

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF SEPTEMBER 16, 2009**

REGULAR MEETING

9:00 A.M.

SEPTEMBER 16, 2009

PRESENT:

| | | |
|-----------------------|---------------------------------------|----------------------------------|
| COMMISSIONERS: | Jim Bagley, Alternate | Mark Nuaimi, Chairman |
| | Kimberly Cox | Richard P. Pearson |
| | James V. Curatalo | Robert Smith, Alternate |
| | Neil Derry, Alternate | Diane Williams, Alternate |
| | Larry McCallon | |
| | Brad Mitzelfelt, Vice-Chairman | |

STAFF:

- Kathleen Rollings-McDonald, Executive Officer**
- Clark Alsop, Legal Counsel**
- Samuel Martinez, Senior LAFCO Analyst**
- Michael Tuerpe, LAFCO Analyst**
- Rebecca Lowery, Deputy Clerk to the Commission**

ABSENT:

COMMISSIONERS: **Paul Biane**

REGULAR SESSION OF THE LOCAL AGENCY FORMATION COMMISSION – CALL TO ORDER – 9:00 A.M.

Chairman Mark Nuaimi calls the regular session of the Local Agency Formation Commission to order and asks Commissioner Derry to lead the flag salute.

Chairman Nuaimi requests those present who are involved with any of the changes of organization to be considered today by the Commission and have made a contribution of more than \$250 within the past twelve months to any member of the Commission to come forward and state for the record their name, the member to whom the contribution has been made, and the matter of consideration with which they are involved. There are none.

CONSENT ITEMS – APPROVE STAFF RECOMMENDATIONS

LAFCO considers the items listed under its consent calendar. The consent calendar consists of:

1. Approval of Minutes for Regular Meeting of July 15, 2009
2. Approval of Executive Officer's Expense Report
3. Ratify Payments as Reconciled for Month of July and August 2009 and Note Cash Receipts
4. Ratify the Action of the Commission Chairman Authorizing Payment of CALAFCO Membership Dues for 2009-2010
5. Review and Adoption of Resolution No. 3067 Denying LAFCO 3076 – Consolidation of San Bernardino Valley Water Conservation District and San Bernardino Valley Municipal Water District

A Visa Justification for the Executive Officer's expense report, as well as a staff reports outlining the staff recommendation for the reconciled payments, ratification of Chairman authorizing payment of CALAFCO membership dues, and adoption of LAFCO Resolution 3067, have been presented and copies of each are on file in the LAFCO office and are made a part of the record by their reference here.

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Commissioner McCallon moves approval of the consent calendar, second by Commissioner Cox. Chairman Nuaimi calls for opposition to the motion and states that he will vote no on item # 5. There being no other opposition, the motion passes with the following vote: Items #1 -#4 - Ayes: Cox, Derry, McCallon, Nuaimi Pearson, Smith. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Curatalo (Smith voting in his stead), Mitzelfelt. Item #5 -Ayes: Cox, Derry, McCallon, Pearson, Smith. Noes: Nuaimi. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Curatalo (Smith voting in his stead), Mitzelfelt.

CONTINUED/DISCUSSION ITEMS:

BUDGET REVIEW FOR FISCAL YEAR 2008-09: (a), UNAUDITED YEAR END FINANCIAL REPORT and (b) CONSIDERATION OF REFUND PROCEDURES FOR LAFCO APPORTIONMENT PROCESS FY 2009-10– APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider the Budget Review for Fiscal Year 2008-09, which includes (a) Unaudited Year End Financial Report and (b) Consideration of Refund Procedures for LAFCO Apportionment Process FY 2009-10. Individual mailed notice of this hearing was provided to affected and interested agencies and County departments.

LAFCO Analyst Michael Tuerpe presents the staff report, a complete copy of which is on file in the LAFCO office and is made part of the record by its reference here. Mr. Tuerpe states that revenues for the year were slightly above projection which is attributable to cost recovery and not an increase in proposal activity.

(It is noted that Commissioner Curatalo arrives at 9:05 a.m.)

Mr. Tuerpe states that in regard to the Unaudited Year End Financial Report, the materials provided to the Commission detail the costs and review the proposal activity chart for FY 2008-09. He reviews two categories of accounts, the expenditures and reserves accounts. He states that in the Salaries & Benefits accounts the year end projections were about \$39 thousand higher than actual expenditures. The lower balance at the end of the fiscal year was due to two factors; one was leave cash outs that were anticipated in June occurred in July and August; and second that 27 pay periods were budgeted in 2008-09; however, only 26 pay periods were paid, creating a surplus in the Salaries and Benefits accounts.

He states that in the Services & Supplies accounts the projections were \$57 thousand higher that what was spent. Litigation costs for LAFCO 3076 slowed down resulting in expenditures being \$26,000 less than projected. Staff had anticipated additional costs for proposal and service review processing, however, these projects were deferred to the next fiscal year and those anticipated costs will in be incurred in the future. Also, the Independent Financial Analysis for LAFCO 3076, was paid for by deposits from the San Bernardino Valley Municipal Water District and the San Bernardino Valley Water Conservation District. The majority of this expense was paid in FY 08-09 with a balance of \$2,356 for payment processed in FY 09-10. He states that LAFCO did not exceed appropriation authority for that category of accounts. He states that for the Commission's reserves, \$126,739 was carried into FY 09-10.

Mr. Tuerpe details the information regarding revenues. He says that LAFCO ended the fiscal year with revenues being \$3,487 in excess of the budget target. He says that interest exceeded budget projections by \$9,613 and that LAFCO fees exceeded budget projections by \$29,844. Also, costs eligible for cost recovery totaled \$33,563 while only \$491 remains outstanding.

Mr. Tuerpe reviews the Proposal Activity. He states that 7 proposals were projected, however only 6 were received, 8 service contracts were received and 23 service reviews were completed during the year: Mojave Water Agency, CSA 64, Big River CSD, Apple Valley Community, Hesperia Community, and the Barstow Community.

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(It is noted the Commissioner Williams arrives at 9:09 a.m.)

Mr. Tuerpe provides an outline of the items in the report related to consideration of a Refund procedure noting that the LAFCO apportionment is based on LAFCO's net operating costs which takes into account the year end fund balance. If the year end balance is higher, the apportionment is lower. Mr. Tuerpe states that the Commission balance at the end of the fiscal year was \$244,585, more than \$100,000 above projections. Taking into account costs deferred to next fiscal year as identified in the staff report, there remains \$32,496. He states that staff recommends that these revenues be refunded to the County, the cities and the independent special districts using the method proposed in the staff report. He reviews the methodology for refunding the monies stating that the \$32,496 would be divided as follows: \$10,832 to the County, \$10,832 to the cities based on each city's proportioned payment, and \$10,832 to be refunded to the special districts based on the inverse of their apportionment where smaller districts will be refunded the majority of the apportionment share.

Commissioner Cox states that she and Commissioners Curatalo and Smith have received information from LAFCO staff, per their request, to evaluate the method that special districts use to calculate the apportionment for LAFCO. She states that some of the smaller districts pay \$10,000 or more and it is a disproportionate share. The special districts representatives would appreciate the Commission's support as they evaluate this process. Mr. Tuerpe states that for cities and districts that have not paid their apportionment, the refund will be deducted from the apportionment amount due to LAFCO. He concludes his presentation by saying that for FY 08-09, LAFCO did not exceed its appropriation authority in any of the appropriation categories and revenues were 0.25% above projections.

Chairman Nuaimi asks if the Commission has any questions for staff. Chairman Nuaimi asks if the Commission should hold off the refunding until a determination has been made as to the equity of the apportionment. Mr. Tuerpe responds that the special districts adopted the formula that is currently used to calculate the apportionment, and it is only the special districts that can revise the formula.

Chairman Nuaimi asks if LAFCO should be refunding monies since it will take money to process and track when the equity of the cost allocation between the cities, county and special districts is in question. He states that he appreciates LAFCO staff's intent to return the over-collection to the entities but asks what the pressing issue is. Executive Officer Kathleen Rollings-McDonald states that Government Code 56381 requires that the apportionment take place based upon the net operating costs established during the budget process. However, based upon the year-end actuals the net operating cost should have been \$32,496 less. Ms. McDonald notes that the apportionment process also is specified by law, the distribution for the cities, using the state controllers report is directed by the Government Code. The cities have the ability, as special districts did, to come up with a different formula should they choose to do so. But the formula is not subject to the Commission's determination.

Executive Officer Kathleen Rollings-McDonald informs the Commission that there is time sensitivity to any proposed change that needs to be voted on regarding the apportionment process, in order to have it implemented for next year. Special Districts must have time to review any proposed changes and allow time to achieve the population vote of the special district members to change the apportionment formula. Commissioner Cox asks what percentage of votes are needed in order to pass the change, to which Ms. McDonald states that it requires a majority population vote for the option to be approved. Commissioner Cox asks if the vote would be conducted through a mail ballot process, to which Ms. McDonald responds that special district elections are done by mail by vote of the members. She states that LAFCO staff would be happy to work with the Special District commission members to complete the mailing process and also informs the Commission that the deadlines are coming up, since the proposed budget and apportionment is mailed in April. Commissioner Cox states that between the three special districts Commission Members they will split the 51 special districts into thirds and conduct personal presentations for the appropriation process discussion if needed.

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Commissioner McCallon moves approval of the item, second by Commissioner Derry. Chairman Nuaimi calls for opposition to the motion, hearing none the vote is as follows: Ayes: Cox, Curatalo, Derry, McCallon, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Mitzelfelt.

CONSIDERATION OF REQUEST TO COUNTY AUDITOR/CONTROLLER-RECORDER TO COLLECT OUTSTANDING CITY AND/OR DISTRICT APPORTIONMENT AMOUNTS FROM FIRST PROCEEDS OF PROPERTY TAX REVENUES FOR FISCAL YEAR 2009-10 – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider the Request to County Auditor/Controller-Recorder to collect Outstanding City and/or District Apportionment Amounts from First Proceeds of Property Tax Revenues for Fiscal Year 2009-10. Individual mailed notice of this hearing was provided to affected and interested agencies and County departments.

LAFCO Analyst Michael Tuerpe presents the staff report, a complete copy of which is on file in the LAFCO office and is made part of the record by its reference here. Mr. Tuerpe states that Government Code Section 56381(b) requires the County Auditor/Controller-Recorder to apportion the Commission's net operating costs to the county, cities and independent special districts. He says that Government Code Section 56381(c) states that if an agency has not remitted payment by the September 1 due date, the Commission may collect those fees from the property tax or from the special assessments or special taxes due to that agency as noted in the staff report. In addition, the Government Code allows the recovery of expenses incurred in collecting the outstanding payments due. Mr. Tuerpe reviews the list of agencies that have not submitted payment to the auditor for the LAFCO apportionment. He states that the City of Chino and the Apple Valley Fire Protection District have paid and need to be removed from the list of delinquent agencies. Staff recommends that the Commission deduct the proposed refund from the apportionment to be collected. The total amount to be collect will be \$7,116.25. Mr. Tuerpe asks for approval of staff's recommendations as listed in the staff report.

Commissioner McCallon states that for the record, the staff report references Item 7B and that should be changed to 6B throughout the staff report.

Commissioner Cox moves approval of the item, second by Commissioner Pearson. Chairman Nuaimi calls for opposition to the motion, hearing none the vote is as follows: Ayes: Cox, Curatalo, Derry, McCallon, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Mitzelfelt.

CONSIDERATION OF LAFCO 3050 – REORGANIZATION TO INCLUDE CITY OF SAN BERNARDINO ANNEXATION NO. 360 AND DETACHMENTS FROM THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT AND ITS VALLEY SERVICE ZONE, AND COUNTY SERVICE AREA 70 (ARROWHEAD SPRINGS SPECIFIC PLAN AREA) (CONTINUED FROM MARCH 18, 2009 HEARING) – APPROVE STAFF RECOMMENDATION TO CONTINUE TO THE NOVEMBER 18, 2009 HEARING

CONSIDERATION OF LAFCO 3067A-3067F – REORGANIZATION TO INCLUDE CITY OF SAN BERNARDINO ANNEXATION NO. 361 (ISLANDS 1-6) AND DETACHMENTS FROM THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT, ITS VALLEY SERVICE ZONE AND ITS SERVICE ZONE PM-1 (PARAMEDICS) COUNTY SERVICE AREA 70 AND COUNTY SERVICE AREA SL-1 (CONTINUED FROM MARCH 18, 2009 HEARING) - APPROVE STAFF RECOMMENDATION TO CONTINUE TO THE NOVEMBER 18, 2009 HEARING

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Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by reference herein. Individual mailed notice of this hearing was provided to affected and interested agencies and County departments.

Ms. McDonald states she has met with the new City Manager for the City of San Bernardino and other City representatives to review the requirements to complete the consideration for the Arrowhead Springs annexation proposal and the six islands. At that meeting, San Bernardino City staff requested that the consideration of both Arrowhead Springs and the Island proposals be maintained for discussion at the same hearing. Ms. McDonald notes that a milestone has been reached in that the City of San Bernardino Municipal Water Department, the City of San Bernardino and Campus Crusade (property owner) have signed an agreement related to the delivery of water and sewer service to LAFCO 3050. The City Manager requested that the LAFCO proposals be continued to the October hearing to allow the city's staff time to provide the necessary information to LAFCO staff. She states that LAFCO staff, however, will also need time to review the financial information as updated for the proposals. Ms. McDonald notes that LAFCO is required to provide individual mailed notices to all landowners and registered voters in the areas within the proposed reorganization area encompassed by LAFCO 3050 and 3067A-F as well as to landowners and voters surrounding the areas. She says that there will be thousands of mailed notices. She states that it is staff's recommendation that the Commission continue the hearing for LAFCO 3050 and the Islands, LAFCO 3067A through LAFCO 3067F to the November 18, 2009 Hearing, direct staff to provide the required notice of hearing, and to continue to work with all the parties involved with these proposals.

Chairman Nuaimi asks if the Commission has any questions.

Commissioner Curatalo moves approval of the item, second by Commissioner Cox. Chairman Nuaimi calls for opposition to the motion, hearing none the vote is as follows: Ayes: Cox, Curatalo, Derry, McCallon, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Mitzelfelt.

SERVICE REVIEW FOR THE COMMUNITIES OF ADELANTO AND EL MIRAGE WHICH INCLUDES A REVIEW OF COUNTY SERVICE AREA 70 IMPROVEMENT ZONE P-6 AND THE CHAMISAL MUTUAL WATER COMPANY AND THE FOLLOWING SPHERE OF INFLUENCE UPDATE/AMENDMENT REVIEW:

CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3080; AND (2) LAFCO 3080 – SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR CITY OF ADELANTO – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider LAFCO 3080 – Service Review and Sphere of Influence Update for City of Adelanto. Notice of the hearing was advertised as required by law through publication of a 1/8 page ad in the *Daily Press*, 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 here. She states that this Service Review is the last to be heard in the Victor Valley Region. She states that when LAFCO began the Municipal Service Review process, the City of Adelanto submitted a request to expand its sphere of influence to the north, that request was withdrawn so that the City could hire a consultant to move forward with the application. At the time, the Commission determined to defer the processing of the Service Reviews while completing the County Fire Reorganization, Formations of the Helendale and Phelan Pinon Hills CSD, and the Island Annexations for the Cities of Fontana, Loma Linda, and Montclair.

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When LAFCO staff returned to the processing of the Service Reviews in the beginning of 2008, LAFCO contacted the City of Adelanto and asked for resubmission of materials in order to once again commence the Service Review. The City of Adelanto submitted materials to reaffirm their existing sphere of influence designation stating at the time that they were not interested in moving forward with the expansion of their sphere of influence. Ms. McDonald provides a display of the regional area and a flyover of the City of Adelanto outlining its geography. Ms. McDonald says that to the west of the City is the community of El Mirage, a part of the community review.

Ms. McDonald reviews for the Commission the issues that will require resolution as part of the Service Review and Sphere of Influence update. She says that staff is recommending a sphere reduction to exclude an area that overlays the Phelan/Pinon Hills CSD. At the time of the formation of the Phelan/Pinon Hills CSD, LAFCO staff reviewed with the City of Adelanto representatives this overlay issue. As was presented to the Commission at the time of the CSD formation, the City expressed no opposition to the exclusion of the area from the City's Sphere of Influence. The City has not changed their position since that time.

She also states that one other issue that needs to be addressed is the tax exempt status for municipally owned parcels not within the City limits. She shows the Commission a flyover of the parcel that has been assigned tax exempt status since the year it was purchased. The parcel is in the vicinity of the non-contiguous City territory along the Mojave River. Tax exempt status for non-contiguous municipally owned parcels requires that the parcel be a part of the city. In LAFCO staff's discussion with the County Assessors Office it was understood that unless the property is within the city, they should be paying property taxes. She says that it is LAFCO staff recommendation that the City resolve this issue through the non-contiguous annexation process to clarify the tax status for all the properties owned by the City.

Ms. McDonald states that LAFCO staff will also recommend a sphere modification to exclude non-contiguous City –owned land. She states that as shown on the maps included for this review, there are three separate, non-contiguous areas that are part of the City, located generally along the Mojave River within the City of Victorville sphere. The Commission approved a City initiated application for annexation of City property in 1973 that was made up of 12 acres to be used for a domestic well. In 1989 the Commission approved a sphere expansion and annexation of approximately 31 acres of non-contiguous property. She states that LAFCO staff at the time was in error by requiring inclusion in the city sphere. There is no requirement of law that these non-contiguous parcels be a part of the sphere.

Ms. McDonald states that one of the factors that LAFCO is required to examine in their Service Reviews is growth and population projections. The determinations in the staff report outlines that in 2009 the population of the City of Adelanto was 28,265 persons; the projections for 2010 according to the Southern California Association of Government (SCAG) are 40,742 persons. She says that this projected growth is highly unlikely given the current economic atmosphere, and notes that the City of Adelanto has one of the highest foreclosure rates in the County and the City's population has not grown as anticipated. She says that the city has adopted a General Plan and reviews on the display the area outlined in the City's General Plan. She notes that the projections in the General Plan include a 37 square mile area that is not a part of the City's sphere of influence.

Chairman Nuami asks if the City of Adelanto, as part of their General Plan development, went beyond their sphere of influence and pre-zoned areas that are not in their sphere, to which Ms. McDonald clarifies that they added the areas to the General Plan, but did not pre-zone them.

Ms. McDonald states that LAFCO staff reviewed with San Bernardino County Land Use Services Department the applications for developments within the Adelanto area. She points out that the majority of the applications are in the El Mirage Community; nevertheless, there are not many projects at this time. She states that the area to the North along the 395 Highway is not currently receiving municipal level services, but the City is in the planning process to provide those services.

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Ms. McDonald states that the present and planned capacity of public facilities and adequacy of public services is also an area that LAFCO staff examines during the Service Review process. She reviews the map of the Fire and Police Stations and states that the primary response to the El Mirage Community has been shifted to the facilities within the City of Adelanto. The city currently contracts with San Bernardino County Sheriffs Department for their law enforcement services and the San Bernardino County Fire Protection District for fire and paramedic services.

Ms. McDonald discussed the issue of water services. She states that water is essential to the quality of life for those in the desert areas. The City of Adelanto provides water and wastewater services to its constituents and does so through its Public Utilities Authority. She states that the master plan for water services was recently updated by the City and she points out on the overhead map the location of the water wells. She also discusses the water allocations for the north desert. She states that the City of Adelanto exceeds its free production allowance by approximately 1,000 AF and that the city is obligated to pay for the excess. She says that LAFCO staff has noted that the free production allowance for the City of Adelanto is unique in that the City has its own free production allowance and also has what is called the "City of Adelanto George Air Force Base" Allocation. This has to do with a dispute regarding the closure of the George AFB, and LAFCO staff learned that in August of 1996 the Armed Services Board of Contract Appeals decided the issue, granting ownership of the water service to the City of Adelanto. LAFCO staff questions why the City and Mojave Water Agency still identifies this as "in dispute".

Ms. McDonald reviews the chart for the city's historic growth, water production, and consumption up through 2005, as presented in the staff report. She points out the allocation and distribution of water sold to SCLA, LA DWP, three correctional facilities and the water consumed by the city. She states that the water production is over 6,000 AF per year and their free production allowance is 4,624 AF per year. She says that any future development will require additional water and that the costs for paying for water usage overage will also continue to increase.

(It is noted that Commissioner Derry leaves the hearing at 9:36 a.m.)

Ms. McDonald reviews that map for the city's sewer service area obtained from the City of Adelanto Sewer Master Plan adopted in 2008. She says that the City of Adelanto removed itself from the Victor Valley Wastewater Reclamation Authority (VWVRA) and thus became responsible for its own wastewater collection and treatment; so the city installed their own wastewater plant. She reviews the charts titled Projected EDU and Wastewater Flow that are related to the city's need for expansion of their sewer system. The expansions are required by the Regional Water Quality Control Board (Water Board) due to service issues. The Water Board has required the city to implement over \$15 million of improvements and expansions in an effort to resolve issues at the wastewater plant.

She states that the city recently conducted a water and sewer rate study. In order to protect against insolvency within the operations of the Adelanto Public Utilities Authority, the city adopted a rate adjustment. She states that the rate increases are substantial and the total rate increase for water from the 2008-09 period through 2013 will be 229%. She reviews the operating expense and debt service anticipated; showing that in 2013 debt service will be 61% of the total expenditures of the water operation.

Ms. McDonald states that the city has also conducted a sewer rate study for the Adelanto Public Utilities Authority and she reviews the chart that identifies the increases in 2008/09. She states that the increase will be 404% by the year 2013. Rates have not been increase since 1999/00 and as a result the expenditures will outpace the revenues as usage increases without the rate increase.

Ms. McDonald states that the staff report also outlines other services provided to the Community by the City of Adelanto such as parks, roads, and drainage. She says that all of these services require additional financial support in order to maintain and implement improvements. Most of the improvements required

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are directly related to development activity. She says that the city has adequate funds to operate and maintain the parks that they own, however, the high cost of maintaining the Stater Bros. Stadium is negatively affecting its viability.

Ms. McDonald states that the City of Adelanto owns and operates the Adelanto Correctional Facility, which is under contract to the State of California. In 2007 the California Department of Finance performed a fiscal compliance audit of the operation and identified a number of deficiencies in the operation of the correctional facility. She says that the city and the correctional facility responded to the audit deficiencies and the State responded indicating that the deficiencies are still not resolved. She states that recent newspaper reports indicate that the City is currently in discussions to sell the Correctional Facility to a private provider in an effort to relieve itself from that obligation.

Ms. McDonald reviews the governmental structure of the City of Adelanto. She states that the mayor and city council are elected officials charged with the representation of the entire City. They are obligated to operate the City and also act as the Board of Directors for the three organizations under the city which are the Adelanto Redevelopment Agency, the Adelanto Public Financing Authority, and the Adelanto Public Utility Authority. The Adelanto Water Authority was purchased in 2000 by the Adelanto Public Utility Authority and is currently reported as a separate fund in the Adelanto Public Utilities Authority audit.

Ms. McDonald states that LAFCO staff has concerns regarding the City audits. The audits for the City have not been conducted within 18 months after the end of a fiscal year as required by State Law. The most current audit for the City as a whole, that the City has provided to LAFCO staff is for FY2004/05 accepted in February 2008. She says that the City has responded to LAFCO staff's concerns regarding the delinquent audits through correspondence received from the City's interim Finance Director noting that the Audit for FY05/06 will be available in draft form by the end of August 2009. She states that LAFCO staff has not been made aware that draft has been completed. She further states that the letter indicates a schedule for bringing the audit current with the FY 06/07 Audit available in September of 2009, FY 07/08 Audit available in October of 2009 and the FY 08/09 Audit review beginning in October 2009, bringing them current. Commissioner Cox asks what the City's reasons for delay in conducting the audits were, to which Ms. McDonald responds that the City indicated that it was a decision made by the City, no other rationale or reason was provided to LAFCO staff. She states that in the materials given to the Commissioners, two more current audits for two component agencies were provided; one is the FY06/07 audit for the Adelanto Public Utilities Authority and the FY 07/08 audit for the Adelanto Redevelopment Agency; both completed related to the processing of the revenue bond acquisitions.

Ms. McDonald outlines the redevelopment chart and reviews the redevelopment project area map on the overhead. Ms. McDonald states that LAFCO staff has provided an outline of the finances for the Adelanto Correctional Facility. She points out to the Commission that an area of concern is the FY06/07 actuals for the Correctional Facility; she states that the FY09/10 budget shows a change in the FY06/07 actuals by an increase of \$1.7 million. She says that in the materials provided by the City of Adelanto, there is no explanation as to how the revenues were increased or how the prior year fund balance was changed. She points out that the Sewer Fund balance has been at a negative and points out the increase in fund balance in FY 08/09 to \$10.3 million in the negative. Chairman Nuaimi states that with the doubling of the water rates, the deficit for FY09/10 does not make sense. He says that the City does not show a deficit in the water rates, so questions why an increase would be necessary. Ms. McDonald states that the actual operational costs have not been met. She states that the City has been using the connection fees to supplement the operation revenues when they are required to hold the connection fees for replacement of facility infrastructure. The City's reserves for connection fees are almost depleted. Chairman Nuaimi states that there appears to be a co-mingling of capital improvement and operating expenditures. Ms. McDonald states that appears to be the case. Commissioner McCallon states that in looking at the FY06/07 differences, it appears that \$12 million is shown in the reserve accounts. He asks if there is any indication as to where those monies came from, to which Ms. McDonald states that to date, the City has not provided LAFCO staff with that information, and that the City has indicated that the draft audit will not

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be available for City review until this month, so staff can not determine where those monies have come from. She reiterates that the lack of audit information is a concern for LAFCO staff.

(It is noted that Commissioner Williams leaves at 9:56 a.m.)

Ms. McDonald states that the City of Adelanto was hard hit during 1992 when the State enacted legislation that shifted partial financial responsibility for education funding to local government; this is known as the Educational Relief Augmentation Funds (ERAF). The City of Adelanto received a reduction in their property tax allocation by approximately 80% due to a majority of their property being in redevelopment areas. Thus, the City went from receiving a 14% tax levy to less than 2%. She says that in response to the loss of tax revenues, and to settle a lawsuit filed by the County of San Bernardino, the City of Adelanto Redevelopment Agency entered into a settlement agreement with the County that provided the RDA annually with pass-through increment funds with an ever increasing debt obligation. The settlement required the RDA to repay the County \$5 million and required the County to loan to Adelanto RDA, at 7% interest, the incremental amount to pay its debt service requirements. Ms. McDonald reviews on the overhead the chart that outlines the Deferral Calculation. She points out that although there are some disagreements with the City audit and the County statement as to the amount owed for the 02/03 and 05/06 years, both the City and the County agree to the \$14.7 million plus owed to the County. She states that no payments have been made on this debt due to the fact that the settlement agreement requires that the loan is subordinate to the Series A, B, and C of the Adelanto Public Financing Authority refunding bonds, but senior to the Series D bonds. Chairman Nuaimi states that what the Commission is faced with is a circumstance where the County owns \$14.7 million worth of debt that the Adelanto RDA has an obligation to pay at a 7% rate of return, which the City has not paid on.

Ms. McDonald continues stating that from the FY04/05 audit for the City as a whole, the long-term liabilities balance of the Government Funds are primarily related to the activities of the Redevelopment Agency. She lists the liabilities as: Tax allocation of refunding bonds, revenue bonds, Intermountain Power Agency settlement, San Bernardino County tax increment loans and compensated Absences. In addition, she states that the City has notes receivable from the Utilities Authority from the sale of the water and wastewater systems. The original purchase had an interest rate of 7.5% but the interest rate was eliminated in 1998 by the governing board of the Utilities Authority. The note has been eliminated from the audits for reporting purposes, but the financial obligation remains and the Utilities Authority is responsible for the repayment of these monies to the City General Fund. The note payable is \$29 million for the water system, and the water authority is required to pay \$500,000 annually, plus surplus water revenues to the City against that note. She says that in addition, the wastewater operation was purchased, that note is \$6.4 million, so the City owns \$34 million of the Utility Authority.

(It is noted that Commissioner Mitzelfelt arrives at 10:00 a.m.)

Chairman Nuaimi asks when the note was established. He asks if it was prior to Prop. 218, to which Ms. McDonald replies that it was in 1996, prior to Prop. 218.

She says that as the budget indicated for sewer operations, LAFCO staff is not certain of the payment made, since the sewer operations functions at a net deficit. She says that overall in the FY04/05 audit, the General Fund operated at a \$1.1 million deficit, the Sanitation Special Revenue operated at a \$29 thousand deficit, Maverick Stadium operated at a \$1.8 million deficit, and RDA operated at \$125 thousand deficit.

Ms. McDonald reviews on the overhead the Long-Term Liabilities page from the City of Adelanto's Audit FY04/05. She notes that on the \$11.3 million, payment is not due to occur until 2009-10 so there are no additions or repayments. For Series A, B, and C payments are made, the Series D Bond is subordinate to the County loan; however, the records are showing payments made on that loan. She says that there are some questions on the repayments of the Series D Bond, but LAFCO staff is not an expert on the

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settlement agreement and what can and can not be paid. She says that at the end of June 30, 2005 the RDA had a long term obligation of about \$62 million.

Ms. McDonald says that the long-term obligations in the debt for the enterprise funds for FY 04/05 shows the Public Utility Authority revenue bonds A, B, and C and it includes the correctional facility and compensated absences. The long-term debt at the end of FY 04/05 was \$50 million. She states that the 2000 Series Bonds have been refunded through a 2005 Series refunding and the debt for the Public Utilities Authority alone stands at \$71 million. She also states that under the investment risks of the Utilities Authority's water system FY 06/07 audit identifies that the Utility owns \$17 million in the Adelanto Public Financing Authority bonds.

(It is noted that Commissioner Williams returns at 10:06 a.m.)

Ms. McDonald states that in reviewing the materials that LAFCO Analyst Michael Tuerpe gathered for the Adelanto Service Review, he prepared the chart that is displayed on the overhead screen included in the staff report. The chart tracks the Enterprise Funds – Outstanding bonds as they transition up to the year 2009. She reviews the progression of the bonds for the Commission, pointing out that the debt increase of \$7 million in the transition from 2005 to 2009. She states that although not discussed in the staff report, a Series A & B Bonds for 2009 have been issued by the City.

Ms. McDonald reviews the RDA Debt chart on the overhead. She states that this chart provides a side-by-side comparison of the RDA Debt. She points out the total debt as now being \$68 million.

Chairman Nuaimi states that the Water Utility owns both the C and D bonds and that the C are not subordinate to the County's debt, so the City could have paid the C bonds off. He asks if there is an interest rate difference with the C and D bonds. Ms. McDonald states that she is not aware of a difference in the interest rate for the two bonds in question; however the Series D bonds are almost paid. She says that if LAFCO were to receive the audit information from the City that the \$904 thousand would be paid and the bond would be retired; the Public Utilities Authority owns those bonds so the monies are paid to them. Commissioner Cox asks if staff is aware of any additional agreement with the County and the City of Adelanto to allow the subordination of the County debt to the D series, to which Ms. McDonald states that there was no additional agreement. Chairman Nuaimi asks if there is a summary of the net tax increment coming to the Agency. Ms. McDonald states that that information is not summarized in the materials presented to the Commission but LAFCO staff can compile the information if needed. Chairman Nuaimi asks how much tax increment the Agency receives per year, to which Ms. McDonald responds that according to the RDA 2008 audit the Redevelopment Agency had an \$8.6 million increment of property tax. She further says that there is a reserve account of \$753 thousand to be used to pay the final year of debt.

Ms. McDonald states that LAFCO Analyst Michael Tuerpe compiled the Bond History information and reviews the chart on the overhead display. She says that for the Redevelopment Agency Bonds the last item is a 2006 bond for Assessment of District 1A in the amount of \$7 million. This assessment district is for water and sewer improvements. The City's independent financial statements do not include this as an obligation of the City or any of the City's agencies. The City refinanced these bonds in 2006, but the maturity date remains unaffected. She points out to the Commission that in the year 2015 the bond will have a balloon payment of almost \$1.7 million dollars, which is 40% higher than the anticipated assessments collected in 2010. She states that in looking at the financial information for the City of Adelanto, the Commission is reminded that the City has experienced one of the highest foreclosure rates in the County. She says that 17% of the 10 thousand homes in the City were in foreclosure. She says that as these foreclosed homes are sold, the tax rates will shift to the new sales price per Prop. 13. She says that this year the assessed evaluation of the City of Adelanto dropped 21.1%, the largest in the San Bernardino County. It is anticipated that the valuations will continue to drop for the next 3 years until the foreclosures have been leveled. If this trend does indeed continue, the ability to repay the assessments is

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impacted. Chairman Nuaimi states that Assessment 1A sounds like a Mello Roos District that has gone upside down, to which Ms. McDonald states that is an assessment district under the Streets and Highway Code. Chairman Nuaimi states that it is a supplemental tax on the property, so it is out of the base 1%, so it is not a tax increment issue; it is a special assessment that is property based, so if it goes upside down, the bond holder loses and it is not an obligation of the agency or the City.

Chairman Nuaimi asks when the Redevelopment Agency has issues if it reverts back to the City's General Fund, to which LAFCO Legal Counsel Clark Alsop states that it is dependent on how the city and agency is structured. Chairman Nuaimi asks if there is a reserve fund for the Assessment 1A District, to which Ms. McDonald states that LAFCO staff has no background information on the district nor information of the calculation of the assessments.

Ms. McDonald states that in the material provided LAFCO staff has identified potential projects that could benefit the city. In 2008 the City Council approved a Conditional Use Permit that would allow for the construction of a 750 bed prison. However, LAFCO staff questions whether four prison facilities within the City limits will actually provide more revenue than cost for the provision of municipal services. Other potentially beneficial projects include a Target Supercenter, the Hanson Precast which is developing a plant that will employ about 100 people when complete, and the Adelanto Gateway Logistics Center which will serve as a distribution center.

Ms. McDonald states that LAFCO staff has presented all the information that they have received on the financial ability of the City of Adelanto so that the Commission can review and determine the range of services, as is required of them. LAFCO staff's position is that without current financial data, the real financial picture of the City is unclear, but it appears to be in dire straits. She states that that staff report also provides structural options as is required of staff when executing a service review. She says that it is staffs opinion that there are no structural options open to the City or Commission to resolve the financial questions presented.

She says the LAFCO staff is recommending that the Commission eliminate the southwestern area that is within the Phelan Pinon Hills CSD and eliminate the one non-contiguous municipally owned property from the City sphere of influence. Ms. McDonald states that the City was required to provide information regarding the sphere of influence update as required by State law. She states that the staff's responses to the mandatory factors of consideration for a sphere of influence is included in the staff report.

Ms. McDonald reviews the County Service Area 70 Improvement Zone P-6 (El Mirage) map on the overhead and states that included with the service review for the community of Adelanto is the service review for the community of El Mirage which includes the Chamisal Mutual Water Company. She states that LAFCO has no direct jurisdiction over Improvement Zone P-6 and that only service review information was provided to the Commission. She reviews the financial information for P-6 and notes that the fund balance will soon be exhausted, and that by FY09/10 the balance will be completely depleted. She says the P-6 is funded by a \$9 per parcel special tax and also collects approximately \$1,300 annually from rents and concessions. She notes that P-6 was approved by the voters with the establishment of a base-year appropriations limit of \$100,000, however the Auditor Controller has not continued to provide for an appropriation limit. LAFCO staff will continue to work with the county to reinstate the appropriation limit required for P-6. Ms. McDonalds states that the current population is 1,600 and the growth is anticipated to reach 2,400 by 2030. She says that the areas land use designation includes Rural Living, Agricultural and Industrial, the land use is large lot.

Commissioner Mitzelfelt states that the El Mirage Dry Lake is considered of high interest to the renewable space vehicle programs, where civilian sponsored test vehicles are tested. He states that the report notes that there are plans for general atomics and to build some hangers in that area. He notes that the area could become a hub of research and development, which could potentially change the development in the area. Ms. McDonald states that there is that potential; however, currently none of the land use

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designations accommodate that type of development. Much of the area carries resource conservation as its designation. Commissioner Mitzelfelt states that the one of the State Agencies has in the past proposed incentives for enterprise in that area. He says that the area continues to develop for research and development for military technologies, aerospace and space technology and it is a potential for the future and could change the entire area. Ms. McDonald states that development of that nature and magnitude would change the entire dynamic of the El Mirage Community and would be a benefit to that area.

Commissioner Mitzelfelt asks why the fund balance for the P-6 parks is listed as \$0 for the FY09/10 budget. Ms. McDonald states that according to the budget that provided for expenses and revenues, the park will use the prior year fund balance to pay for current expenses, leaving a zero fund balance. They will continue to receive what minimal revenues they are allowed, but the park will have to scale back or consider changing the assessment structure that is hedged against inflation. She says that the Community needs to review and address the cost of their services.

Ms. McDonald reviews on the overhead the map for the area surrounding the Chamisal Mutual Water Company and states that the only retail water provider in the El Mirage Community is the Chamisal Mutual Water Company which is governed by the California Department of Corporations. She states that Chamisal has a free production allowance of 77 acre-feet, and its production has never exceeded 30 acre-feet; Chamisal could potentially lease the unused free production allowance to others who need the allowance. LAFCO staff was unable to contact the mutual water company and the Department of Corporations did not have much information regarding Chamisal; the information presented to the Commission was obtained from County Environmental Health Services.

Ms. McDonald states that the City employees and its contract staff are striving to the right the ship for the City of Adelanto and working to solidify their financial situation. However without current financial documents to clearly show the financial position of the City, LAFCO staff cannot fully assess the situation. She says that LAFCO staff does not see any LAFCO options to resolve the issues; there is no jurisdictional change that can resolve the financial issues, no change of organization, and no transfer of responsibility, that can be provided to address the circumstances.

Ms. McDonald states that LAFCO staff recommends that the Commission take the following actions: For environmental review, certify that LAFCO 3080 is statutorily exempt; that the Commission receive and file the service review report for the City of Adelanto and the Community of El Mirage, and that staff be directed to continue to work with the City to resolve the tax exempt status for the properties and the annexation of the City owned properties; that the Commission take the actions identified, amending the Sphere of Influence as outlined in the staff report, and continue the adoption of the Resolution to the October Hearing.

Commissioner Cox states that she did not see any letters of support or opposition from the City on the service review. She asks if the City is in agreement with staff's recommendations.

Ms. McDonald states that the City is in agreement with the sphere and that a representative from the City of Adelanto is in attendance. She says that LAFCO staff has not received an official letter from the City regarding the service review.

Chairman Nuaimi opens the public hearing and asks if there is anyone who wishes to speak. There is no one. Chairman Nuaimi closes the public hearing.

Chairman Nuaimi asks for questions from the Commission. There are none.

Chairman Nuaimi states that he understands that LAFCO does not have much authority on this matter, but it does appear troubling in reviewing the City's General Fund that that has grown to \$14 million in

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revenue and \$9 million of those dollars are "other" or transfers and the taxes and assessments are flat. This is an entity that is using transfers and other funding sources to continue to provide service. He says that it seems that there are enough examples of this type of accounting where redevelopment dollars are creatively utilized to pay for debt obligations. He says that he finds it troubling to see that they receive over \$9 million a year in tax increment, based on the County settlement agreement one third of the tax increment goes to the County, but the County is loaning the monies back to the City at a 7% interest rate, plus the issue of ERAF payments.

Commissioner Mitzelfelt states that the County settlement was due to a lawsuit over the George Air force Base situation, and that he is currently in discussions with the City, County Counsel and other entities to try to modify that settlement. Chairman Nuaimi states that it appears that the settlement continues to be a growing obligation to the City and it does not seem that the City is structured and operating like a city ideally should be. He says that the City has some substantial challenges on the long term debt obligations and he is pleased that the County is willing to address the issues.

Ms. McDonald states that from the LAFCO staff stand point, the financial information presented is how the City stands for the years of the audit report, but it is not known what the present situation is; however, the financial drain will continue unless the issues are addressed.

Commissioner Mitzelfelt moves approval of LAFCO 3080 as recommended by staff, second by Commissioner Cox. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Cox, Curatalo, McCallon, Mitzelfelt, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane.

PENDING LEGISLATION REPORT

Ms. McDonald states that she has provided the Commission a copy of the Daily Legislative Report from the California Association of LAFCOs (CALAFCO). She point out that one item that is not included on the report is SB88 (DeSaulnier) which talks about bankruptcy for Special Districts and says that in order to declare bankruptcy they must first gain the approval of the California Debt and Advisory Commission and that that Commission has the ability to put restrictions and conditions on the bankruptcy before it is filed. She says that CSDA is concerned with that Senate Bill. She also notes that AB155 which is related to municipalities including Special Districts that requires that a local public entity may only file bankruptcy with the approval of the California Debt and investment Advisory Commission. She says that there is a Blakeslee bill (AB1109) that is looking to develop a receivership vehicle for special districts and other entities that are in financial trouble which will enable the entity to be placed under temporary administration while finding resolution.

EXECUTIVE OFFICER'S ORAL REPORT

Ms. McDonald states that the Commission has at their place a letter from the CALAFCO Executive Board regarding the structural organizational changes of CALAFCO. The Southern California LAFCOs have representatives for election to the CALAFCO Board, Commissioner Biane from our Commission, a City Member from Orange County, and a Special Districts Member from Ventura County. The Southern California LAFCOs are hoping that a better representation of the needs in Southern California will be represented as the discussions for restructuring to regional divisions goes forward.

Ms. McDonald states that the Commission has been given a copy of the FPPC News regarding the publishing of the FPPC List of Violators and their enforcement activities.

Ms. McDonald states that a copy of the CALAFCO Annual Business Notice and Agenda has been provided to the Commissioners for the meeting to be held on October 29, 2009.

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Ms. McDonald states that she has been asked to participate in the Municipal Utility Managers Meeting in late October. The workshop will include a session topic in recruitment and finding the right candidate. She says that the contract for recruitment for the Executive Officer will be on next month's agenda to contract with Alcock and McFadden for those services.

Ms. McDonald concludes her report by informing the Commission that the CALAFCO Annual Conference will be held in October and that Commissioners Bagley, Biane, Cox, Pearson, and Smith will be attending along with the Executive Officer.

COMMISSIONER COMMENTS

Chairman Nuaimi calls for comments from the Commission. There are none.

COMMENTS FROM THE PUBLIC

Chairman Nuaimi calls for comments from the public. There are none.

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS
ADJOURNED AT 10:51 A.M.**

ATTEST:

REBECCA LOWERY, Deputy Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

MARK NUAIMI, Chairman