

PROPOSAL NO.: LAFCO 2991

HEARING DATE: May 16, 2007

RESOLUTION NO. 2959

A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION OF THE COUNTY OF SAN BERNARDINO MAKING DETERMINATIONS ON LAFCO 2991; APPROVING THE REORGANIZATION TO INCLUDE CONSOLIDATION OF THE BALDY MESA WATER DISTRICT AND VICTOR VALLEY WATER DISTRICT, WITH CONSOLIDATED DISTRICT TO BE KNOWN AS THE VICTORVILLE WATER DISTRICT, ESTABLISHMENT OF VICTORVILLE WATER DISTRICT AS A SUBSIDIARY DISTRICT OF THE CITY OF VICTORVILLE, FORMATION OF IMPROVEMENT DISTRICT NO. 1 (VICTOR VALLEY WATER DISTRICT BOUNDARIES) AND IMPROVEMENT DISTRICT NO. 2 (BALDY MESA WATER DISTRICT BOUNDARIES), AND ANNEXATIONS TO VICTORVILLE WATER DISTRICT AND IMPROVEMENT DISTRICT NO. 1, AS MODIFIED. The primary reorganization area, as modified, includes the consolidation of the existing boundaries of the Baldy Mesa Water District (17,446+/- acres) and the existing boundaries of the Victor Valley Water District (36,893+/- acres) into a single special district, to be known as the Victorville Water District, and establishment as a subsidiary district of the City of Victorville. This reorganization also includes the formation of Improvement District No. 1 (Victor Valley Water District boundaries), Improvement District No. 2 (Baldy Mesa Water District boundaries) and annexation of five island areas to the Victorville Water District and its Improvement District No. 1.

On motion of Commissioner _____, duly seconded by Commissioner _____, and carried, the Local Agency Formation Commission adopts the following resolution:

WHEREAS, an application for the proposed reorganization in the County of San Bernardino was filed with the Executive Officer of this Local Agency Formation Commission (hereinafter referred to as the "Commission") in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Sections 56000 et seq.), and the Executive Officer has examined the application and executed her certificate in accordance with law, determining and certifying that the filings are sufficient; and,

WHEREAS, at the times and in the form and manner provided by law, the Executive Officer has given notice of the public hearing by this Commission on this matter; and,

WHEREAS, the Executive Officer has reviewed available information and prepared a report including her recommendations thereon, the filings and report and related information having been presented to and considered by this Commission; and,

WHEREAS, the public hearing by this Commission was held upon the date and at the time and place specified in the notice of public hearing and in order or orders continuing the hearing; and,

WHEREAS, at the hearing, this Commission heard and received all oral and written protests; the Commission considered all plans and proposed changes of organization, objections and evidence which were made, presented, or filed; it received evidence as to whether the territory is inhabited or uninhabited, improved or unimproved; and all persons present were given an opportunity to hear and be heard in respect to any matter relating to the application, in evidence presented at the hearing; and,

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WHEREAS, the Commission determines to modify this proposal to include the annexation of five separate areas to the consolidated Victorville Water District currently being served by the Victor Valley Water District but not a part of its boundaries and to include the formation of Improvement District No. 1 (boundaries of the Victor Valley Water District) and Improvement District No. 2 (boundaries of the Baldy Mesa Water District) to isolate assets, liabilities, rate structures, property tax revenues, etc. between the consolidating agencies as a function of the reorganization;

NOW, THEREFORE, BE IT RESOLVED, that the Commission does hereby determine, resolve, order, and find as follows:

DETERMINATIONS:

SECTION 1. The proposal is approved subject to the terms and conditions hereinafter specified:

CONDITIONS:

Condition No. 1. The boundaries of this change of organization are approved as set forth in Exhibits A, A-1, B, B-1, C, C-1, D, D-1, E, E-1, F, F-1, G, G-1, H, and H-1 attached.

Condition No. 2. The following distinctive short-form designation shall be used throughout this proceeding: LAFCO 2991.

Condition No. 3. The effective date of the consolidation (hereafter "Effective Date") shall be fifteen (15) calendar days following completion of the protest process.

Condition No. 4. The Victor Valley Water District ("VVWD") and Baldy Mesa Water District ("BMWD") shall be consolidated into a successor county water district, to be known as the Victorville Water District ("Successor District"), and the Successor District shall be established as a subsidiary district of the City of Victorville, subject to the terms and conditions contained herein.

Condition No. 5. The Successor District, the Victorville Water District, shall function under, and carry out all authorized duties and responsibilities assigned to a county water district as outlined in California Water Code Sections 30000 et seq. and other applicable laws. Upon the Effective Date of this reorganization, the legal existence of the VVWD and BMWD shall cease, except as otherwise required by law, and the Successor District shall succeed to all rights, duties, responsibilities, properties (both real and personal), contracts, equipment, assets, liabilities, obligations, functions, executory provisions, entitlements, permits and approvals of VVWD and of BMWD.

Condition No. 6. Pursuant to agreement between the City Council of the City of Victorville, as the designated governing body of the Successor District, VVWD and BMWD, an Employee Transition Plan (the "Transition Plan") has been provided to LAFCO, attached as Exhibit I to this resolution, detailing how the reorganization shall not adversely affect or impair the status of employees of the predecessor VVWD or BMWD. As specified in the Transition Plan, as of the Effective Date of this reorganization, all full-time employees of the VVWD and BMWD shall become full-time employees of the City of Victorville, with assignment of ninety-three (93) specific filled positions to the Successor District and seventeen (17) specific filled positions assigned to City departments. Pursuant to amended and restated Resolution No. 07-037 (Exhibit J), the City of Victorville shall charge the Successor District for all costs associated for all employees assigned to the Successor District. Current rates of pay, accrued vacation and sick leave, vacation and sick leave accrual rates, employee rights, seniority rights, insurance, retirement benefits, and all other benefits and programs now provided employees pursuant to existing contracts shall continue at a level not less than that currently enjoyed, with the exception of the VVWD lifetime medical benefits for retired employees and spouses. Transferred VVWD employees, employed by VVWD prior to August 2003, will have the option of receiving the City's standard Retirement Medical coverage, as outlined in the Transition Plan, as it may be amended in the future, and will be provided a one-time pay-out amount of \$10,000 within 30 days of the Effective Date of this change or retention of their existing benefit (a defined liability of VVWD) [Government Code Section 56886(l)].

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Condition No. 7. The service area/territory of VVWD, on the Effective Date of this reorganization, shall be formed as the Victorville Water District Improvement District No. 1; and the service area/territory of BMWD, on the Effective Date of this reorganization, shall be formed as the Victorville Water District Improvement District No. 2. The areas proposed to be annexed by this reorganization shall also be included in the Victorville Water District Improvement District No. 1. The Successor District, on behalf of the Improvement Districts, shall establish and maintain separate accounts for the purpose of keeping separate the existing assets and liabilities, including, but not limited to, capital funds, property taxes, assessments and debt obligations of VVWD and BMWD, as set forth in the City of Victorville's amended and restated Resolution No. 07-037 (Exhibit J) and the Agreement for Transfer of Assets, Liabilities, Contractual Rights and Obligations (Exhibit K). The operational facilities of VVWD and BMWD shall be transferred to Successor District Improvement Districts Nos. 1 and 2, respectively.

Condition No. 8. The Successor District shall accept all system facilities transferred from the VVWD and the BMWD in "as is" condition, without any payment or repair obligation from the assets of either the VVWD or the BMWD [Government Code Section 56886(h)]. All system facilities and incidental liabilities, such as accounts payables, contract obligations and customer deposits, shall be transferred by the Successor District to the appropriate Improvement District of the Successor District. All assets including, but not limited to, cash reserves, buildings and other real property, water production equipment (pumps, storage tanks, etc.), transmission lines and rights-of-way, rolling stock, tools, and office furniture, fixtures and equipment, all lands, buildings, real and personal property, and appurtenances held by the VVWD and BMWD shall be transferred to the appropriate Improvement District of the Successor District as of the Effective Date of this reorganization [Government Code Section 56886(h)].

The debt obligations of BMWD (including, but not limited to, Assessment District #1, Assessment District #2R, Certificates of Participation, Notes Payable) shall remain with the ratepayers obligated to repay those debts through assignment to Successor District Improvement District No.2.

These obligations and transfers have been outlined and agreed to by the City of Victorville, VVWD and BMWD by adoption of the "Agreement for the Transfer of Assets, Liabilities, Contractual Rights and Obligations" attached as Exhibit K to this resolution.

Condition No. 9. VVWD's existing rates, fees, taxes, assessments and charges shall continue as Victorville Water District Improvement District No. 1's existing rates, fees, taxes, assessments and charges; and BMWD's existing rates, fees, taxes, assessments and charges shall continue as Victorville Water District Improvement District No. 2's existing rates, fees, taxes, assessments and charges in the same manner as provided in the original authorization pursuant to Government Code Section 56886(t). Both sets of rates, fees, taxes, assessments and charges shall remain in effect until the Board of Directors of the Successor District shall have duly adopted a uniform schedule for rates, fees, taxes, assessments and charges, which does not impose upon the customers of either Successor District Improvement District No. 1 or Improvement District No. 2 the burdens assumed by the predecessor of the other, for bonds or other burdens of service.

Condition No. 10. Adoption of Uniform Schedule for Rates, Fees, Taxes, Assessments and Charges -- All previously authorized rates, fees, taxes, assessments, and/or charges currently in effect by the VVWD and BMWD shall be continued for a period of 24 months or until a rate restructuring plan is approved by the Successor District as authorized pursuant to Government Code Section 56886(t).

Condition No. 11. Until duly revised by the Successor District, and unless otherwise expressly provided herein or legally required, VVWD's ordinances, resolutions, policies, procedures and practices existing on the Effective Date shall govern the activities and affairs of the Successor District Improvement District No. 1. Until duly revised by the Board of Directors of the Successor District, and unless otherwise expressly provided herein or legally required, BMWD's ordinances, resolutions, policies, procedures and practices existing on the Effective Date shall govern the activities and affairs of the Successor District Improvement District No. 2. The Board of Directors of the Successor District shall expeditiously review and ratify the ordinances, resolutions, policies, procedures and practices adopted hereby, making such revisions as it shall deem appropriate.

Condition No. 12. The Successor District shall succeed to all water and capacity rights and interests of VVWD and BMWD, whether wholly or partially owned or held by either or both of them, and shall succeed to the

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priorities of use or rights of use of water or capacity rights in any public improvements or facilities or any other property, whether real or personal, to which either VVWD or BMWD is entitled to on the Effective Date. The Successor District shall specifically succeed to all rights and interests held or claimed by VVWD and/or BMWD under the Judgment entered (including all documents constituting the Physical Solution, as from time to time existing) in City of Barstow, etc., et al. v. City of Adelanto, etc., et al., and Related Cross Actions, Riverside County Superior Court Case No. 208568 (the "Mojave Basin Area Adjudication"), including those from time to time set forth in Table B-1, to the Judgment.

The Successor District shall also specifically succeed to all rights and interests held or claimed by VVWD and BMWD under all agreements and memoranda of understanding with the Department of the Interior, the Bureau of Land Management, the United States Geological Survey, the California Department of Fish and Game, the California Water Quality Control Board and the Regional Water Quality Control Board for the Lahontan Region, the California Department of Health Services, the Mojave Water Agency, the County of San Bernardino, the City of Adelanto, the City of Hesperia, the City of Victorville, the Town of Apple Valley, the Apple Valley Ranchos Water Company, the Southern California Logistics Airport Authority, the Victor Valley Wastewater Reclamation Authority, the Victor Elementary School District, the Victor Valley Union High School District, the High Desert Power Project (or any of its related entities), Southern California Edison, and any other public agency or private entity with which either the VVWD or the BMWD has an agreement or memorandum of understanding. The Successor District shall also assume all joint use flow agreements and maintenance agreements [Government Code Section 56886(j) (r)]. Amendments of existing agreements shall be completed prior to the Effective Date to address any changes in service [Government Code Section 56886(r) (v)].

Condition No. 13. The appropriation limit of the consolidated Successor District shall be the aggregate appropriation limit of the two consolidating Districts, VVWD and BMWD, estimated to be \$1,554,660.

Condition No. 14. The Successor District and its Improvement Districts shall succeed to all rights, duties and obligations of VVWD and BMWD with respect to the enforcement, performance or payment of any outstanding bonds, including revenue bonds, or other contracts and obligations of VVWD and/or BMWD and/or its community facility districts on the Effective Date. This consolidation shall not impair any rights of any bondholder or creditor of VVWD or BMWD.

Condition No. 15. As of the date of approval of the subject action by LAFCO through the Effective Date and pursuant to the provisions of Government Code Section 56885.5(a)(4), VVWD and BMWD shall each be prohibited from taking the following actions unless it first finds an emergency situation exists as defined in Government Code Section 54956.5:

a. No increase in compensation or benefits:

Providing any increase in compensation or benefits for members of the governing board, its officers, staff or the executive officer of VVWD and/or BMWD. Exceptions to this prohibition include planned and budgeted merit and range increases for either District, as identified in the adopted budget.

b. Bound by current budget:

Appropriating, encumbering, expending or otherwise obligating any revenue of VVWD and/or BMWD beyond that provided in the current budget at the time of Commission approval.

Condition No. 16. Implementation of changes of organization:

a. Implementation Jurisdiction:

LAFCO shall retain jurisdiction, subject to the statutory rights of VVWD and BMWD as set forth in Government Code Section 56853, to hear and amend, to the extent necessary and appropriate, any Terms and Conditions to which protests have been duly made; any Terms and Conditions which require the agreement of VVWD and BMWD and/or any other public agency or entity having

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Government Code Section 56157. In keeping with the Commission's policy, notice was provided by placing a display advertisement of at least one-eighth page in a newspaper of general circulation within the reorganization area. Comments from landowners, registered voters, and any affected local agency have been reviewed and considered by the Commission in making its determination.

6. The reorganization proposal has no direct effect on the County General Plan or the General Plan of the City of Victorville.
7. Upon reorganization, which includes consolidation, the Successor District, the Victorville Water District, will extend its services to residents, landowners and governments within its boundaries. The Plan for Service submitted by the City of Victorville provides a general outline of the delivery of service as mandated by Government Code Section 56653. The Plan indicates that the consolidated District can maintain and/or improve the level and range of services available to the reorganization area. The Plan for Service has been reviewed and compared with the standards established by the Commission and the factors contained within Government Code Section 56668. The Commission finds that such Plan conforms to those adopted standards and requirements.
8. The area in question is presently served by a number of local agencies, a complete listing of which is on file in the LAFCO office. None of these other agencies will be directly affected by the completion of this reorganization.
9. The consolidation proposal complies with Commission findings in its service reviews/sphere of influence updates for the affected agencies that a single water district serving the Victorville community would be appropriate. The annexation of the five areas identified in the reorganization complies with Commission policies which indicate that areas receiving service should be a part of the service provider, which allows for a more efficient and effective service delivery pattern.
10. The Local Agency Formation Commission has determined that this proposal is statutorily exempt from environmental review since it does not have the potential for resulting in physical changes in the environment, directly or ultimately, or any adverse environmental impacts (Section 15061(b)(3) of the State Guidelines for the California Environmental Quality Act). The basis for this determination is that approval of the consolidation of the two Water Districts, including the consolidated District's establishment as a Subsidiary District of the City of Victorville, the annexation to the consolidated District of the five island areas currently being serviced by the Victor Valley Water District, and formation of the two Improvement Districts, will not result in any changes in land use or changes in the existing physical environment. Therefore, without any identifiable physical changes, this proposal does not constitute a project and is not subject to environmental review under the provisions of the State CEQA Guidelines sections cited above or the Commission's adopted CEQA Guidelines.

The Commission adopted the Statutory Exemption and directed its Clerk to file a Notice of Exemption within five (5) days with the San Bernardino County Clerk of the Board of Supervisors.

11. The reorganization area can benefit from the consolidation through the economies of scale available, the efficient delivery of service to the community of Victorville, and the coordination of efforts in conjunction with other water retailers and wholesalers to address supply deficiencies in the region.
12. The County of San Bernardino has determined that there will be no exchange of property tax revenues for the annexations proposed by this reorganization upon completion of this action and that the consolidation will transfer \$308,050 in property tax revenues from the BMWD to Improvement District No. 2 of the Victorville Water District. This negotiated agreement fulfills the requirements of Section 99 of the Revenue and Taxation.
13. Maps and legal descriptions, as revised, are in substantial compliance with LAFCO and State standards through certification by the County Surveyor's Office.

SECTION 4. Approval by the Local Agency Formation Commission indicates that completion of this proposal

