

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF JUNE 17, 2009**

She states that road maintenance is being provided by the Newberry CSD. A road grader was purchased with funds received from Kiewit Pacific Quarry Operation following a survey of residents who indicated that they wish to provide road maintenance. She explains that when LAFCO staff became aware of the provision of the service, staff provided information to the District relating to both the County's and LAFCO's process required for activation of that service. She says that CSD law requires that if a CSD is to provide road maintenance services, it must receive the consent of the authority over the roads. The District has indicated that it is providing road maintenance service on County non-maintained roads. Therefore the County's consent and permits to perform the grading are required for the CSD to provide road maintenance. The Commission is provided with documentation relating to discussion held in 1976 when Special District representation was seated on the Commission and all districts relinquished control of latent powers to the LAFCO process and were required to request activation of those services from LAFCO. She states that the process has become more complicated in that there is now a protest process and a certificate of completion is required for all activations. She states that LAFCO staff has provided the District with information in order to initiate activation of this authority. It is LAFCO staff's belief that provision of road maintenance is a benefit to the community; however, the process for activation must be followed.

Ms. McDonald reports on the agencies' financial ability to provide service. She states that several areas of concern have been identified in the staff report. She says most are working toward compliance. An adopted budget is required; however, the Daggett CSD has not adopted an annual budget since 1995-96. Revenues are received, bills are paid and a transaction report is provided to the State Controller's Office. She says that Newberry CSD and Yermo CSD do adopt annual budgets and operate within them; however, Yermo's budget only provides a total revenue figure with no breakdown of receipts or a position of cash carryover, so it is unclear what the actual position of the District is. Newberry's budget does not provide a distinction of revenue sources. According to the County Auditor/Controller's office the most recent budget received for Newberry is the 2008-09 budget, which is appropriate. It has been verified that Yermo has submitted materials to the County Auditor, but there are no records of Daggett CSD filing any documents with the Auditor/Controller since 1995-96. She says that this is of concern to LAFCO staff because without budgets staff cannot provide a real picture of the financial position of the district.

Ms. McDonald states that the State Constitution requires the adoption of an annual appropriation limit by every district which in 1977-78 had more than 12.5 cents per hundred in taxation. She states that according to the County Auditor/Controller's records the tax rate for these districts in 1977-78 was for Daggett \$1.25 per hundred, for Newberry \$.91 per hundred and for Yermo \$1.08 per hundred. She says that each of the districts, therefore, is required to adopt an annual appropriation limit. She is aware that the Newberry CSD is working with the County Auditor/Controller staff to assemble the information necessary to establish an appropriation limit. LAFCO staff has no information on whether Daggett or Yermo are seeking to comply with this requirement.

The State Controller's records were consulted to determine if regular audits were performed. Ms. McDonald states that the last audit of Daggett CSD's finances was in 2002-03, however, the audit was done without a budget. For Newberry CSD, the last audit received was in 2006-07. The County Auditor-Controller indicates that Yermo CSD is current and has its 2006-07 and 2007-08 audits; however the State Controller reports that it has not received 2006-07. She says that all audits were filed appropriately and this process has revealed an issue with tracking of the legal requirements for the filing of documents with the County Auditor-Controller. Those issues are being resolved. She states that the financial transaction report summaries filed with the State Controller for the districts for 2004-05, 2005-06 and 2006-07 are included in the staff report.

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF JUNE 17, 2009**

With regard to street lighting, Ms. McDonald reports that street lighting costs vary widely for the three districts for Edison-owned street lights with the district paying the utility costs. According to the State Controller's report, for Daggett the District pays \$266 per light, for Newberry the District pays \$750 per light, and for Yermo the District pays \$165 per light. She questions what is the real cost and if there could be more efficient ways to have the street lights adapted so that electricity costs are lowered.

The only district with outstanding debt is Daggett and its debt will expire in 2019.

With regard to accountability for community service needs, governmental structure options and operational efficiencies, Ms. McDonald reports that these areas have caused the most consternation for the three districts. In January 2009 LAFCO staff held a community meeting to explain the process to the residents and property-owners within Yermo, Daggett and Newberry. She says that in reviewing the mandates of state law, the direction of CSDs, and the direction of the Cortese-Knox-Hertzberg Act, LAFCO must look at the question of sustainability for the long term within the 2030 horizon for all MSR's and the direction that a single multi-purpose agency is more appropriate to serve in many cases. Options for the districts include consolidation of the three districts which would allow for economies of scale, would streamline the governance and allow for compliance with CSD law as the districts provide the same types of services through the same types of mechanisms, all have park and recreation facilities and volunteer fire organizations that provide service along the I-15 and I-40 corridors and to their constituents. She states that the economies of scale would be beneficial to the districts as they move forward. Consolidation of the spheres of influence would signal the position of the Commission and in each case the Harvard community has been removed from the discussion of the spheres of influence on the basis that it receives its services, primarily fire protection, from the County Fire Protection District and its North Desert Service Zone. She says there are no plans from the districts to extend any service into the Harvard area.

Ms. McDonald states that the second option would be consolidation of the Yermo and Daggett CSDs' spheres of influence and the maintenance of the Newberry CSD's sphere of influence in its current configuration. This option would provide for efficient governance over the long term, and the consolidation of the Yermo and Daggett spheres would point toward the Commission's direction to consolidate the two districts which are intertwined through water service. Maintenance of the Newberry CSD's sphere in its current configuration would recognize the District's continuing agricultural pursuits in that area.

(It is noted that Commissioner Derry leaves at 9:47 a.m.)

Ms. McDonald reports that in reviewing spheres of influence, service obligations must be considered. In each case recommendations have been made for change to the services provided under the functions. No changes are recommended in the Daggett or Newberry functions or services. The Yermo water function will be discussed as the next item on the agenda.

She summarizes by saying that the staff's recommendation is that the Commission certify the options are statutorily exempt from environmental review, receive and file the MSR's for the three districts, and select one of two options which are: 1) consolidate all three spheres of influence into a single sphere for the overall community, excluding the Harvard area; or 2) consolidate the spheres of influence for the Daggett and Yermo CSDs into a single sphere and retain and affirm the Newberry CSD sphere of influence as it currently exists, excluding the Harvard area from any of the spheres, and that the consolidated sphere be expanded to include the four separate areas identified in the staff report, amend the rules and regulations affecting special districts for Daggett and Newberry as indicated in the staff report, and continue adoption of the resolutions reflecting

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF JUNE 17, 2009**

the determinations to the July hearing.

Vice-Chairman Mitzelfelt summarizes the options as follows: A) consolidate the spheres of influence of the three districts; B) consolidate the spheres of influence of the Daggett and Yermo CSDs leaving the Newberry CSD sphere as it exists; C) designate a zero sphere for each district; or D) affirm the spheres as they exist.

Vice-Chairman calls for questions from the Commission. There are none.

Vice-Chairman Mitzelfelt opens the public hearing and calls upon those wishing to speak. He reminds attendees that there is a three-minute limit; however, if someone is representing one of the CSDs that limit will be extended to five minutes.

JoAnne Cousino, on behalf of Newberry CSD, states that Newberry Springs is a small community, rich in history, determination and pride in its accomplishments. Five decades ago families assembled through a progressive dinner and built a community center. At that time fire protection was provided by the California Division of Forestry in Hesperia, 50 miles from Newberry Springs. She adds that the same group of families petitioned the County Board of Supervisors to form a CSD so that the community could have its own fire department and other needed services. She says that in December 1958 that became a reality and a lighted double ball field and park have since been added to the community. She states that Assistant Chief Miller will report on the attributes that Newberry Fire brings to the community and the exemplary service it provides to the residents and to the travelers on two major highways in the high desert. She says the CSD park and community center are a hub for a variety of services and activities ranging from government services and meetings, social gatherings, trade associations, to food and commodity programs for the community. She believes that consolidation of government to a central point outside the district would negatively impact those who can least afford or manage travel costs as the Silver Valley is a large area and is occasionally divided by the Mojave River for weeks at a time when storms occur. In this situation the commute from Newberry to Yermo can range from 40 to 60 miles depending on whether the Daggett bridge is affected. She says the community has invested a great deal in self-governance and to have it potentially taken away is a very bitter fate to accept without any certainty of improved opportunity for services and a more effective and efficient cost savings to the residents of Newberry. Moreover, the citizens question why and how a consolidation of the districts would promote public access and accountability for community services, needs and financial resources as required by the Government Code. She states that LAFCO staff has not provided an action plan. She asks the Commission to consider that the combined gross budgets in all categories for the three CSDs is just over \$400,000 and the cost of wages, benefits, and personal protective equipment for one paid firefighter is approximately \$75,000 per year. She states that a manned station would require 18 salaried personnel to staff a three-man station at a cost of approximately \$700,000. She reports that administratively the cost of one manager to run a large combined district would cost ten times what the districts are currently paying. She comments that it is understood that today's discussion is only about the sphere of influence and no services would be affected now, however, LAFCO staff states in the MSR that the approval of consolidation of the spheres today will indicate the future consolidation of the districts. She adds that the MSR includes Yermo and Daggett exclusionary zones; however Newberry's are not included. LAFCO staff has indicated Newberry must apply and pay fees in order to include the exclusionary zones. She requests that the exclusionary zones be included as proposed, as they are for Yermo and Daggett, and that many of the discrepancies noted in the MSR are corrected. She continues with the following questions: Will there be more tax dollars from the County to fund the larger programs that will be needed when LAFCO decides to consolidate the districts? Will it truly benefit the public, as noted in the Government Code, or will there be less benefit due to the high cost of protection and administration? She asks the Commission to leave Newberry whole with an independent sphere

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF JUNE 17, 2009**

of influence and give the District an opportunity to grow. She thanks the Commission for allowing her to share the District's concerns.

Stephen Miller, on behalf of Newberry Springs Fire, states that the Department's management team has an aggregate 65 years of fire ground experience and hundreds of training classes in emergency response, disaster planning and operations and management of fire departments. He says Newberry Springs as a department has worked closely with the CSD Board in the last five years to develop many of the best practices available in the fire service, including an active training program which follows state and federal standards, a comprehensive mutual aid program which is consistent with the state's program and leads the nation in mutual aid and cooperative interagency activity during disasters and major events. He says firefighters for Newberry Springs, as it is a volunteer department, have daytime jobs, and his work in industry often involves project management. Therefore he deals with the economics of various size projects, from day-to-day repair issues to nearly million-dollar expansion projects. He says that economies of scale take on different values depending upon the size and complexity of the situation, and the fire service is not very different, in that when large populations and large budgets and high value facilities exist, paid career departments make good sense. He says, however, that in the rural environment, where revenues are very low, that kind of investment cannot be supported. He states that combining multiple volunteer agencies can create a situation where volunteers can no longer manage the volunteers requiring career staff to make it work. He adds that combining the three volunteer departments into one would very easily create that situation. He says that for that reason over 70 percent of the fire service in the United States is all-volunteer. With the current economic conditions, he believes that over the next five years many career departments could go to combination and some combination could revert to fully volunteer. He says Newberry Springs operates one of the most modern fleets of apparatus with nearly 100 percent up time and over 98 percent of its calls are staffed. He states that for mutual aid, County Fire is their number one customer and Newberry Springs provides about six mutual aid calls to the County, primarily Station 46, for every one that Newberry Springs receives, largely because County Fire must cover over 6,000 miles with the three personnel in one station. He believes Newberry Springs Fire is a strength and asset to the County system. He asks that the exclusion zones be included as it will assist in planning and asks that the sphere of influence for Newberry Springs remain intact. He says in recent weeks there has been huge interest in alternative energy, particularly solar, in the community, and the community needs to have the flexibility to be able to plan if the projects come to fruition. He reiterates that the exclusion zones should be included in order for the CSD to focus its time, monies and efforts on planning for the future and the sphere of influence should be kept intact so that the CSD can grow as the area grows.

Ellen Johnson, on behalf of Silver Valley Community Issues Committee, states the committee is comprised of a group of individuals who work on various community issues, including blight, and other problems. She says that the Committee supports the Newberry CSD in its request and the Committee believes that combining the spheres of influence is not in the best interest, especially for Newberry Springs. She says staff has mentioned fire protection in its report and comments that she has contacted County Fire on numerous occasions and has not received response. She urges the Commission to not accept the staff's recommendation of consolidation of the spheres of influence.

Spike Lynch, on behalf of the Newberry Springs Harvard Real Property Owners Association, states the association met on Saturday, June 13, where this issue was discussed. He says the property owners in Newberry Springs are very pleased with the job the CSD and volunteer fire department have been doing. He says the CSD has done a good job with its reporting and audits. He believes that the Newberry Springs community is unique from that of Yermo and Daggett. He says it is not the Association's position to oppose the consolidation of the spheres of Yermo and Daggett, but the Association is vehemently opposed to consolidating the sphere of

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF JUNE 17, 2009**

Newberry with Yermo and Daggett. He states that without further justifiable reasons he believes that the sphere of influence for Newberry should remain.

Bob Smith, representing Yermo CSD, says he was selected president of Yermo CSD in November 2008. He states that he agrees that Yermo would be in favor of the proposed sphere expansions and Yermo has no objection to Newberry remaining autonomous. He conveys the message from the Yermo board that Yermo is attempting to remain neutral and wants to move forward to do what is best for the Yermo community, while encouraging all the communities to look at options. He believes that Ms. McDonald shared the perception that there was not a "warm and fuzzy feeling" toward bringing the three Districts together as one. He believes there is room for at least two of the Districts to be able to negotiate. He met with the Daggett CSD president and did not receive a "warm and fuzzy feeling" from him that he wishes to move forward toward consolidation of the districts' spheres. He indicated he pointed out to the Daggett CSD president that he would like to have options for Yermo and Daggett to explore the pros and cons of operating as a combined district. He says that the Districts feel that they are separate communities and they exist because they want to be autonomous. He encourages the Commission to find an option that will keep Newberry autonomous, and speaking for Yermo, he would like to have options to move forward for the best of the Yermo community.

Vice-Chairman Mitzelfelt asks if there is anyone else who wishes to speak. There is no one. Vice-Chairman Mitzelfelt closes the public hearing.

Commissioner McCallon clarifies that if the Commission agrees to consolidate the spheres of two of the Districts or all three of the Districts, it would not be consolidating the Districts, but simply signaling that at some point in the future it would only occur if one of the agencies applies to make that happen. Ms. McDonald confirms that that is correct. He points out that whatever action is taken today does not force consolidation in any way. Ms. McDonald states any action today does not affect the existing service delivery of any of the three Districts. Commissioner McCallon asks what the Newberry exclusion zones are. Ms. McDonald states she is unsure what is meant by "exclusions." She states there are some exclusion areas along the railroads that are not in the Newberry CSD but have been in the sphere of influence for many years.

Vice-Chairman Mitzelfelt asks if someone from the CSD would come forward and explain the exclusion areas. Stephen Miller of the Newberry Springs Volunteer Fire Department states that there may be a misunderstanding. He says he was under the impression that LAFCO staff's proposed sphere expansions were being annexed and becoming part of the CSD boundaries. He states that, at LAFCO's suggestion, the District was beginning the process to annex these zones; however, the cost and complexity have placed it on hold. He asks that LAFCO provide detailed instructions on how to go about annexing the exclusion areas to follow up on the recommendation made last year by LAFCO staff.

Commissioner Cox asks for clarification on the exclusion of the Harvard community from the spheres of influence of the Districts. Ms. McDonald states that the community of Harvard is currently receiving its services from the San Bernardino County Fire Protection District and there have been no plans or effort to address the service issues in Harvard. LAFCO staff recommends that it be removed as its primary service is currently received from the County Fire Protection District from its manned station there.

Vice-Chairman Mitzelfelt asks if the Yermo CSD expressed an opinion on that recommendation. Ms. McDonald states it did not.

Robert Smith, representing Yermo CSD, states that the best option would be for the District to be able to maintain its sphere over the Harvard area. The District has no intent or desire to do

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF JUNE 17, 2009**

anything at this point but would like to maintain the sphere.

Commissioner Cox asks if there would be any conflict in fire protection. Ms. McDonald states there would not as it is provided through the County and the territory is in the County's jurisdiction. She states that all unincorporated areas and all spheres of influence territory of the three districts is currently overlain by the San Bernardino County Fire Protection District, so all the surrounding territories are served. She explains that the issue is that the obligations for a sphere of influence assignment require the District to master plan for delivery of the District's range of services to the sphere of influence. That obligation has not been done for the Harvard area. She says that, as its primary service is provided by the County, staff recommends its exclusion. She adds that, for example, for the Newberry area, the railroads are currently a part of the County Fire Protection District.

Commissioner Cox comments that it has been her honor to serve each of the three communities for over five years in her elected capacity on the Mojave Water Agency and she would like to vouch for the unique characteristics of the Newberry Springs community. She says that, of the three communities, it would stand to reason to allow that community to maintain its independence. She goes on the record as stating that Yermo and Daggett should have a combined sphere of influence.

Commissioner Pearson comments that he has concern about the remarks made in response to the municipal service review. He believes that staff used the best information available in some cases, and in fact, in most cases there was very little information or accurate information available. He states there were issues such as lack of timely audits, lack of budgets, and lack of appropriations. He states that the Commission is concerned about rural agencies that perhaps feel that they are independent with no assistance available. He explains that the very action of the municipal service review and sphere review exposes a management shortfall which really does not serve the citizens of the agency. He suggests that the Districts take this as a lesson. He commends those who made presentations today and says their points were made very well. He agrees with Commissioner Cox that the Yermo and Daggett spheres of influence should be consolidated, leaving Newberry's as it currently exists. He adds that the solar plant being developed in the area will be beneficial to a larger area in the years ahead. He requests that the representatives of the Districts review some of the shortfalls that have been identified. He states there is a lack of management expertise that must be addressed in order to meet the financial challenges of the Districts.

Vice-Chairman Mitzelfelt agrees and asks Ms. McDonald, with regard to the Harvard area, her opinion of retaining the Harvard area within the Yermo CSD. Ms. McDonald states that it has been a part of the Yermo CSD sphere of influence since 1973 but points out that the SCAG transportation analysis zones and mailing addresses for the area designate it as Newberry Springs. Commissioner Cox asks what the population in Harvard is. Ms. McDonald states it is 824. The 2010 census estimate is 941.

Commissioner Cox moves approval of staff recommendations 1, 2, and 3(B) consolidating the spheres of influence of the Daggett and Yermo CSDs into a single sphere of influence with the modifications including the Harvard area in the Yermo CSD sphere of influence, and affirming the existing sphere of influence of the Newberry CSD, and Items 4, 5 and 6, second by Commissioner McCallon. Vice-Chairman Mitzelfelt states that this process is driven by state law and it is to encourage LAFCOs to use municipal service reviews, spheres of influence and boundary powers where feasible and appropriate to combine special districts that serve overlapping or adjacent territory into multi-function community services districts. He agrees with the motion and says that if there is to be a consolidation it would be driven by circumstances and by the CSDs themselves. He states the municipal services reviews have been valuable in

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF JUNE 17, 2009**

pointing out some management and structural issues that the Districts have been working to resolve in good faith. He reminds everyone in attendance that those findings are a part of the service review. He expresses his appreciation for the work of LAFCO staff and the cooperation and feedback provided by the CSDs.

Vice-Chairman Mitzelfelt asks if there is further comment. There is none. Vice-Chairman Mitzelfelt calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Biane, Cox, McCallon, Mitzelfelt, Pearson, Williams. Noes: None. Abstain: Smith. Absent: Curatalo, Nuaimi (Commissioner Williams voting in his stead).

**CONSIDERATION OF (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3008A; AND (2) LAFCO 3008A – ACTIVATION OF WATER POWERS FOR YERMO COMMUNITY SERVICES DISTRICT (CONTINUED FROM MAY 20, 2009 HEARING) – APPROVE STAFF RECOMMENDATION**

(It is noted that Commissioner Smith returns to the dais at 10:31 a.m.)

LAFCO conducts a public hearing to consider LAFCO 3008A – Activation of Water Powers for Yermo Community Services District. Notice of the original hearing was advertised as required by law through publication of a 1/8<sup>th</sup> page ad in the *Desert Dispatch*, a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, and those individuals and agencies requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by reference herein. She states that this was continued from the May hearing when it was discovered that there is a need for the property tax exchange process by the County for activation of latent powers. That has now been completed. She says the Yermo CSD, over a number of months, has discussed the potential for activating its water functions. In January 2006, this Commission took action as required by the rewrite of the Community Services District law to review the active functions for every CSD in the County. She reports that at the time the Yermo CSD indicated that its water function was not actively provided and, as directed by the State, the power was removed from its range of functions that it was authorized to provide. In August 2006 the issues regarding the Yermo Water Company and its operations came to fore. Those issues included its inability to serve its customers and to provide a safe water system. She states that the president of the Board of Directors communicated with LAFCO staff regarding the activation of the water powers for the Yermo CSD, so that it could participate in the PUC process that had begun to address the issues of the Yermo Water Company. As a result, LAFCO staff began working with representatives of the District to bring forward an application to address the issue. She refers to the staff report which includes the application and resolution of the Board of Directors that was submitted in April 2009. She says that the staff report includes a history beginning in 1982 when the Yermo CSD asked for the activation of water powers to address existing issues with the Yermo Water Company. At the time the purpose was that the CSD wanted to acquire the existing water company because it was deteriorated, undersized and without adequate supply or storage. In 2006 it became evident that this water company was deteriorated, is underfunded, and has issues regarding water supply and storage. She states that in May 2009 the PUC directed its staff to petition the San Bernardino Superior Court to place the Yermo Water Company in receivership, removing it from its private owner. The premise for the request for activation of water powers is to allow the Yermo CSD to participate in the process before the San Bernardino County Superior Court to acquire the water system. She states that the CSD has submitted its application and has complied with LAFCO staff's request to define the service area where it would provide service. Water powers will indicate that the District has the ability to provide water

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF JUNE 17, 2009**

anywhere within its boundaries, but the acquisition of the water system and whatever funding is necessary must be applied to a specific area.

Ms. McDonald points out on the overhead display the area defined as the water service zone for Yermo CSD. LAFCO staff has expressed some concerns in that the area exceeds the boundaries of the existing sphere of influence. She states that Yermo or Daggett CSD, or the County, through an improvement zone to County Service Area 70, are the only agencies that could provide this service. Yermo overlays the area and Daggett provides water service to the west. She states the CSD's application identifies a plan for delivering the service and anticipates delivering it through a contractual relationship. Information was provided by both the County Special Districts Department and an outside contractor, High Desert Underground, on how it intends to operate within the parameters of the existing water system. Ms. McDonald states that it is important to note that there is an existing request for a rate increase because of the underfunded status of the water company through the PUC. She states that when the application was circulated for review and comment to County departments, the PUC and the State Department of Public Health Drinking Water Environmental Management Section no comments or expression of concern were received regarding the activation of this power. She says that the Department of Public Health provided the requirements for obtaining the permits to operate the system should the CSD be successful in its acquisition. Those requirements which are far more stringent than LAFCO's plan for service requirements include extensive technical, managerial and financial reporting. LAFCO staff believes that it is appropriate for the CSD to receive the water power and to participate in the process for the acquisition of the system and that a public agency is appropriate to operate the system. She says that all residents within this water company have been a part of the CSD since it was formed and deserve efficient operation and management of the system that serves them. LAFCO staff recommends that the Commission approve the request for activation and that the Commission take the actions regarding the statutory exemption for environmental review and adopt the draft resolution indicating findings and determinations. She adds that this proposal has a protest process and if the Commission approves and adopts the resolution there will be a 30-day reconsideration period followed by a 21-day protest period. LAFCO staff will circulate the information to the residents and landowners within the Yermo CSD and conduct the protest proceeding. If there is insufficient protest to require an election or termination it will be approved and a certificate of completion will be filed giving an effective date for activation of that service.

Vice-Chairman Mitzelfelt asks if there are questions from the Commission. Commissioner Cox states that the staff report includes a statement that local control of this fundamental service is long overdue for this community. She states that embodies the dilemma this community has been in for many years. Ms. McDonald states that if growth and development are anticipated in the overall community along the I-15, a reliable source of a water system is needed. Vice-Chairman Mitzelfelt echoes that sentiment and adds that he has been advocating strongly for many years to the PUC that it take action relating to this untenable situation.

Vice-Chairman Mitzelfelt opens the public hearing and calls upon those wishing to speak. There is no one. Vice-Chairman Mitzelfelt closes the public hearing.

Commissioner Biane moves approval of staff recommendation, second by Commissioner McCallon. Vice-Chairman Mitzelfelt calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Biane, Cox, McCallon, Mitzelfelt, Pearson, Smith, Williams. Noes: None. Abstain: None. Absent: Curatalo (Commissioner Smith voting in his stead), Nuaimi (Commissioner Williams voting in his stead).

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF JUNE 17, 2009**

**PENDING LEGISLATION REPORT**

Ms. McDonald reports that she has distributed the CALAFCO legislative report to the Commission today. She states that AB853 (Arambula), which would provide for a separate annexation process for specialized communities, has become a two-year bill.

**EXECUTIVE OFFICER'S REPORT**

Ms. McDonald refers to the information relating to the CALAFCO Annual Conference which was distributed to the Commission today. She states that she has received information from Orange LAFCO offering the opportunity for Commissioners to join with the Orange Commissioners on a bus ride to the Conference. She states the round trip cost would be \$125 per person.

Next month's hearing will include consideration of the San Bernardino Valley Water Conservation District and San Bernardino Valley Municipal Water District and tentatively the Municipal Service Review for the City of Adelanto.

There will be no hearing in August and the September hearing will include the final municipal service review associated with the north desert which is the Ridgecrest-Trona area.

Ms. McDonald announces that the annual audit will be conducted in September and October.

Commissioner McCallon questions why CALAFCO's annual conference should be supported considering the position CALAFCO has taken on regional representation. Ms. McDonald reports that CALAFCO intends to take action in August on that issue. If the Commission chooses not to participate as a member of CALAFCO the Conference is still available at a non-member rate. Ms. McDonald states that she has conveyed to CALAFCO's director that she has been instructed not to pay the dues until a decision is made on regional representation. Commissioner Williams asks if other LAFCOs are following suit. Ms. McDonald reports that they are. She says that a meeting of the southern California LAFCOs is scheduled for July 2.

**COMMISSIONER COMMENTS**

Vice-Chairman Mitzelfelt calls for comments from the Commission. There are none.

**COMMENTS FROM THE PUBLIC**

Vice-Chairman Mitzelfelt calls for comments from the public. There are none.

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS ADJOURNED AT 10:50 A.M.**

**ATTEST:**

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**ANNA M. RAEF, Clerk to the Commission**

**LOCAL AGENCY FORMATION COMMISSION**

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**BRAD MITZELFELT, Vice-Chairman**