TOM DODSON & ASSOCIATES
2150 N. ARROWHEAD AVENUE
SAN BERNARDINO, CA 92405
TEL (909) 882-3612 • FAX (909) 882-7015
E-MAIL tda@tdaenv.com

RECEIVED
JUL 02 2009
LAFCO
San Bernardino County

July 2, 2009

Ms. Kathleen Rollings-McDonald
Executive Officer
Local Agency Formation Commission
215 North D Street, Suite 204
San Bernardino, CA 92415-0490

Dear Kathy:

The Commission Staff has requested a final set of comments from my office regarding San Bernardino County Local Agency Formation Commission (LAFCO) 3076, the proposed "Consolidation of the San Bernardino Valley Water Conservation District and the San Bernardino Valley Municipal Water District." I have attached my January 9, 2009 letter outlining my thoughts regarding the Commission's compliance with the California Environmental Quality Act (CEQA) for this complicated project. At the January 2009 Commission hearing, the project Environmental Impact Report (EIR) was certified based on the information in the administrative record. So what additional steps are required for compliance with CEQA.

If the Commission decides to approve the consolidation (LAFCO 3076), the final step in the process is to approve the filing of a Notice of Determination (NOD) with San Bernardino County. The NOD is the Commission's announcement to the public that the final step in the CEQA process has been completed. The NOD can only be filed when an actual "determination" regarding an action before an agency is approved. If approved, the NOD filing initiates a 30 day statute of limitations for a legal challenge to a decision to approve a project. Part of the final action before the Commission on LAFCO 3076 includes the filing of the NOD, if it is approved.

The second component of the CEQA action before the Commission at the upcoming hearing is the adoption of a set of facts and findings. Under normal circumstances when an EIR concludes no significant impacts will occur and no mitigation measures are required to reduce impacts to a less than significant impact level, there is no need to prepare a set of facts and findings or a statement of overriding considerations. Because of the contentiousness of the LAFCO 3076 proceedings, the LAFCO staff, in conjunction with LAFCO legal counsel, has compiled a set of facts and findings for adoption as part of the Commission's decision. In this instance, the set of facts and findings

represent an excellent summary of the EIR and the rationale supporting the findings. The facts and findings augment the elaborate administrative record compiled in support of the Commission's certification of the EIR and serve as a final set of environmental information for the Commission to rely upon in support of its decision on LAFCO 3076.

In closing, I want to reiterate my recommendation contained in the attached letter regarding certification of the LAFCO 3076 EIR: "*Based on my 30+ years of experience with CEQA compliance, I recommend that, the Commission certify the Final EIR at its January 21, 2009 meeting. I also want to remind the Commission that any comments received from any party prior to a decision to approve the consolidation must be addressed. If the Commission rejects the consolidation, then the certification of the Final EIR is essentially irrelevant. Therefore, the Commission should anticipate that the debate over issues documented in the Final EIR will continue right up to the point of decision. I would respectfully request that the Commission allow the LAFCO Staff, RBF and LAFCO legal counsel to respond to all environmental comments prior to the Commission decision on LAFCO 3076. This will allow us to ensure the best administrative record possible if the consolidation is approved and CEQA litigation ensues.*" This recommendation remains the same for approving filing the Notice of Determination and approval of the facts and findings presented in the final decision package before the Commission. If the Commission approves LAFCO 3076 directing consolidation of the two agencies, I recommend that the Commission also approve filing the NOD in a timely manner and approve the set of facts and findings as part of the Commission's overall CEQA administrative record for this action. I will be available at the LAFCO hearing on July 15 to address any questions the Commissioners may have.

Sincerely,

Tom Dodson

Tom Dodson

TOM DODSON & ASSOCIATES
2150 N. ARROWHEAD AVENUE
SAN BERNARDINO, CA 92405
TEL (909) 882-3612 • FAX (909) 882-7015
E-MAIL tda@tdaenv.com

January 9, 2009

RECEIVED
JAN 09 2009
LAFCO
San Bernardino County

Ms. Kathleen Rollings-McDonald
Executive Officer
Local Agency Formation Commission
215 North D Street, Suite 204
San Bernardino, CA 92415-0490

Dear Kathy:

As we near the Commission hearing for certification of the LAFCO 3076 environmental impact report (EIR), you requested that I provide the Commission with a summary of my participation in the review and recommendations based on my role as the environmental consultant to the Commission. Needless to say, the review process for LAFCO 3076 (Consolidation of the San Bernardino Valley Water Conservation District and the San Bernardino Valley Municipal Water District) has been very contentious. Consolidations are typically routine actions that require minimal environmental review, but the Water Conservation District and a core group of opponents of the consolidation raised a number of issues in opposition, including many issues with environmental focus. The following is a summary of the environmental review process for LAFCO 3076 from my perspective, including the collective LAFCO Staff's independent participation and review of the EIR.

The EIR review process can be divided into several steps that when fulfilled represent compliance with the review process established by the California Environmental Quality Act (CEQA). The more detailed discussion of requirements is provided in the State CEQA Guidelines, but to minimize confusion the following summaries do not include detailed discussion of the referenced Guideline sections. I can provide these data at the hearing if any Commissioners would like more detail.

Decision to Prepare an EIR

Based on the level of controversy over the proposed consolidation application, LAFCO Staff concluded that a decision on the consolidation justified the preparation of an EIR. This decision was made due to controversy over several environmental issues (biology, land use, mining issues, etc.) and a desire by the Staff to provide the most conservative CEQA compliance process available. State CEQA Guidelines Section 15081 authorizes a lead agency two methods of deciding whether to prepare and EIR. Staff concluded that the best method to comply with this requirement would be to prepare an Initial Study in order to narrow the scope of issues to be addressed in the EIR for LAFCO 3076.

The Initial Study was prepared and issued in conjunction with a Notice of Preparation on September 7, 2007. A public scoping meeting was held on September 26, 2007. The original scope of issues did not change and included agricultural resources, biological resources, water supply and water quality, land use and relevant planning, mineral resources, and utilities and service systems (water infrastructure and water supply). The primary participants in this scoping process were the Conservation District and its attorney Lagerlof, Senecal, Gosney, & Kruse, LLP, City of Highland, Center for Biological Diversity and the Valley Municipal Water District.

Two observations about this phase of the CEQA review process. First, extra effort was expended by LAFCO Staff to ensure that the procedural process for this stage of the review was fulfilled. Although I participated in this process, it is my professional judgment that the procedural process through this stage of the review was completed in full compliance with CEQA requirements. Second, based on the participation in this stage of the review process, it became clear that the environmental concerns are issues of local concern, not a concern for regulatory agencies. For example, no participation or comments were received from the California Department of Fish and Game; the U. S. Fish and Wildlife Service; California Division of Mines and Geology; nor the California Department of Water Resources or State or Regional Water Boards. As State trustee agencies for biological resources, minerals and mining activities, and water resources, the lack of their participation after being afforded an opportunity indicates that these agencies did not perceive these issues as significant state-wide environmental issues.

Preparation and Public Review of the EIR

Two Commissioners plus the LAFCO Executive Officer selected RBF Consultants to prepare the EIR under contract to LAFCO. RBF was given general guidance by LAFCO Staff, but the firm was given a free hand in preparing the Draft EIR. In accordance with Section 15084 of the State CEQA Guidelines, both the Municipal Water District and the Water Conservation District were requested to submit data to support preparation of the Draft EIR. In an effort to go beyond requirements in preparing the Draft EIR, both parties to the consolidation were given an opportunity to review the project description before it was released, and both provided input.

After extensive independent review of the document by LAFCO Staff and legal counsel, the Draft EIR was published for public review on June 4, 2008. The Draft EIR was widely distributed, including to all of the active participants in the review process and to all State trustee agencies. Both the Notice of Availability and the Notice of Completion for this document were filed with the appropriate agencies, the County and the State Clearinghouse, respectively. The Notice of Availability was also published in a newspaper of general circulation as required by Section 15087 of the State CEQA Guidelines. Since the Commission has the final decision on the consolidation issue, there are no responsible agencies for this action. The public comment/review period ended on July 18, 2008, but it was extended to July 21, 2008. The Draft EIR concluded that implementation of the consolidation is not forecast to cause any significant adverse impacts and no mitigation measures were identified for implementation.

Finalizing the EIR for Certification

The administrative review process for an EIR closes when the project EIR is certified and when a final decision is rendered on the project before the decision-maker. Following a decision on the project, LAFCO files a Notice of Determination which establishes a 30-day statute of limitations for any party to initiate litigation on the content of the EIR, including the whole of the administrative record. I would like to quote from State CEQA Guidelines Section 15151 regarding the standards for adequacy of an EIR: *An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full*

disclosure. The underlining for emphasis is mine, not the Guidelines. The primary point of this quote is to recognize that an EIR does not need to be a perfect document. It needs to inform; it needs to present all perspectives regarding issues; and it needs to fully disclose the full range of environmental impacts to the Commission.

Six comment letters were received on the Draft EIR for LAFCO 3076. Three of these (State Clearinghouse, Native American Heritage Commission and Valley Municipal Water District) provided input, but did not raise any significant issues. Three of the letters, those from the Center for Biological Diversity, City of Highland, and Lagerlof, Senecal, Gosney, & Kruse, LLP, raised numerous issues related to the adequacy of the Draft EIR. A full set of responses to these comments has been compiled and independently reviewed for adequacy by the LAFCO Staff and legal counsel. These responses, which comprise, much of the Final EIR have been properly distributed to the commenters on the Draft EIR.

Not surprisingly the opponents to the consolidation generally found sections of the Draft EIR inadequate. In my judgment much of the negative comment is based on assumptions regarding future actions by the Valley Municipal District that are not part of the plan for service supplied by this agency. Based on my professional judgment, the Final EIR is adequate, and so I recommend this finding to the Commission. But I refer the Commissioners back to the State CEQA Guidelines criteria for adequacy. Specifically, is the analysis of environmental effects sufficient; are both sides of the issues presented in the Final EIR for consideration by the Commission; and do the Commissioners find that the document has made the "good faith effort at full disclosure" of the environmental effects of consolidation. It is my opinion that the Final EIR meets these criteria for adequacy.

Recommendation

Based on my 30+ years of experience with CEQA compliance, I recommend that the Commission certify the Final EIR at its January 21, 2009 meeting. I also want to remind the Commission that any comments received from any party prior to a decision to approve the consolidation must be addressed. If the Commission rejects the consolidation, then the certification of the Final EIR is essentially irrelevant. Therefore, the Commission should anticipate that the debate over issues documented in the Final EIR will continue right up to the point of decision. I would respectfully request that the Commission allow the LAFCO Staff, RBF and LAFCO legal counsel to respond to all environmental comments prior to the Commission decision on LAFCO 3076. This will allow us to ensure the best administrative record possible if the consolidation is approved and CEQA litigation ensues.

Tom Dodson

Tom Dodson