

# LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: MAY 13, 2015



FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer  
SAMUEL MARTINEZ, Assistant Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

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SUBJECT: Agenda Item #12 – Discussion of Status of Potential Proposal to  
Activate Latent Authority for East Valley Water District to Provide the  
Services of Wastewater Treatment, Disposal, and Recycling

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## **BACKGROUND:**

At the April 15 hearing, staff was requested to provide information related to the status of a potential proposal to activate the wastewater treatment, disposal and recycling authority for the East Valley Water District (hereafter "District"). Staff has been working with the District to address the submission of a proposal to activate expanded services under its sewer function to include the operation of a regional wastewater treatment plant. In order to address this issue, it is important to understand the relationship of the Commission to the functions authorized a special district under its parent act. The following provides an historical outline to clarify this relationship.

## **LAFCO AUTHORITY OVER LATENT POWER:**

At the inception of Local Agency Formation Commissions in 1963 they were fashioned with a governing board made up of members of the Board of Supervisors, City Councils and a public member in all counties of California except for San Francisco. They presided over public hearings on city annexations, detachments, district formations, annexations, detachments, and reorganizations which included those types of changes. In 1970, at the behest of special districts throughout the State, representation on Commissions to have a seat at the table for determinations on their boundaries and governance was granted to independent special districts. AB 1155 (Knox) was approved and enacted, Chapter 1249 of Statutes of 1970, which authorized a process to allow for the seating of special districts but that came with a price, the loss of the direct authority to activate latent power authorized in each districts principal act (a copy of the relevant portion included as Attachment #1 to this report).

In 1976, at the request of independent special districts in San Bernardino County, Special Districts were seated on the Commission, the Rules and Regulations affecting special districts were adopted and the listing of authorized functions and services was developed through a survey process for all special districts under LAFCO purview. From 1976 through 2001 this process remain effectively static, but with the update of LAFCO law through approval AB 2838 (Hertzberg) there was a fundamental shift, all members represented on the Commission were to fund its operations, and in every sphere of influence update or amendment the active functions and services of special districts are to be reviewed. San Bernardino LAFCO commenced its mandatory service review/sphere of influence amendment process in 2002 and complied with this requirement.

**EAST VALLEY WATER DISTRICT:**

In 1976 when requested for response, the District (then known as the East San Bernardino County Water District) identified its range of services to be water, sewer and park and recreation. The Exhibit A detailing the functions and services performed by all special districts within San Bernardino County under the procedures required by District Reorganization Act limited the District’s services to those services and functions listed at the time. In 2003-04 the Commission undertook the mandatory service review/sphere of influence update process for the east valley region of the County. In August of 2004, the service review report for the District was presented to the Commission and its determinations outlined in LAFCO Resolution No. 2836 (copy included as Attachment #2 to this report). In compliance with Government Code Section 56425(i) the following information was included:

**WHEREAS**, the Local Agency Formation Commission of the County of San Bernardino is required to review and update the Exhibit “A” of the Rules and Regulations of Special Districts to outline the services provided. The Exhibit “A” of the Rules and Regulations is amended to read as follows:

SERVICE	FUNCTIONS
Water	Retail, agricultural, domestic, replenishment
Sewer	Sewage collection
Park and Recreation	Development, maintenance in conjunction with water facilities

**WHEREAS**, pursuant to the provisions of Government Code Section 56425(h), the range of services provided by the East Valley Water District is limited to those identified above, and such range of services shall not be changed unless approved by this Commission; and,

From 2004 through October 2014, no questions were raised regarding this determination. However, in October 2014, through discussions related to the water conservation study, LAFCO staff was made aware of the wastewater treatment plant project for the District. Specifically, on October 20, 2014 the District’s manager and consultant outlined the wastewater treatment plant project and LAFCO staff outlined to the District that it did not

have authorization to provide for anything other than wastewater collection and would need to apply to LAFCO for activation of the latent services under its sewer function. Attachment #3 to this report provides a copy of the letter sent to the City of Highland that provides a general outline of the project and the District’s purpose in pursuing it.

As staff understands the sequence of events related to this project from review of its website, the District has taken the following primary steps:

September 2013		District Board of Directors authorizes General Manager to retain the services of a Program Manager for the evaluation of possible sewer treatment plant; this is a direct outgrowth of the 2012 Sewer Master Plan upgrade
January 2014		District awarded a contract for professional services to RMC to conduct a feasibility study for a water reclamation plant
October 2014		In closed session negotiation of purchase of property north of 3 <sup>rd</sup> street, east of Sterling Avenue for water reclamation plant conducted
October 2014		Accept final Feasibility Study and direct General Manager/CEO to pursue the construction of Water Reclamation Plant on District owned property; Authorize General Manager/CEO to issue RFQ and RFP for the design, build, and operation of the Sterling Recharge Facility (aka Water Reclamation Plant); Issue RFP for environmental consulting on Sterling Recharge Facility.
February 2015		Award Program Management Services Contract to Kennedy/Jenks Consultants for the District’s Recycled Water Center; Award legal services contract to Musick, Peeler & Grant LLP for preparation of EIR and related CEQA compliance matters for District’s Recycled Water Center; Award Professional Services Contract to ESA to prepare EIR and related CEQA compliance documents for District’s Recycled Water Center
March 2015		Accept the findings of the updated Recycled Water Feasibility Study by RMC; receive and file the Economic Impact of the East Valley Recycled Water Project by John Husing; receive responses from community survey conducted by Probolsky Research Inc.

At the March 18, 2015 Board of Directors meeting an item to initiate the activation process required by Government Code Section 56824.10 through 56824.14 was presented and the matter continued due to questions on noticing to the April 22, 2015 hearing. This item included a draft resolution of initiation and other background material. Ultimately the April 22 Board of Directors special meeting was canceled and staff is awaiting the rescheduling of this matter.

During this period LAFCO staff and Legal Counsel continued to meet with the staff of the District and its Special Counsel and Legal Counsel to review the options related to consideration of the activation proposal due to the complications of the progression of the project. LAFCO staff has provided to the District four options for consideration and are currently awaiting information as to the choice to move forward. Each of the options to address the question were reviewed and concerns outlined related how to move forward with the project. It appears that the choice will be to create some kind of Joint Powers Authority but the exact parameters of this effort are not clear at this time. LAFCO staff continues to work with all parties involved in this issue and seeks to be sure that the integrity of the process and the requirements of State law are complied with.

No action is required of the Commission other than to note receipt of the report and direct staff on any matters related to this discussion.

KRM

Attachments:

- [1 -- Excerpt from AB 1150 \(Knox\) Statutes of 1970](#)
- [2 -- LAFCO Resolution No. 2836](#)
- [3 -- East Valley Water District Letter to City of Highland Dated January 16, 2015 outlining the Project with attachments presented to City Council on January 27, 2015](#)