

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

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DATE: JULY 9, 2008
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #12: LAFCO 3073 – Dissolution of the Victorville Sanitary District

INITIATED BY:

Council Resolution of the City of Victorville

RECOMMENDATION:

Staff recommends that the Commission approve LAFCO 3073 by taking the following actions:

1. Determine that LAFCO 3073 is statutorily exempt from environmental review, and direct the Clerk of the Commission to file a Notice of Exemption within five (5) days;
2. Approve LAFCO 3073, Dissolution of the Victorville Sanitary District, subject to the following terms and conditions:
 - a. The City of Victorville shall be designated as the successor agency to all rights, responsibilities, properties, equipment, contracts, assets and liabilities, obligations, and functions of the Victorville Sanitary District; and,
 - b. All property tax revenue attributable to the District prior to the calculations required by Section 98.6 of the Revenue and Taxation Code, including delinquent taxes and any and all other collections or assets of the District to be dissolved shall accrue and be transferred to the successor agency, the City of Victorville; and,
 - c. All previously authorized charges, assessments, and/or taxes of the Victorville Sanitary District shall be continued by the City of Victorville; and,
 - d. The Appropriation Limit of the City of Victorville shall be adjusted based on the amount of property tax revenues that will be shifted to the City as a result of this

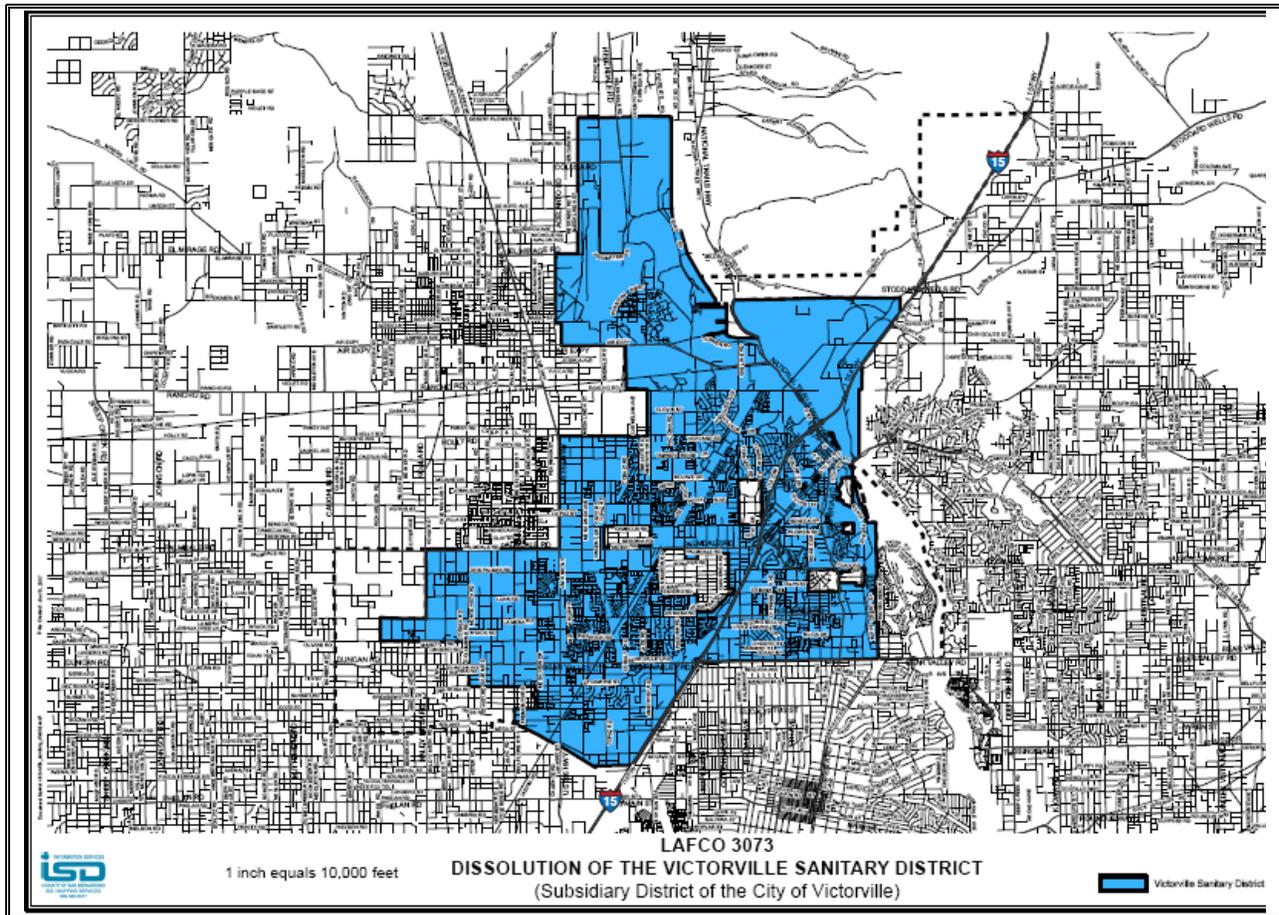
dissolution, estimated to be \$1,500,000 for Fiscal Year 2007-08; and,

- e. Upon the effective date of this dissolution, any funds currently deposited for the benefit of the Victorville Sanitary District which has been impressed with a public trust, use or purpose, including but not limited to, Capital Reserve Accounts, Capital Improvement Accounts, Sewer Connection Fees, etc. on June 30, 2008 shall be transferred to the City as the successor agency and the successor agency shall separately maintain such funds in accordance with the provisions of Government Code Section 57462; and,
 - f. The City of Victorville shall defend, indemnify, and hold harmless the San Bernardino Local Agency Formation Commission in making these determinations; and,
 - g. Authorize the completion of these proceedings pursuant to Government Code Section 56854, without an election, unless at least 25% of the registered voters or 25% of the landowners within the District submit written protest to this proposal at the protest hearing.
3. Adopt LAFCO Resolution #3013 setting forth the Commission findings and determinations for the proposal.

BACKGROUND:

The Victorville Sanitary District (hereafter Victorville SD) was originally formed on November 13, 1923 as an independent Special District. In January of 1981 the City of Victorville and the Board of Directors of the Victorville Sanitary District submitted a joint application requesting that the district be established as a subsidiary district of the City. The proposal, LAFCO 2081, was determined to be abandoned in February 1982 following numerous continuances to allow for decisions to be made related to the operation of the Victor Valley Wastewater Reclamation Authority Treatment Plant. These determinations were necessary in order for the District to take off-line its existing treatment facility. The proposal was re-initiated by the City and District in March of 1982 and the District officially became a subsidiary District of the City of Victorville on August 10, 1982.

On April 19, 2005, the City Council of the City of Victorville initiated the dissolution of its three subsidiary districts – Fire, Park and Recreation and Sanitary – by a single resolution, Resolution No. 05-70 and submitted the proposals for Commission consideration in August 2006. Review of the Plan for Service by LAFCO staff and interested and affected agencies required the submission of supplemental information and a revised Plan for Service prepared by the City of Victorville’s consultants was accepted in February 2008. Attachment #1 to the staff report provides an illustrative map of the area of the Victorville SD proposed for dissolution and Attachment #2 provides a copy of the City’s initiating resolution, Plan for Service and Application Forms. The boundaries of the Victorville SD are shown below.



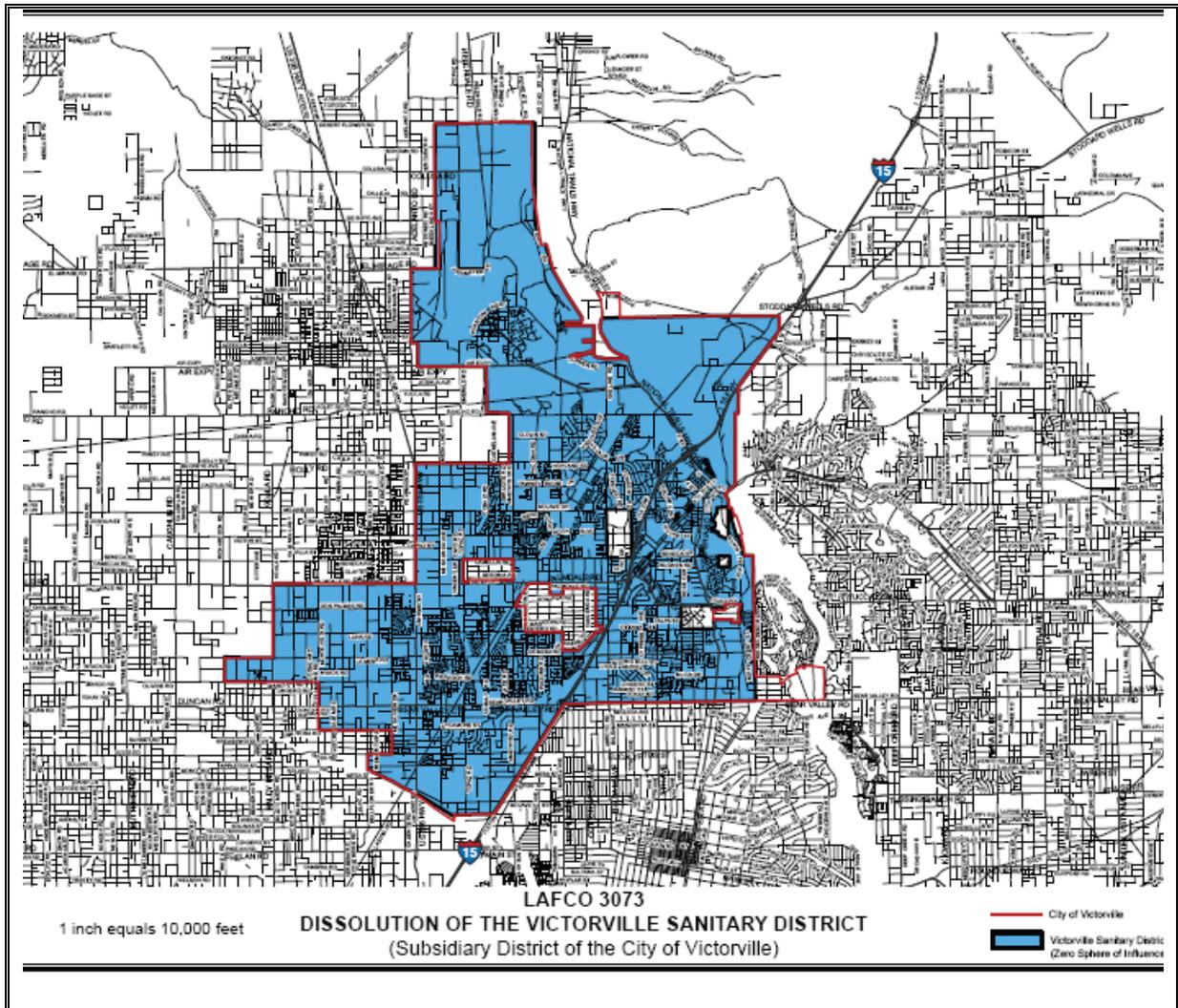
At the February 2007 Commission Hearing for the Municipal Service Review/Sphere of Influence Updates for the community of Victorville, the Commission determined to assign a zero sphere of influence to the Victorville SD. This determination, set out in LAFCO Resolution No. 2955, a copy of which is included as Attachment #3 to this report, indicated the Commission's position that since the District had not been operated as a separate entity by the City for the past 25 years, the simplest mechanism to correct these governance problems would be through dissolution and full assumption of the services and operations of the agency by the City.

In response to this determination of the Commission, the City Council, acting as the governing body of its then existing subsidiary districts, proposed their dissolution to address questions of independent operation and truly fold them into the administration of the City. This action will clarify and memorialize the current operations of the agency as a department of City government, resolving operational conflicts for a self-governed special district.

As with any review, the following materials will outline the staff's analysis of the four areas of consideration: boundaries, financial implications, service effects and the positions of the community and environmental consequences. These issues, along with other information, are outlined below.

BOUNDARIES:

The Victorville SD currently consists of 71.65 +/- square miles. The City of Victorville currently encompasses 73.8 square miles showing that approximately 2.15 square miles of City territory is not included within the boundaries of the Victorville SD. These areas include the territory along Bear Valley Road including the commercial areas and Victor Valley College portion of CSA 64, the area of CSA 42 within the City's boundaries on the north, the Coad Road and Mountain View Acres islands, the City Civic Center area generally bordered by Seneca, Armagosa Road, Mojave Drive and Civic Center Drive and the area generally bordered by Ottawa Road, Rodeo Drive, Coad Road and Hesperia Road. The last two areas are currently receiving sewer service. A map showing the boundaries of the City and District are shown below.



Approval of the dissolution will provide for the provision of sewer service through the City of Victorville within its corporate boundaries, resolving the conflict for the areas around the

Civic Center and the area westerly of Hesperia Road currently served by the agency without contract for service. However, it will put in place a duplication of service within the County Service Area 64 territory northerly of Bear Valley Road including the commercial areas and the property of Victor Valley College and the territory in the north included within County Service Area 42 (Oro Grande) that did not previously exist. The City has acknowledged these serving entities in the past and staff has no reason to believe that an actual duplication of service will be encountered in the future.

FINANCIAL CONSIDERATIONS:

The financial effect of the proposed dissolution would transfer all existing revenue, contracts, assets and liabilities of the Victorville SD to the City of Victorville. As outlined in the Municipal Service Review for the Victorville SD, the district has been operated as a City Department for better than twenty-five years without separate accounting or budgeting actions as required for a self-governed special district. The Plan for Service presented by the City outlines the following financial considerations:

1. **Property Tax Transfers:**

Upon the successful completion of the proposed dissolution, the property tax revenues generated within the boundaries of the existing District are to be transferred to the City. The County of San Bernardino adopted a resolution approving this process as a part of the property tax transfer negotiations required by Section 99 of the Revenue and Taxation Code, supported by the City of Victorville. The Plan for Service identifies the property tax revenues generated for the district as approximately \$1,500,000 in Fiscal Year 07-08.

A review of the City's Comprehensive Annual Financial Report (CAFR) for the year ending June 30, 2006 does not identify property tax revenues associated for the Sanitary District in its Statements, identifying on page 34 that Operating Revenues consisted only of Charges for Service of \$7,950,599 for the year ending June 2006. However, in discussions with City staff, it has been identified that actual property tax receipts for the year were \$1,380,026 which are shown as a part of the charges for service. The property tax information from the Auditor/Controller-Recorder's office for the same period identified that the total property tax levy for the District would be \$1,456,362 (\$2,214,935 general levy minus \$758,573 in Redevelopment Agencies Increment).

Correspondence provided to LAFCO staff from the firm of Rosenow Spevacek Group Inc. dated May 15, 2008, (the firm which provides the information for pass-through agreements for the Victor Valley Economic Development Agency, a redevelopment agency) identified that the pass-through required from VVEDA for the Victorville SD, as well as the other subsidiary districts, was provided directly to the City of Victorville as a lump sum. This furthers the staff position that the subsidiary districts are not operated as special districts as required by law. City staff has provided an outline of the pass-through amounts that should have been credited to the Victorville Sanitary District, as follows:

Fiscal Year 2006-07	\$586,247
Fiscal Year 2005-06	\$429,794
Fiscal Year 2004-05	\$262,250

This total is \$1,278,291 over the past three years provided to the City of Victorville; while the Victor Valley Economic Development Agency has been in existence since 1993. No information was received regarding pass-through amounts owed to the District from the City redevelopment agencies.

2. Staffing:

The Victorville SD does not directly employ its own staff; it is managed and operations and maintenance staffed by City of Victorville employees assigned to the Public Works Department while billing services are provided by the City's Finance Department. On page 12 of the Plan for Service it identifies the City staffing of the District included 16.19 Full Time Equivalent (FTE) positions under the identification of the Public Works Department. No change will occur through successful completion of the dissolution.

3. Appropriation Limit:

Under normal circumstance, the Commission would condition the approval of the dissolution of the district upon the transfer of the existing appropriation limit to the successor agency. However, in this case, there is no appropriation limit established for the Victorville FPD by its governing body even though it is required by Article XIII B of the State Constitution. The City of Victorville has requested that the estimated property tax revenues for FY 07-08, \$1,500,000 be added to the City's existing appropriation limit.

4. Budgetary Information:

The Plan for Service discusses the revenues and expenditures of the district on page 17. For further detail the staff reviewed the materials contained within the City of Victorville Comprehensive Annual Financial Report (CAFR) for the 2005-06 Fiscal Year. This document identifies on page 34 the operations of the Sanitary District as an enterprise account. This information identifies that the Victorville SD had total revenues of \$7,950,599 and total operating expenses of \$4,954,456, with a net operating income of \$2,996,143.

The chart which follows illustrates the District's expenditures and revenues taken from the pages of the Plan for Service and City's CAFR:

VICTORVILLE SANITARY DISTRICT IDENTIFIED AS SANITARY DISTRICT PROPRIETARY FUND YEAR ENDED JUNE 30, 2006			
	PLAN FOR SERVICE BUDGET INFORMATION	CAFR OUTLINE OF REVENUES AND EXPENSES	VARIANCE WITH PLAN FOR SERVICE POSITIVE (NEGATIVE)
EXPENDITURES:			
Personnel Services		\$4,267,369	
Maintenance and Operations Costs		\$163,144	
Depreciation		\$523,943	
Expenditures	\$4,165,404		
TOTALS	\$4,165,404	\$4,954,456	(\$789,052)
REVENUES:			
Property Taxes	\$675,000		
Charges for Service (User Fees)	\$4,700,000	\$7,950,599*	
Investment Income		\$143,286	
Other	\$150,000		
Total	\$5,525,000	\$8,093,885	\$2,568,885
Excess (deficiency) of revenues over (under) expenditures	\$1,081,323	\$3,139,429	\$1,779,833
Cash and Cash Equivalents at beginning of Year	\$	\$12,042,366	
Cash and Cash Equivalents at End of Year	\$	\$12,336,754	

*Correspondence from City identifies that \$1,380,026 in property tax revenues was received and included in the Charges for Service amount shown

As a condition of approval, LAFCO staff recommends that the Commission require that the City provide for separate accounting of the assets and obligations of the sewer system function. This would include, but not be limited to, the operations balance, shown as \$11,825,305 as of April 21, 2008, and the capital cash balance, shown as of \$2,644,135 as of April 21, 2008. Pursuant to the provision of Government Code Section 57462 the City would be required to separately maintain these funds.

Through a review of the City's CAFR, LAFCO staff identified an existing loan amount owed to the Victorville SD by the City General Fund. Page 55 of the CAFR identifies that these loan(s) occurred during the 1992-93 fiscal year (copy included as a part of Attachment #5) for a total amount of \$3,402,052. This total obligation was not identified in the Plan for Service submitted by the City. This matter was further reviewed with City of Victorville staff since the materials identified "no interest rate or period of repayment" for the loan and all obligations or assets of the Victorville SD need to be addressed in the dissolution proceedings. LAFCO staff identified that the only options available in this process were to either establish a repayment schedule or forgive the loan.

Correspondence from the City staff, dated April 24, 2008, provides an outline of the City's position. Of the options available to address the loan the letter identifies that City staff would request that the City Council, acting as the Board of Directors of the Victorville SD, forgive the loan. This staff position was taken since a review of District files found no record of the loan or expressed purpose, no loan agreement and no clear identification if it was one or several loans. The April 24 letter identifies as a portion of the rationale for this action that the Victorville Park and Recreation and Fire Districts had "borrowed" money from the General Fund over the years in an amount exceeding \$24,668,998 as of 2001. A District Agenda Item, dated June 3, 2008, considered by the City Council sitting as the Victorville SD, provided three options for consideration: forgive the loan, determine to require the City to repay the loan without interest; or establishment of a future repayment schedule with interest. The recommendation was to forgive the loan and which again cited the transfer of City General funds to the Fire and Park District for a total of \$42,086,970 as of June 30, 2007. Attachment #5 provides a copy of the minute action forgiving the loan.

Staff concern remains since, as has been outlined in various portions of this report, a subsidiary district is a separate legal government which must be accounted for on its own. Therefore, the shortfalls of other separate subsidiary districts, in the staff's opinion, should not be used to justify the use of revenues which were collected for the purpose of operating the Sanitary District. In addition, LAFCO staff has identified in the staff reports for the dissolution of the subsidiary Fire and Park Districts that at the time they were established as subsidiary districts it was for the expressed purpose of allowing for augmented funding to be provided from the City General Fund to provide for a City Council determined level of service. LAFCO staff has reviewed the question of the ability of the Victorville SD to forgive this loan, and determined they are authorized to do so. However, it is just another reminder of the concerns for the separate operation of the subsidiary districts overall.

Even with the concern regarding the outcome of the \$3,402,052 loan, LAFCO staff concurs with the position of the City of Victorville that the approval of the dissolution of the Victorville SD will clarify the responsibilities for this agency and supports the action. In addition, the dissolution will resolve the concerns of LAFCO that this district has not been operated as a special district for the 25 years it has been a subsidiary district.

SERVICE CONSIDERATIONS:

The City of Victorville has submitted a "plan for services" as required by law which states that the City can demonstrate that the range and level of service currently available will be maintained. As noted earlier, this plan is included as a part of Attachment #2 to this report.

Within this plan, the City has acknowledged that it has operated the Victorville SD as a City department for more than 25 years. Therefore, following successful completion of the dissolution, there will be no change in the provision of this service, no augmentation or diminution of the range and level of service currently provided for the maintenance and operation of the wastewater collection and transmission system. It identifies that plans are currently underway to expand the system to address the City's needs through 2025.

Another option for service delivery would be to designate the Victorville Water District as the successor agency since a County Water District is authorized to provide sewer service. This option was rejected by the City staff on the basis that it would not streamline the operations and would not resolve the lingering financial management issues that LAFCO staff has outlined.

LAFCO staff supports the dissolution of the Victorville SD in that the action will make more transparent the delivery of this service through the City of Victorville, as well as provide for clarification of accountability for decisions on its operation.

RESPONSE TO THIS PROPOSAL:

LAFCO staff has circulated this proposal for review and comment by the affected and interested agencies. To date, no response has been received either in support or opposition. Staff's reaction to this lack of response is that most people currently served by the Victorville SD assume it to be a City department – its billing is from the City Finance Department, its vehicles show identification as being the City of Victorville – and it does not appear on any tax bill as a separate legal entity.

ENVIRONMENTAL CONSIDERATIONS:

The Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates, has reviewed this proposal and has indicated that it is his recommendation that this dissolution is statutorily exempt from the California Environmental Quality Act (CEQA). This determination is based on the finding that the Commission's approval of the action would not result in an alteration of the physical environment and would not change the area in which the service is provided; therefore, the proposal is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061 (b) (3). A copy of Mr. Dodson's report is included for the Commission's review as Attachment #6.

FINDINGS:

1. The area in question is legally inhabited, containing 31,944 registered voters as of November 15, 2007. The City of Victorville has 34,400 registered voters within its boundaries as of June 24, 2008.
2. The County Assessor has determined that the value of land and improvements within the boundaries of the Victorville SD was \$8,569,043,735 as of November 2007 (Land -- \$2,681,735,638; Improvements -- \$5,887,308,097).
3. The proposal is consistent with the zero sphere of influence determination made by the Commission on April 18, 2007 through action taken in regard to LAFCO 3039.
4. Notice of the original May hearing was provided through publication of a legal ad in The Sun, and the Victor Valley Daily Press, newspapers of general circulation in the area. As required by State law, individual notification was provided to affected and

interested agencies, County departments and those individuals requesting mailed notice.

5. In compliance with Commission policy and Government Code Section 56157, the notice of this hearing has been provided by publication of an 1/8th page legal ad in The Sun, a newspaper of general circulation, and the Daily Press, a local newspaper. To date, no opposition to this proposal has been received.
6. This proposal does not conflict with the City of Victorville's General Plan as the entirety of the district is within existing City boundaries.
7. As the CEQA lead agency, the Commission's Environmental Consultant, Tom Dodson and Associates, has reviewed LAFCO 3073. Mr. Dodson has indicated that his review recommends that the dissolution is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the Commission's approval of the action would not result in an alteration of the physical environment and would not change the area in which the service is provided; therefore, the proposal is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061 (b) (3). A copy of Mr. Dodson's report is included for the Commission's review as Attachment #6.
8. The area within the Victorville Sanitary District is also served by the following local agencies:
 - County of San Bernardino
 - City of Victorville
 - Victorville Recreation and Park District
 - Victorville Fire Protection District
 - Victorville Water District
 - Mojave Water Agency
 - Mojave Desert Resource Conservation District
 - County Service Area 60 (Apple Valley Airport)

The only agencies directly affected by this proposal are the City of Victorville and the Victorville Sanitary District. None of the other agencies will be affected since they are regional in nature.

9. The City of Victorville has submitted a plan for services addressing the potential for providing wastewater collection and treatment services through the City as a department rather than through a separate special district. This plan is attached for Commission review, and it indicates that the range and level of such services can be maintained following dissolution.
10. The area in question can benefit, and has benefited, from the provision of wastewater collection and treatment services through the City of Victorville, as shown in the Plan for Services.

11. This proposal and its anticipated effects conform with adopted Commission policies and directives of state law that promote the simplification of the government.
12. Pursuant to the provision of Government Code Section 56668(o), the dissolution of the district to reflect its current operation as a City Department will not result in the unfair treatment of any person, based upon race, culture or income.
13. The County Board of Supervisors has successfully concluded the property tax negotiations required by Section 99 of the Revenue and Taxation Code.
14. The map of the proposed dissolution is not required to meet state standards.

CONCLUSION:

One of the primary goals of the Local Agency Formation Commission as set forth by the legislature is to promote the simplification of government to the extent possible. This includes the consolidation of services under one government, as outlined in the opening section of the Cortese-Knox-Hertzberg Act, “a single governmental agency, rather than several limited purpose agencies, is in many cases better able to assess and be accountable for community service needs and financial resources, and, therefore, is the best mechanism for establishing community service priorities.”

For the past 25 years the City of Victorville has operated its subsidiary Victorville Sanitary District as a City Department, without separate appropriation limit and without separate actions on Council agenda. Therefore, the action proposed to dissolve the district reflects its actual operation and allows for a more transparent operation as a city department without the pretext of identification as a self-governed special district.

It has been troubling to LAFCO staff that the operation of the District has not been reflective of its status as an a self-governed special district, one whose ex-officio Board of Directors has been designated to be the City Council of the City of Victorville. This concern, as outlined in the Municipal Service Review, is that this district has operated without a separate budget and without an appropriation limit for longer than anyone on the current staff can remember. A loan or loans has been provided to the City General Fund for which there is no documentation other than a line within the City’s Comprehensive Annual Financial Report, which has been forgiven in order to allow dissolution to proceed. These aspects of a lack of a separate government are troubling on the larger scale of accountability to the constituents of the agency.

In the end, however, the dissolution of this agency is a good government remedy to the current situation: it promotes the recognition of the operation of the service through the auspices of the City of Victorville as a department, as it has operated for 25 years, and it promotes a more transparent operation of government through the ease of understanding that it is a City Department, with City employees performing the services. For all these reasons, and those outlined in other portions of this report, staff recommends approval of LAFCO 3073.

KRM/

Attachments:

1. Maps of the District and City Boundaries
2. City Resolution No.05-70, Plan for Service, Application Forms from the City of Victorville, and Supplemental Information Filings; Letter Dated May 15, 2008 Related to VVEDA Pass Through
3. LAFCO Resolution No. 2955 for the Municipal Service Review/Sphere of Influence Update for the Victorville Sanitary District
4. Excerpt from LAFCO 2081A -- Establishment of the Victorville SD as a Subsidiary District
5. Data Related to Forgiving Outstanding Loan to City General Fund Including Letter from City Dated April 24, 2008 and June 3, 2008 Minutes and Board Agenda Item
6. Environmental Review from Tom Dodson and Associates
7. Draft LAFCO Resolution #3013