

Bighorn-Desert View Water Agency

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A Public Agency

December 16, 2011

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

RE: Comments to Draft Staff Report – Service Reviews and Sphere of Influence
Updates for the Homestead Community dated November 17, 2011

Ms. Rollings-McDonald:

This letter provides Bighorn-Desert View Water Agency's written comments on the draft staff report dated November 17, 2011 concerning the Service Reviews and Sphere of Influence Updates for the Homestead Community.

1. General Comment: It is our understanding that Government Code Section 56425(g) requires a sphere of influence review every 5 years, starting from January 1, 2008, and Section 56430 requires a concurrent service review. While we understand that LAFCO is obligated by these Government Code sections to consider "any other matter related to effective or efficient service delivery" we are concerned about the true value of certain LAFCO staff opinions on the SOI process. Opinions concerning internal controls over finance reporting (p. 59), Agency Board and General Manager turnover (p. 62) and Brown Act issues (p. 63-64) do not seem to have any relevance to the sphere recommendation on page 74. In addition, a recommendation such as No. 5 in the conclusions on page 79 is out of order and not within the purview of LAFCO. We respectfully request that LAFCO reconsider making such opinions in the final report. At a minimum, we believe that LAFCO is missing important facts about the whole record concerning such issues in order to formulate such opinions.
2. Pg. 12: The Agency notes that the Community History section overlooks the implementation of the Q, S and T initiatives, passed around 1999, which dramatically altered the financial condition and operations of the Agency. Given the other historical points provided this seems somewhat relevant to the historical record.

3. Pg. 17, Station 43 (Johnson Station): The Agency questions the accuracy of the statement that Station 43 is “home to a newly established Community Volunteers” resource. We believe this fact to be very antiquated as there once was an active volunteer fire department in Johnson Valley (JV). Upon receipt of this draft, we made an inquiry with County Fire staff and were informed that there is no functioning fire engine at that facility either. They confirmed that the facility does house one “volunteer first responder vehicle” which is under the supervision of a single “first responder” who resides in the area. There are zero (0) paid call firefighters and while County Fire is actively engaged in recruiting paid call firefighters, there have been no applicants. This statement should be corrected to reflect the current relevant facts.

4. Pg. 36, Bulk Water:
 - a. General Comment: The Agency does provide bacteriological monitoring to any bulk hauler that would desire to obtain such service. Our staff, state certified operators, currently conduct testing on behalf of one active licensed commercial hauler to assist them with meeting their permit requirements for serving bulk water.
 - b. General Comment: The Agency is aware that the County has closed the Johnson Valley Improvement Association (JVIA) kitchen for non-compliance with State and County Health and Safety Codes, including but not limited to a obligation to meet the requirements of a Transient/Non-Community Water System (CA Code 113869) because according to a letter from Environmental Health Services dated February 2010 “hailed water is generally not considered a viable potable source for a food facility”. The Agency and a (recently resigned) member of the JVIA Board of Directors attempted to assist the JVIA in finding an acceptable resolution to this issue, such as reverse osmosis treatment of the bulk water entering the facility, but the JVIA Board of Directors declined to seek the assistance from the Agency. For the record and to clarify for LAFCO staff, our position is that it is not the Agency’s “lack of plans” nor lack of commitment to its mission that have created the JVIA’s water supply problem and the lack of water pressure in JV. History shows that JVIA acting on behalf of the community has clearly communicated that they are not interested in such things, either for either themselves or their neighbors.
 - c. Para. 3: Is the quote in paragraph 3 taken from the County Code correct? It states, “no reasonable means of obtaining an acceptable quality and quantity of groundwater, *and that water treatment methods have been approved by DEHS*”. This final part supports our contention that BDVWA could have worked with DEHS and JVIA to implement a more cost effective and efficient solution (ie. water treatment) which would enable the JVIA to continue with bulk water until such time as a pressurized system is built. Instead of focusing on the needs of the whole community (as the Agency does) JVIA turned their attention elsewhere. They were successful in lobbying the Third Supervisorial District into granting \$82,000 (with the possibility for additional funding) for the construction of an on-site water well at precisely the same time that the Agency was

planning and awarding a contract for the construction of a new test well nearby. The myopic view of a few individuals in charge of JVIA has perpetuated the delay of the next incremental step for JV: a community-wide pressurized system. The Agency feels that JVIA's real plan is to create a competing water company further dividing the community between the well owners controlling the JVIA Board of Directors and the vacant land owners along with those dependent on hauled water for their survival. LAFCO is in receipt of our letter dated November 3, 2011 which addresses this concern.

- d. Para 4: The reason why there are no written plans for a water system in JV is elementary. Each time the community was approached on the subject it was met with opposition. Led by the JVIA BOD as well as a group of private well owners the Agency continued to receive a message the community didn't want our help primarily because they objected to development in the area.

5. Pg. 36, Water Agency Rate Comparison Table:

- a. Hi Desert Water District has a stand-by charge which is not properly footnoted in the Table. The Table should also note that the HDWD surcharges are currently \$11.50 per month to denote an accurate cost comparison between entities.
- b. The BDVWA "Charge" is for a $\frac{3}{4}$ " or a 1" sized meter.

6. Pg. 37, para 2: As of the date of this letter the Agency has completed the following tasks to achieve access to State Water Project via a Conjunctive Use Project known as the "Ames/Reche Spreading Grounds and Recovery Program:

- a. Certification of a Mitigated Negative Declaration for the project.
- b. Completion of a recharge Feasibility Study, including two permanent monitoring wells.
- c. Ninety percent completion on the design of the facility.
- d. Acquisition of all but one private easement for conveyance pipeline from the Morongo Basin Pipeline turnout.
- e. Pledge by Mojave Water Agency for up to \$1M funding to complete the project.
- f. Acceptance and execution by Hi Desert Water District of the *Ames/Reche Groundwater Storage and Recovery Program and Management Agreement* on December 14, 2011.
- g. Ninety percent completion of a Groundwater Management Plan in support of the *Ames/Reche Groundwater Storage and Recovery Program and Management Agreement*.
- h. Submission of a completed application for right-of-way from the Bureau of Land Management (project is located on government land).
- i. Submission of an Environmental Assessment to the Bureau of Land Management in support of NEPA requirements.
- j. Executed Streambed Alteration Permit from CA Fish and Game.

- k. Receipt of “non-jurisdictional” determination from the US Corp. of Engineers.
- l. Completion of the internal draft Biological Opinion from US Fish and Wildlife staff.

At this time the project is expected to be operational by July 2012.

- 7. Pg. 38, para 1: Note that bulk water is “self-hauled” as well as commercially delivered to residents.
- 8. Pg. 40, para 7: Note that the parties to the *Ames/Reche Groundwater Storage and Recovery Program and Management Agreement* will enter into a Stipulation to Enter an Amended and Restated Judgment which shall then supersede the existing Judgment dated June 3, 1991, entered in Riverside County Superior Court Case No. 211504.
- 9. Pg. 40, Facilities and Connections:
 - a. para 1: There are seven active pressure zones within the Agency (A, B, C, D, E1, E2 and E3)
 - b. para. 2: Records would indicate that Well 4 is in “inactive” status with the Department of Public Health. Well Nos. 2 and 3 share a single power supply limiting operation to one well at any given time. The same case exists with Well Nos. 6 and 7.
 - c. para. 4: PRV bypasses are also necessary to maintain pressure during repair of the primary reducing valve.
 - d. para. 5: The agency’s intertie with HDWD is currently disconnected and isolated from cross-connection. The pump was removed many years ago. With minimal effort a connection could be made whereby the Agency could receive water via gravity flow from HDWD. However, more work would be needed for the Agency to pump water into HDWD’s system. The two agencies are actively seeking a new, permanent emergency intertie solution. In addition, the Agency has the ability to “high line” a connection between fire hydrants to create an emergency intertie with CSA 70/Zone W-1.
- 10. Pg. 42, Johnson Valley:
 - a. Pg. 42, para. 1: One of the bulk hauling stations connected to the pressurized system is located on the east end of JV at Bodick Rd. and Kickapoo Trail. Residents of the JV community utilize this facility as well as others who utilize the Well No. 10 facility.
 - b. Pg. 42, para. 2: This site serves forty-one (41) residential self haul and four (4) commercial (licensed and unlicensed).
- 11. Pg. 43, Johnson Valley, para. 1:

- a. General Comment: As stated previously, the Agency's 2007 Water Master Plan is silent on JV and its water supply system because of the community's resistance to bringing water into JV (cost and "anti-development" have been cited as reasons). Attempts to bring a pressurized water system were first evaluated in 1967 by Albert A. Webb & Assoc. on behalf of the Proposed Johnson Valley County Water District Committee. The JV County Water District was never formed and eventually JV became part of the Bighorn Mountains Water Agency service area. Since that time the Agency has actively engaged in its mission to provide water to its service area. The following summarizes activities to date:
- i. In 1994, a Community Development Block Grant was awarded and the Agency executed a Maintenance and Operations Agreement (No. 94-340) for the construction of a community well in JV. In 1995, an Addendum was issued to the original Agreement and the County Special Districts Department began construction of the well in 1996 and Notice of Completion was filed in 1998. The Agency committed contractually to operation and maintenance of the well for 10 years from the Notice of Completion. The ten year commitment has expired but the Agency continues to maintain Well No. 10.
 - ii. In 2005, an EPA State and Tribal Assistance Grant was awarded which provided for 55% funding for Johnson Valley Hydrologic Investigation (JVHI). The basis for the award was to perform additional studies to better define the characteristics of the basin for the benefit of the region. This project includes the construction of an 8-inch diameter test well.
 - iii. In April 2007, the Agency received the final report entitled, *Basin Conceptual Model and Assessment of Water Supply and Demand for the Ames Valley, Johnson Valley and Means Valley Groundwater Basins*.
 - iv. In 2008, the Agency received federal authorization under the Water Resources Development Act (WRDA) for \$15M to assist in the construction of a water system in JV and to interconnect it with the existing B-zone of the Agency.
 - v. In December 2010, the Board of Directors authorized staff to proceed with completion of the JVHI using the EPA Grant funds remaining.
 - vi. In April 2011, Board of Directors authorized staff to actively seek a willing property seller for the location of the JVHI test well.
 - vii. In July 2011, Board authorizes purchase of 5-acres of real property for locating the JVHI test well.
 - viii. In November 2011, Board of Directors authorizes the execution of a Professional Services Agreement with Daniel B. Stephens & Associates for the completion of the JVHI test well. The contract total is \$171K with EPA providing matching grant funds.

b. Para. 1: As a part of its mission the Agency recognizes its responsibility to provide for the growth of JV and the Board of Directors has taken deliberate steps to ascertain the JV property owners' interest in obtaining a pressurized water supply sometime in the future. The various steps taken to date are outlined below:

- i. In February 2010, the Planning & Engineering Committee developed a mail-in survey regarding community desires for water supply. The survey was mailed to all property owners in Tax Rate Areas 088015, 094036 and 094043. Three primary questions were asked and they were directed at 1) any interest in pressurized water, an interest in a redundant bulk water supply or a "do nothing" option.
- ii. In April 2010, the Board of Directors authorized funding of the mail-in survey.
- iii. In August 2010, an Ad Hoc Committee met in public session to tabulate the survey results.
 1. With a 30% return rate approximately 60% of the respondents expressed a desire for pressurized water service. The primary written comment was a question of cost. There was vocal opposition to the Agency's survey from a few private well owners and there was written opposition published in the JVIA membership journal (newsletter).
- iv. Based on the survey results the following actions have taken place to determine the steps necessary to accomplish the construction of a pressurized water system and the cost to property owners.
 1. In December 2010, the Chief Engineer prepared a comprehensive "task list" for developing and completing a pressurized water system in JV. The presentation was made at a publically noticed Planning and Engineering Committee meeting.
 2. In October 2011, the Chief Engineer updated the Planning and Engineering Committee on the "task list". The presentation included a review of the original 1967 water distribution system envisioned by Webb & Assoc. as well as GIS maps outlining parcel identities, basic facilities needed and other features.

LAFCO recognizes that the community must fund its own water system. However, the Agency has spent and pledged in excess of several hundred thousand dollars over a number of years to try and develop plans, programs and projects but JVIA keeps declining any services it can't receive for free or which promote the development of the community.

- c. Para. 3: JV is served by two hauling stations. One is a stand-alone water system located in western JV and the other is a hauling station connected to the pressurized water system at the intersection of Bodick Rd. and Kickapoo Trail. In addition, for reasons stated in detail previously we disagree that there is “no current mechanism for providing an organized retail system for water delivery”. The Agency has been working to bring services to JV for many years now but JVIA has consistently brought vocal opposition to any such plans.
 - d. We oppose any claim by LAFCO that the Agency has caused “health and safety challenges for any establishment providing food (in JV)”. First, because there is only one “for profit” food establishment in JV and it is the JVIA. Second, for reasons stated earlier the leadership of JVIA has done all it can to block the Agency efforts to resolve the water supply challenges of its community that it takes responsibility for promoting the growth and development of (JVIA’s own mission statement).
12. Pg. 43, para. 4: LAFCO implies that the lack of action by the Agency has “led to health and safety challenges for any establishment providing food”. We disagree. To our knowledge, the only establishment selling food for profit is the Johnson Valley Improvement Association (JVIA) and unfortunately after some 50 years of operating an unpermitted “for-profit” food facility there have been a few complaints submitted to the Health Department which ultimately led to inspections, letters requiring compliance and ultimately the closure of the facility for non-compliance in November 2011. Non-compliance was over a variety of issues including the use of bulk water for the facility. Although, JVIA’s mission is to promote the orderly growth and development of the Johnson Valley community, the JVIA Board of Directors has been working against the Agency concerning these particular health and safety issues.
13. Pg. 47, para. 1, last sentence: Add that MWA has pledged up to \$1M to construct the final project as well as provide for grant matching funds.
14. Pg. 48, para. 5: Change June 30, 2010 to June 30, 2011 to match 2011 audit data contained in the table.
15. Pg. 56, No. 4: The \$9.30 surcharge is assessed bi-monthly. This statement implies it is a monthly fee.
16. Pg. 60, para. 3: The policy recommendation for Ethical Conduct Policies were brought before the Board of Directors and approved as a revision to the Employee Handbook in April 2011.
17. Pg. 60, Pension and Post-Employment Benefits: There are no Post Employment Benefits offered to employees therefore the financial statements are silent on this matter.
18. Pg. 61, Status of, shared facilities: See comments No. 9d herein regarding the intertie with HDWD.

19. Pg. 62, Board positions table: Regrettably Mr. Dossey neglected to file his Oath of Office by noon December 2nd as required by the Election Code and the position was subsequently declared vacant by the remaining Board members on December 8, 2011. The Board then decided to appoint a new director for which advertising has begun, again in accordance with the Election Code.
20. Pg. 63, Brown Act: LAFCO's reference to the 2011 Brown Act letter is irrelevant to a sphere review therefore the comment should be omitted from this report.
21. Pg. 66, para. 2: See our comment No. 11 herein regarding Agency's progressive steps towards service delivery in the JV area.
22. Pg. 69, first bullet: Residents of JV pay no special taxes. The properties within the area known as JV have no bond obligations related to the predecessor Bighorn Mountains Water District. Based on facts provided herein, JV has received a multitude of benefits for the very small percentage of general tax levy that those properties contribute to the Agency's budget. Statements regarding lack of progress on a pressurized system have been addressed previously in this letter. The Agency disagrees with LAFCO staff that it has not done enough in JV. This theme is repeated throughout the report yet in this bullet and in the subsequent paragraph LAFCO states that there is a lack of adequate tax base to support such an endeavor.

Second paragraph: JV has no bond debt from the predecessor Bighorn Mountains Water District.
24. Pg. 75, Authorized powers: As stated in the review meeting, the Agency does not intend to operate the Ames/Reche recharge facilities. The Agency will enter into an Agreement with Mojave Water Agency to perform the on-going operation and maintenance of the facility once constructed.
25. Pg. 76/77, Johnson Valley: See our comment No. 11 herein regarding Agency's efforts in JV. In addition the statement implies that the Agency is seeking financial participation for the JVHI when in fact that funding was approved in the 2005 EPA STAG grant award.
26. Pg. 77, Ames Valley Recharge Project, para. 2, last sentence: This is a regional project with multiple beneficiaries including the piped area of the Agency, the Hi Desert Water District, CSA 70/Zone W-1 (Landers), CSA 70/Zone W-4 (Pioneertown) and the Mojave Water Agency.
27. Pg. 77, Facilities and Connections: The agency has seven (7) pressure zones in the primary water system. Well No. 10 in JV serves as a stand-alone water system for the purposes of Department of Public Health Consumer Confidence Reporting. There are seven active production wells operated by the Agency. See our comment No. 9b above regarding Well Nos. 2 and 4. There are four separate bulk hauling station locations around the Agency. One is the Well No. 10 facility. The other three are located within the larger pressurized water system with two stations located in the

northern territory previously known as the Bighorn Mountains Water Agency. The last station is located in Flamingo Heights which was previously known as the Desert View County Water District. The three hauling stations inside the pressurized system are supplied by the 6 active production wells (not by Well No. 10).

28. Pg. 78, para. 1: See our comment No. 9d herein regarding interties with HDWD and CSA 70/Zone W-1.

Please feel free to use the information in this comment letter to correct the draft staff report. We thank LAFCO staff for giving us the opportunity to comment and submit the most up-to-date information for inclusion in your report. We hope that our objections to certain opinions have been duly noted and that the report will be revised accordingly. If you have any further questions or require any further information please do not hesitate to contact me at (760) 364-2315.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marina D. West".

Marina D. West, PG
General Manager