

# LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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**DATE:** MAY 13, 2015  
**FROM:** KATHLEEN ROLLINGS-McDONALD, Executive Officer  
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**TO:** LOCAL AGENCY FORMATION COMMISSION



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**SUBJECT:** Agenda Item #9: LAFCO 3174 – Service Review for Water  
Conservation within the Valley Region

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## **RECOMMENDATION:**

Staff recommends that the Commission take the following actions related to LAFCO 3174:

1. For environmental review certify that the service review is statutorily exempt from environmental review and direct the Executive Officer to file the Notice of Exemption within five (5) days.
2. Receive and file the service review for Water Conservation within the Valley Region which provides the written statements for the six determinations outlined in Government Code Section 56430.
3. Direct LAFCO staff to provide continued monitoring of the districts as warranted related to reporting issues on Appropriation Limits for the Municipal Water Districts and compliance with the provisions of Govt. Code Section 56133 for the Chino Basin Water Conservation District as outlined in the report.
4. Initiate a sphere of influence review for the Chino Basin Water Conservation District to evaluate the alternatives of:
  - a. Expansion of the sphere of influence to be coterminous with the sphere of influence of the Inland Empire Utilities Agency;
  - b. Expansion to include the whole of the Chino Basin; or
  - c. Designation of a zero sphere of influence.
5. Modify LAFCO 3173 (application submitted by the San Bernardino Valley Water Conservation District) to evaluate alternatives for the sphere of influence designation as follows:

- a. Expansion of the sphere of influence to be coterminous with the sphere of influence of San Bernardino Valley Municipal Water District,
- b. Include the whole of the Bunker Hill Basin, or
- c. The request initiated by the District to expand the sphere of influence from its current zero sphere designation to include the district's boundary plus an additional 1,973 acres.

## **BACKGROUND:**

In November 2013 the San Bernardino Valley Water Conservation submitted an application to expand its sphere of influence to include the territory of the Santa Ana River and its existing boundaries (LAFCO 3173). As required by law, such a sphere of influence request requires that a service review under Government Code Section 56430 be conducted. Since LAFCO had initiated the second cycle of service reviews for the Valley Region it was determined that the discussion of water conservation would be the first regional service review to be prepared. This review evaluates the activities related to water recharge and water conservation education under the new concept of an assessment of services regionally rather than the community-by-community approach utilized in the first cycle of service reviews.

This evaluation required the receipt of substantial amounts of information from each of the five entities which provide for the recharge of the Valley groundwater basins: Chino Basin Water Conservation District, Inland Empire Utilities Agency, San Bernardino Valley Water Conservation District, San Bernardino Valley Municipal Water District, and the San Bernardino County Flood Control District.

The draft service review report was provided to all the affected agencies for review and comment which culminated with a joint meeting on March 30. Written comments to the draft report were received from the all of the primary districts and are included as Attachment #8 to the service review. The final step for the service review is the presentation of the report to the LAFCO Commission at a public hearing. The report prepared is provided as Attachment #1 to this report.

## **PRESENTATION OF WRITTEN STATEMENTS ON DETERMINATIONS:**

Government Code Section 56430 requires that the Commission evaluate six determinations when conducting a service review and provide a written statement for each. The following provides a summary of the statements dealt with in-depth in the service review report provided.

### **Determination I - Growth and population projections for the affected area**

Within San Bernardino County, the Valley Region is the most densely populated area, with 73% of the population within it, but accounting for only 2.5% of the county's land

area. Based on these figures, the estimated population density of the Valley Region is approximately 2,977 persons per square mile, which is similar to neighboring Los Angeles and Orange Counties.

The 2014 estimated population is 1.5 million, and projections identify the Valley to grow at a rate of 0.3% annually through 2020. It is not until 2025 that the growth rate is projected to increase. LAFCO uses a 30-year horizon for its population projections, and its analysis in conjunction with Southern California Associated Governments (“SCAG”) projections provides a projected population of 2.1 million in 2045. The 2045 figure would be roughly twice that of 1990, with presumably twice the density overall. These population projections are shown below:

Population Source Year	Census			Estimate	Projected		
	1990	2000	2010	2014	2025	2035	2045
<b>Valley Region</b>							
<b>Population</b>	1,064,522	1,280,603	1,476,306	1,510,985	1,710,583	1,899,690	2,119,309
<b>Annual Growth Rate</b>	1.6%				1.1%		
sources:							
1990, 2000, and 2010 population (U.S. Census)							
2014 estimate population (ESRI)							
2025 through 2045 population (SCAG and LAFCO)							

The population projections do not include the heavy daily business, commercial, education and industrial activities. Further, the transient traffic on Interstates 10 and 15 (two of four interstates that exit Southern California to the east) has significantly increased in volume each decade and is anticipated to continue to do so. All of this signals that the Valley Region is one of the most densely populated and traveled parts of the state and that conjunctive use of water resources will only intensify for the already impacted groundwater basins.

Determination II - The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence

The Valley Region as defined by LAFCO contains 75 square miles of unincorporated territory (15% of the Valley Region). Of that 75 square miles of unincorporated territory, 32 square miles (or 43%) is classified as a disadvantaged community; although some of that area includes government-owned, open space, or park land.

Determination III - Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs and deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence

Integration of flood and stormwater management strategies with recharge and conjunctive use opportunities contributes to water supply reliability in the region. The San Bernardino Valley region has been significantly urbanized over the past several decades and the area continues to grow with numerous in-fill development projects. As

the amount of impervious surface increases with urbanization, the runoff, and, therefore, storm and flood flows are also increasing. Without adequate flood control systems to capture and contain these surface waters for recharge, the opportunities for water supply, water quality, and environmental improvement are greatly lessened or lost. Therefore, formulating strategies to further capture storm runoff and use it for recharge of the groundwater basins will provide both flood management and water supply benefits to the region.

As identified by the Department of Water Resources, the Chino Basin, Bunker Hill, and Riverside-Arlington basins have been designated as High Priority basins and the other basins as Medium Priority basins for future monitoring. Within the Chino Basin, storm water recharge has declined significantly since FY 2010-11 (due to the drought), being less than the storm water recharge average during the previous 10 years. Recycled water was first considered a recharge source to reduce reliance on imported water from the Metropolitan Water District of Southern California. However, due to the current drought and restrictions placed upon the State Water Project, recycled water has now become a necessity for the basin. In the San Bernardino Basin Area, groundwater storage is now at the lowest level in recorded history, easily surpassing the previous low point in 1964, which took place at the end of a 20-year drought. In turn, multiple recharge and recovery projects are moving forward to be able to capture and use as much of the local supply as possible in order to lessen reliance on the State Water Project.

In response to efforts to reduce consumer consumption, the two water conservation districts in the Valley are neither 1) responsible for the demand reductions required by the Water Conservation Act of 2009 (10% demand reduction by 2015 and 20% by 2020), nor 2) responsible for helping the retail agencies within their respective boundary achieve their water use reductions as the water conservations districts are not “urban wholesale water providers”. The Inland Empire Garden Friendly program was developed by the four major water suppliers of western Riverside and San Bernardino counties with cooperation from a university institute, conservation district and local botanic garden. The Inland Empire Garden Friendly program was created to assist consumers in locating and learning about climate-appropriate plants for the Inland Empire.

Specific to the West Valley portion of the region, the Chino Basin WCD has long provided water conservation sustainability services to its constituents through demonstration and education and it provides this service well. To further its demonstration and education service, it opened its Water Conservation Center campus in 2014. However, the service of Chino Basin WCD is limited to within its boundary which encompasses only a portion of the Chino Basin. Chino Basin WCD has received QWEL (Qualified Water Efficient Landscaper Board) and EPA certification as an adopter of the QWEL program and as an EPA WaterSense Labeled Professional Certification Program provider. QWEL certification is a valuable tool for consumers to be able to select landscape and maintenance professional who understand and have value for water and resource conservation. Seven district staff are QWEL certified and can teach the class to others.

For the East Valley portion of the region, the SB Valley WCD currently budgets very limited funding toward conservation education and outreach efforts. Instead, it focuses on water recharge efforts in cooperation with other agencies such as providing school and other outreach through Inland Empire Resource Conservation District. Additionally, SB Valley WCD actively supports and helps fund the iEfficient initiative, leads a Basin Technical Advisory Committee subcommittee for landscape education for implementing the qualified water efficient landscaper program (QWEL), and has a certified trainer on staff.

#### Determination IV - Financial ability of agencies to provide services

The Chino Basin WCD has a high unassigned fund balance that seems disproportionate to the services the district provides. MUNI had an unrestricted Net Position of \$108 million at June 30, 2013, a substantially high figure. The Board of Directors has designated \$18 million of this reserve to be retained for the purpose of self-insuring the district against any claims made against it.

SB Valley WCD has recently come out of a difficult financial time which began in 2008 and continued through 2011. This situation mirrored the overall economic slow-down; however, the effect on the district was more severe because all sources of its revenues were impacted at the same time. Since this time the district has revised its financial structure, reduced costs and implemented various policies that will reduce the likelihood and severity of these occurrences in the future. The district implemented cost reductions documented in the annual budgets including the reduction from seven to five divisions for the board of directors as allowed by special legislation (SB-235). In 2011 and 2012 the Groundwater Charge was increased by 25% and 15% respectively to allow the groundwater fund to raise adequate revenue to operate the facilities within its financial ability without subsidy from the district reserves or other enterprises. The district has high liquidity, no long-term debt, and meets its service obligations (after capital projects). Therefore, a high unassigned fund balance seems disproportionate to the services the district provides. In response to the review of the draft staff report, SB Valley WCD has provided additional information that identifies that it has a counter-cyclic revenue and expense cycle and that without accumulating this reserve rates would be highly variable. The District has also identified that it is presently designing capital improvements which will use much of the reserve attributed to groundwater. Should the district desire to actively provide habitat management and enhancement (related to the Wash Plan) beyond its own properties, it would need to receive special legislation to expand the scope of its authorized activities as well as submit an application to LAFCO to request authorization to provide said service under the provisions outlined in Government Code Section 56824.10 et seq.

Chino Basin WCD, IEUA, and MUNI are subject to an appropriations limit as outlined in the State Constitution. San Bernardino Valley WCD is not subject to the appropriations limit as it was determined to be exempt due to its limited tax rate in 1977-78. IEUA and MUNI annually adopt the limit as part of its budget process. A review of the audits for IEUA and MUNI does not identify a review of the annual calculation of the limit as

required by the Constitution. LAFCO staff recommends that IEUA and MUNI include this requirement in future audits. Chino Basin WCD established its appropriations limit on January 12, 2015 and has indicated it will be reviewed in future audits.

Determination V - Status of, and opportunities for, shared facilities

Throughout the Valley Region there are numerous partnerships between Flood Control District, the municipal water districts, and the water conservation districts for storm water capture. This symbiotic relationship produces both economies of scale and duplication of service. As long as there are multiple agencies authorized to provide stormwater capture the opportunity to share facilities will remain.

Determination VI - Accountability for community service needs, including governmental structure and operational efficiencies

Within at least the past ten years, the two water conservation districts have not consistently yielded enough candidates for the board of directors to field competitive elections. This has resulted in the majority of the seats being filled by appointments in lieu of election. The elections for the Municipal Water Districts are more competitive: IEUA has had an election for at least one board member in eight out of the last ten election cycles; and MUNI has had an election for at least one board member in seven out of the last ten election cycles.

Given the determinations outlined within this service review, LAFCO staff's position is that one of two options should be supported by the Commission: (1) the consolidation of the two Water Conservation Districts into a single Water Conservation District serving the entirety of the Valley region and bringing the educational opportunities to a much broader constituency, or (2) the two water conservation districts should consolidate with its respective overlaying municipal water district.

**ENVIRONMENTAL CONSIDERATIONS:**

The Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates, has indicated his recommendation that the review of LAFCO 3174 is statutorily exempt from California Environmental Quality Act (CEQA). This recommendation is based on the finding that the service review is not judged to pose any adverse changes to the physical environment. Therefore, the service review is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061 (b)(3). A copy of Mr. Dodson's analysis is included as Attachment #3 to this report.

**CONTINUED MONITORING:**

This service review identifies areas where the districts fail to comply with the State Constitution, State Law, and generally accepted good-governance practices. San Bernardino Valley Municipal Water District disputes one issue where continued monitoring is recommended related to its appropriation limit annual review.

LAFCO staff's position relates to the language of Section 1.5 of the State Constitution which reads that the annual calculation of the appropriations limit (Gann Limit) for each entity of local government shall be reviewed as part of an annual financial audit. The draft service review recommended that the Commission continue to monitor the two municipal water districts (IEUA and MUNI) as a review of their audits does not identify the annual calculation of the appropriation limit.

During the review and comment period for the draft service review report, MUNI voiced opposition through letter and legal counsel position that there is no constitutional or statutory requirement for municipal water districts to review the appropriations limit in its annual independent audit. MUNI requested that the Commission not adopt the recommendation of staff to require that its annual audit include a review of whether or not MUNI has complied with the Gann Limit. Inland Empire Utilities Agency ("IEUA") did not provide comment on this matter during the review and comment period of the draft service review.

Further research by LAFCO staff through its Legal Counsel reveals that while the annual review of the appropriations limit does not have to be included in the annual independent audit, a review of the appropriations limit calculations nonetheless has to occur in some manner (e.g. independent auditor, the agency). In addition, MUNI's action of establishing its annual appropriations limit and submitting an Annual Statement of Financial Transactions to the State Controller, in which it identifies its Gann Limit, does not satisfy the separate additional requirement imposed by Section 1.5 to review the annual calculation of the appropriations limit. Attachment #2 to this report includes the differing legal opinions provided by MUNI and LAFCO legal counsels.

Given the analyses of the legal counsels, LAFCO staff has amended its recommendation as follows:

*LAFCO staff recommends that the Commission determine that Section 1.5 of the State Constitution (that the annual calculation of the appropriations limit (Gann Limit) for each entity of local government shall be reviewed as part of an annual financial audit) may be satisfied through an annual review either by independent auditors, the agency, or its agents, not including the Annual Statement of Financial Transactions submitted to the State Controller. Confirmation of such review is to be provided to LAFCO to satisfy evaluation of this constitutional requirement as a part of a service review.*

Therefore, LAFCO staff's position remains that the Commission approve the recommendation for continued monitoring of MUNI and IEUA related to reporting issues on appropriations limits. Chino Basin WCD recently adopted its appropriations limit and evaluation of the calculation would not take place until the conduct of its next audit.

Further, this requirement extends to all agencies which are statutorily required to have an appropriation limit. Therefore, LAFCO staff's position is that, as a best practice, the cities and special districts should provide for an annual review of its Gann Limit calculations as

part of their annual independent financial audits and a letter outlining this requirement will be provided to all agencies.

### **ADDITIONAL DETERMINATIONS:**

1. As required by State Law notice of the hearing was provided through publication in a newspaper of general circulation within the area, the *San Bernardino Sun* and the *Inland Valley Daily Bulletin*. Individual notice was not provided as allowed under Government Code Section 56157 as such mailing would include more than 1,000 individual notices. As outlined in Commission Policy, in-lieu of individual notice the notice of hearing publication was provided through an eighth page legal ad.
2. As required by State law, individual notification was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.

### **CONCLUSION:**

Given the determinations presented in the service review report, it is LAFCO staff's position that the Commission should support one of two options:

- The consolidation of the two Water Conservation Districts into a single Water Conservation District serving the entirety of the Valley region and bringing the educational opportunities to a much broader constituency, or
- The two water conservation districts should consolidate with its respective overlaying municipal water district.

The first scenario of a single Water Conservation District encompassing the Valley has not been supported by any of the districts citing such concerns as separate basin activities and resources to the location of operations and governance. While this scenario would provide direct control of the consolidation process by the Water Conservation Districts and provides for a means to extend the conservation educational elements to all of the urban valley region, it appears that it has been discounted by all involved in the study. Without support from some quarter of the affected agencies, success would not be anticipated.

Turning to option two, consolidation with the respective Municipal Water Districts, for SB Valley WCD, a proposed consolidation of the SB Valley WCD and the San Bernardino Valley Municipal Water District was denied by LAFCO on the basis that the financial and structural issues identified by staff were being addressed by the District and consolidation would not offer an assurance of the continued services. During the processing of this service review, both the SB Valley WCD and MUNI have outlined their reluctance to consolidate given the contentious nature of the previous process and the deep and painful wounds that linger. However, as a part of this service review these agencies, along with East Valley Water District, have submitted an outline to form a Groundwater Sustainability Council ("Council") for stormwater capture, water import funding, and groundwater recharge



which they are circulating to the east valley retailers. This effort a means or mechanism to coordinate key functions and shared services and facilities, absent formal consolidation. The Council would be the responsible entity for ensuring adequate stormwater capture, imported water funding, and groundwater recharge efforts. The Council would be composed of the general managers of the water producers from the basin. While this scenario does not achieve consolidation it moves toward shared services and facilities, and it provides a means to move towards more efficient provision of this service in the East Valley area. While not the preferred method for service provision, LAFCO staff would support this option absent a desire for consolidation by the agencies. The one caveat with the structure is that the general managers form the council rather than elected officials which does not allow for a true functional consolidation as a joint powers authority would. Given the proviso identified above, LAFCO staff supports this effort and in doing so recommends that the Commission modify LAFCO 3173 to evaluate the alternative of modifying the SB Valley WCD's sphere of influence to be more in line with the Council's proposed efforts.

For the West Valley, efforts and sentiments to dissolve the Chino Basin WCD date back to at least 1969 based on the reasoning that the district's functions and services could be assumed by an overlying agency that has the same authorized functions and services (IEUA or Flood Control District). Given the information gathered and the determinations of this service review, LAFCO staff's position is that the best option for continuing the level of service currently offered for the entire West Valley would be for the Chino Basin WCD to consolidate with the IEUA. Should these districts not desire to put forth an application to LAFCO, the formation of an alliance, joint powers agency, or council similar to that as being proposed in the East Valley would move towards achieving greater economies of scale. Therefore, LAFCO staff recommends that the Commission initiate a sphere of influence proposal to evaluate an expansion of the Chino Basin WCD's existing coterminous sphere.

In order to address these recommendations, LAFCO staff is proposing that the Commission:

- Initiate a sphere of influence review for the Chino Basin Water Conservation District to include analysis of the following alternatives:
  - Expansion of the sphere of influence to be coterminous with the sphere of influence of the Inland Empire Utilities Agency;
  - Expansion to include the whole of the Chino Basin; or,
  - Designation of a zero sphere of influence.
- Modify LAFCO 3173 (application submitted by the San Bernardino Valley Water Conservation District) to include the analysis of the following alternatives:
  - Expansion of the sphere of influence to be coterminous with the sphere of influence of San Bernardino Valley Municipal Water District,
  - Include the whole of the Bunker Hill Basin, or
  - The request initiated by the District to expand the sphere of influence by 1,973 acres.

Staff recommends that the Commission take the actions outlined on pages 1 and 2 to provide for the completion of the service review for water conservation in the Valley Region and initiate the further sphere of influence studies.

KRM/MT

Attachments:

1. [Service Review with Attachments](#)
2. Appropriations Limit Analysis
  - a. [Memorandum from LAFCO Legal Counsel dated April 22, 2015](#)
  - b. [Letter from San Bernardino Valley Municipal Water District Legal Counsel dated April 6, 2015](#)
3. [Environmental Recommendation from Tom Dodson](#)