

**Draft LAFCO Resolution No. 3194**

**Attachment 6**

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

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**PROPOSAL NO.: LAFCO 3181**

**HEARING DATE: JANUARY 21, 2015**

**RESOLUTION NO. 3194**

**A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO MAKING DETERMINATIONS ON LAFCO 3181 – REORGANIZATION TO INCLUDE ANNEXATIONS TO THE BIGHORN-DESERT VIEW WATER AGENCY; DISSOLUTION OF ZONE W-1 OF COUNTY SERVICE AREA 70 AND FORMATION OF AN IMPROVEMENT DISTRICT OF THE BIGHORN-DESERT VIEW WATER AGENCY.**

The territory proposed for reorganization includes the entire service boundary of County Service Area 70 Zone W-1, which includes four (4) separate areas encompassing a total of approximately 5,701 acres.

**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 dissolution 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 the 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 called for January 21, 2015 at the time and place specified in the notice of public hearing; and,

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**WHEREAS**, at the hearing, this Commission heard and received all oral and written support and/or opposition; 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.

**WHEREAS**, the Commission determined to adopt the modified proposal to include the formation of an improvement district of the Bighorn-Desert View Water Agency associated with the extinguished County Service Area (CSA) 70 Zone W-1.

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

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

**Condition No. 1.** The boundaries of this change of organization are approved as set forth in Exhibits "A" and "A-1" attached;

**Condition No. 2.** The following distinctive short-form designation shall be used through this proceeding: LAFCO 3181;

**Condition No. 3.** The effective date of this reorganization shall be July 1, 2015;

**Condition No. 4.** The service area/territory of the dissolved CSA 70 Zone W-1, on the effective date of this reorganization, shall be formed as an improvement district of the Successor District ("Improvement District") and shall be required to maintain separate accounts for the purposes of keeping the existing assets and liabilities, including, but not limited to, capital funds, assessments and debt obligations of the dissolved CSA 70 Zone W-1 isolated and segregated;

**Condition No. 5.** Upon the effective date of the reorganization, the Bighorn-Desert View Water Agency, as Successor District to CSA 70 Zone W-1, 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 the dissolved CSA 70 Zone W-1. It is anticipated that the transition period shall be from the date of completion of the protest process until the effective date of the reorganization assigned (July 1, 2015) allowing for the smooth transition of operations;

**Condition No. 6.** Upon the effective date of the reorganization, the Improvement District shall receive all reserve fund balances from the dissolved CSA 70 Zone W-1 specifically identified in the Fiscal Year 2014-15 Adopted Reserve Program (Capital Replacement \$358,764 and Capital Expansion \$319,263; total \$678,027) to be held for the benefit of the ratepayers and property owners within the dissolved district. Transactions utilizing these funds shall be accounted for and described in the annual audit/comprehensive financial reports recognizing the improvement district. All other cash on hand or reserve

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funds shall transfer to the Successor District for use in providing the service to the area of the dissolved CSA 70 Zone W-1;

**Condition No. 7.** Upon the effective date of the reorganization, the Successor District shall accept all system facilities transferred from the dissolved CSA 70 Zone W-1 in “as is” condition without any payment or repair obligation from the assets of CSA 70 (pursuant to Government Code Section 56886(h)). All system facilities and incidental liabilities, such as accounts payables, contract obligations and customer deposits shall be transferred to the Successor District. All assets including, but not limited to, water production equipment (pumps, storage tanks, etc.), water transfer infrastructure, transmission lines and rights-of-way, rolling stock, tools, office furniture, fixtures and equipment, all lands, buildings, real and personal property and appurtenances held by the dissolved CSA 70 Zone W-1 shall be transferred to the Successor District;

**Condition No. 8.** The debt obligations of the dissolved CSA 70 Zone W-1 (including but not limited to bond debt and its share of Improvement District M of the Mojave Water Agency) shall remain with the ratepayers obligated to repay those debts through assignment to the Improvement District of the Successor District;

**Condition No. 9.** The existing fees, taxes, assessments, and charges of CSA 70 Zone W-1 shall continue as the Improvement District’s fee, taxes, assessment and charges for payment of the obligations for the duration of the debt obligation;

**Condition No. 10.** Water rates for the CSA 70 Zone W-1 area shall transition to the previously established and authorized current rates of the Bighorn Desert View Water Agency. It is anticipated that the transition shall be phased to allow for transition in operating systems but shall be accomplished by the close of the first fiscal year following the effective date of the reorganization;

**Condition No. 11.** Upon the effective date of the reorganization, the Successor District shall succeed to all water and capacity rights of the dissolved CSA 70 Zone W-1, whether wholly or partially owned or held by the extinguishing district and shall succeed to the 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 the dissolved CSA 70 Zone W-1 is entitled to upon the effective date of this Reorganization. The successor district shall specifically succeed to all rights and interest held or claimed by the dissolved CSA 70 Zone W-1 under the Ames Judgment under Riverside Superior Court Case 211504;

**Condition No. 12.** Upon the effective date of the reorganization, the Successor District shall specifically succeed to all rights and interests held or claimed by the dissolved CSA 70 Zone W-1 under all agreements and/or 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, or any other public agency or private entity with which the dissolved CSA 70 Zone W-1 has an agreement or memoranda of understanding. The Successor District shall also assume all joint use flow agreements and maintenance agreements held by the dissolved CSA 70 Zone W-1 [(Government Code Section 56886(r)]. Amendments of existing agreements shall be

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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 dissolved CSA 70 Zone W-1 shall be added to the appropriation limit of the Successor District;

**Condition No. 14.** Upon the effective date of this reorganization, the Successor District and its Improvement District shall succeed to all rights, duties, and obligations of the dissolved CSA 70 Zone W-1 with respect to the enforcement, performance or payment of any outstanding bonds, including revenue bonds, or other contracts and obligations of the dissolved CSA 70 Zone W-1. This reorganization shall not impair any rights of any bondholder or creditor of the dissolved CSA 70 Zone W-1;

**Condition No. 15.** As of the date of approval of the reorganization by LAFCO through the effective date pursuant to the provisions of Government Code 56885.5(a)(4), the Board of Supervisors of San Bernardino County as the governing body of CSA 70 Zone W-1 shall be prohibited from taking the following actions unless it first finds an emergency situation exists as defined in Government Code Section 54956.5:

- **No Increase in Compensation or benefits:** No increase in calculation for payment of benefits or compensation to CSA 70 shall be allowed. Exceptions to this prohibition include planned and budgeted increases identified in the adopted budget for Fiscal Year 2014-15.
- **Bound by Current Budget:** Appropriating, encumbering, expending, or otherwise obligating any revenue of CSA 70 Zone W-1 beyond that provided in the current budget at the time of Commission approval unless agreed to by the Successor District; and,

**Condition No. 16.** The Bighorn-Desert View Water Agency shall indemnify, defend, and hold harmless the Commission from any legal expense, legal action, or judgment arising out of the commission's approval of this proposal, including any reimbursement of legal fees and costs incurred by the Commission.

**SECTION 2. DETERMINATIONS.** The following determinations are required to be provided by Commission policy and Government Code Section 56668:

1. The County Registrar of Voters Office has determined that the study area is legally inhabited with 319 registered voters as of January 5, 2015.
2. The study area is within the sphere of influence assigned the Bighorn-Desert View Water Agency by approval of LAFCO 3148 in 2012 as a part of the Service Review/ Sphere of Influence Update process for the Homestead Valley community of the South Desert Region.
3. The County Assessor's Office has determined that the total assessed valuation of land and improvements for the area is \$36,759,776 as of May 21, 2014. This figure is broken down as follows:

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Area 1	\$35,848,657 (\$14,077,335 land; \$21,771,322 improvements)
Area 2	\$ 352,623 (\$110,251 land; \$242,372 improvements)
Area 3	\$ 448,496 (\$176,622 land; \$271,874 improvements)
Area 4	\$ 110,000 (\$25,000 land; \$85,000 improvements)

4. Notice of this hearing has been advertised as required by law through publication in *The Hi-Desert Star* a newspaper 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 and agencies having requested such notice.
5. In compliance with Commission policy and Government Code Section 56157, the Notice of Hearing for the hearing on this proposal was provided by publication in *The Hi-Desert Star* in a 1/8<sup>th</sup> page legal ad. In addition, as requested by the Agency, individual notice of the hearing was provided to registered voters and landowners within the area of LAFCO 3181. Comments from registered voters and landowners and any affected local agency in support or opposition will be reviewed and considered by the Commission in making its determination.
6. The proposed reorganization, including annexation and formation of an improvement district, of the Bighorn-Desert View Water Agency and the assumption of the functions and services previously provided by the dissolving CSA 70 Zone W-1 does not conflict with the established County General Plan or its adopted Homestead Valley Community Plan within this territory. The proposed reorganization has no direct impact on such land use designations.
7. The Southern California Associated Governments (SCAG) has adopted a Regional Transportation Plan and Sustainable Community Strategy pursuant to the provisions of Government Code Section 65352.5 and approval of LAFCO 3181 has no direct impact on these determinations. The Sustainable Community Strategy includes as a determination the need to assure the ongoing availability of a reliable water supply which approval of LAFCO 3181 will support.
8. 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 (Sections 15061 and 15378 of the State guidelines for the California Environmental Quality Act). This recommendation is based on the finding that that the proposal will not change the area in which the service is provided; therefore, no physical affect upon the environment can be seen. With that determination a General Rule Statutory Exemption as authorized under Section 15061(b)(3) of the State CEQA Guidelines is appropriate. 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 section cited above or the Commission's adopted CEQA Guidelines. The Commission adopted the Statutory Exemption and directs its Executive Officer to file a Notice of Exemption within five (5) days with the San Bernardino county Clerk of the Board of Supervisors.

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9. The study area is presently served by the following public agencies: County of San Bernardino, Mojave Desert Resource Conservation District, Mojave Water Agency and its Improvement Districts Zone 01 and M, Hi-Desert Memorial Healthcare District, San Bernardino County Fire Protection District and its South Desert Service Zone, and County Service Area 70 (unincorporated County-wide multi-function agency) and its Zones W-1, R-15, and TV-5. Zone W-1 of CSA 70 will be dissolved through successful completion of this reorganization and its services and functions transferred to Bighorn-Desert View Water Agency and an improvement district of the Agency to be formed. None of the other agencies will be directly affected by the completion of this proposal through an adjustment in their boundaries as they are regional in nature.
10. Upon reorganization, the Bighorn-Desert View Water Agency will assume the responsibility for providing domestic water service within the territory of the former CSA 70 Zone W-1. The Bighorn-Desert View Water Agency has submitted a Plan for Service including a Fiscal Impact Analysis for the assumption of the water service through dissolution of CSA 70 Zone W-1 which addresses the issues as required by Government Code Section 56653. This Plan indicates that the Bighorn-Desert View Water Agency can, at a minimum, maintain the level of service delivery currently received by the area. In addition, the District has provided supplemental information providing budget projections for the first five years following annexation. The Plan for Service and supplemental information submitted by the District have 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 for Service and supplemental data submitted conform to those adopted standards and requirements.
11. The proposal complies with Commission policies and the determinations made within the Homestead Valley Community service review. The reorganization area can benefit from the assumption of water service through the Bighorn Desert View Water Agency as evidenced by the Plan for Service and through the ability to directly participate in the governance of this service through voting for the Board of Directors.
12. This proposal will not affect the fair share allocation of the regional house needs as the entire area is unincorporated with the Regional Housing Needs Allocation (RHNA) numbers assigned to the County of San Bernardino.
13. With respect to environmental justice, the reorganization provides for the continuation of existing retail water services within the area and will not result in the unfair treatment of any person based upon race, culture or income.
14. The County of San Bernardino has successfully completed the process for the determination of the transfer of ad valorem property tax revenues upon successful completion of this reorganization to the Bighorn-Desert View Water Agency. This fulfills the requirements of Section 99 of the Revenue and Taxation Code.
15. The maps and legal descriptions, as revised, are in substantial compliance with LAFCO and State standards through certification by the County Surveyor's office.

