

**DRAFT - ACTION MINUTES OF THE - DRAFT
LOCAL AGENCY FORMATION COMMISSION
HEARING OF DECEMBER 16, 2015**

REGULAR MEETING

9:00 A.M.

DECEMBER 16, 2015

PRESENT:

COMMISSIONERS:	Jim Bagley	Larry McCallon
	Kimberly Cox, Vice-Chair	James Ramos
	James Curatalo, Chair	Acquanetta Warren, Alternate
	Steve Farrell, Alternate	Diane Williams
	Robert Lovingood	

STAFF:

- Kathleen Rollings-McDonald, Executive Officer**
- Clark Alsop, LAFCO Legal Counsel**
- Samuel Martinez, Assistant Executive Officer**
- Michael Tuerpe, Project Manager**
- Jeffery Lum, LAFCO Analyst**
- Rebecca Lowery, Clerk to the Commission**
- Bob Aldrich, LAFCO Consultant**

ABSENT:

COMMISSIONERS: **Janice Rutherford, Alternate** **Sunil Sethi, Alternate**

9:05 A.M. – CALL TO ORDER – FLAG SALUTE

Chairman Curatalo calls the regular session of the Local Agency Formation Commission to order and leads the flag salute.

Chairman Curatalo requests those present who are involved with any of the changes of organization to be considered today by the Commission, and have made a contribution of more than \$250 within the past twelve months to any member of the Commission, to come forward and state for the record their name, the member to whom the contribution has been made, and the matter of consideration with which they are involved. There are none.

(It is noted that Ms. Warren arrives at the dais at 9:06 a.m.)

CONSENT ITEMS – APPROVE STAFF RECOMMENDATION:

The following consent items are expected to be routine and non-controversial and will be acted upon by the Commission at one time without discussion, unless a request has been received prior to the hearing to discuss the matter.

1. Approval of Minutes for Regular Meeting of November 18, 2015

2. Approval of Executive Officer's Expense Report
3. Ratify Payments as Reconciled for Month of November 2015 and Note Cash Receipts
4. Consideration of: (1) CEQA Statutory Exemption for LAFCO SC#402; and (2) LAFCO SC#402 – City of San Bernardino Irrevocable Agreement to Annex for Sewer Service (APN: 0268-291-09 Muscoy)
5. Consideration of Fee Reduction Request by the City of Needles/San Bernardino County Fire Protection District for its Reorganization Proposal to Annex the City of Needles Territory to the San Bernardino County Fire Protection District

LAFCO considered the items listed under its consent calendar, which includes a Visa Justification, the Executive Officer's amended expense report, ratification of payments as reconciled for the month of November, LAFCO SC# 402 and the consideration of fee reduction for the City of Needles. Copies of each report are on file in the LAFCO office and are made part of the record by their reference herein.

Executive Officer Kathleen Rollings-McDonald says that an amended expense report for the Executive Officer has been provided to the Commission.

Chairman Curatalo calls for requests for deferral from Commissioners or staff; there are none.

Commissioner Lovingood moves approval of the consent calendar as revised, second by Commissioner Ramos. There being no opposition, the motion passes unanimously with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Lovingood, McCallon, Ramos, Williams. Noes: None. Abstain: None. Absent: None.

PUBLIC HEARING ITEMS:

ITEM 6. CONSENT ITEMS DEFERRED FOR DISCUSSION

No items deferred for discussion.

DISCUSSION ITEMS:

ITEM 7. CONTINUED FROM THE NOVEMBER 18, 2015 HEARING - PRESENTATION REQUIRED PURSUANT TO POLICY AND PROCEDURE MANUAL SECTION IV- APPLICATION PROCESSING, CHAPTER 1 – PROPOSALS, POLICY 11 – ISLAND ANNEXATION PURSUANT TO GOVERNMENT CODE SECTION 56375.3 -- PROPOSED ANNEXATION TO THE CITY OF RIALTO AND WEST VALLEY WATER DISTRICT OF THE LYTLE CREEK RANCH SPECIFIC PLAN ANTICIPATING THE DEVELOPMENT OF MORE THAN 500 UNITS

Commissioner Curatalo opens the discussion item as required by LAFCO Policy 11 – Island Annexation Pursuant to Government Code Section 56375.3 related to LAFCO 3201

Reorganization to include City of Rialto Annexations et seq. Executive Officer Kathleen Rollings-McDonald presents the staff report for Policy 11 – Island Annexation, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here.

Ms. McDonald states that in September 2011, the Commission modified its Island Annexation Policy removing the requirement for a City to initiate the annexation of its islands when considering a major development application. She states that the amendment addressed two changes in circumstances: (1) the passage of SB 89 by the legislature removing the discretionary Motor Vehicle In-lieu fee on a per capita basis made the determination of sustainability for service delivery questionable; and (2) the continuing desire of the Commission to look at these issues on a case-by-case basis. She says that in September 2015, the City of Rialto submitted an application for annexation of two portions of the adopted Lytle Creek Ranch Specific Plan.

Ms. McDonald states that the annexation proposal includes the anticipated development of 3,187 residential units and 235,645 square feet of commercial development and that the specific plan includes areas already a part of the City of Rialto, bringing the total development to 6,260 residential units and 668,732 square feet of commercial development. She says that the development criteria of the island annexation policy have clearly been met requiring the discussion of the unincorporated island areas near the project.

Ms. McDonald states that it is LAFCO staff's position that LAFCO 3201 presents the last opportunity for the Commission to look at requiring the annexation of the North Rialto islands as a companion action. She says that this does not preclude efforts which may be undertaken between the County and City, along with LAFCO support, to address a comprehensive island annexation plan to provide for clarification and realignment of jurisdictions but the incentive may be different. She says that staff has evaluated the revenues available from within these areas for transfer to the City of Rialto and the anticipated cost for provision of service based upon the calculation used in the Plan for Service signed by the City of Rialto for LAFCO 3201.

Ms. McDonald states that San Bernardino County has established policies related to the transfer of ad valorem property tax, generally known as the "share the pain" process. She says that in the transfer, the historic share assigned the City is determined, what would have been the historic allocation of property tax is determined based upon that share, and then the detaching agencies' revenue is subtracted from the historic share of revenue; the remaining amount is then equally split between the City and County General Fund, generally resulting in a loss of percentage share for the annexing City. Ms. McDonald states that in the case of the City of Rialto, the historic share is less than the amount of the detaching agencies at 13.642183%. The detaching agencies have shares which total 21.043441% of property tax revenues. She says that staff has estimated that the total revenues that would be received based upon 2015-16 data is \$201,207 and that according to the County's past practice, compared to a standard annexation, this would be an increase of \$70,762.

Ms. McDonald states that an additional item of significance in considering these islands is a recent judicial decision related to the imposition of special taxes in an island annexation situation. She says that the case, *Citizen's Association of Sunset Beach vs Orange County Local Agency Formation Commission*, determined that the provisions of Prop 218 do not apply to island annexations, and the existing taxes that had been previously authorized by the annexing City

could be extended to the island without a vote. She says that this decision is significant for consideration of island annexations in San Bernardino County as this was not the interpretation prior to the decision in 2011. She says that based upon the calculation of Stan Hoffman and Associates for LAFCO 3201, this represents revenues of approximately \$235,665 annually based upon existing populations in the five islands estimated at 2,250. This would be a substantial source of revenue for the City of Rialto.

Ms. McDonald states that staff's review of the revenues and expenditures shows that there will be a cash balance available to fund reserves and/or capital replacement costs. She states that in the past, the City of Rialto has rejected the Commission's requirement to annex the island areas as their analysis showed a substantial deficit in funding and that this deficit was primarily based on the exclusion of the utility tax; and as outlined in the staff report, that situation has changed.

Ms. McDonald states that based upon the information amassed by staff related to this discussion, it is staff's position that further discussions related the North Rialto Islands in total should be pursued under the provision of Government Code Section 5637.3 in partnership with the County and City of Rialto and that this position has been conveyed to the City of Rialto representatives. Ms. McDonald states that the El Rancho Verde Island does not meet the criteria for expedited annexation and asks the Commission for direction concerning the processing for LAFCO 3201.

Commissioner Bagley comments that the issue is with the utility tax, that cities are responsible for the provision of service to the public, and that LAFCO is charged with ensuring the efficient distribution of these services.

Commissioner Ramos asks for clarification of what caused the change to the issue with the utility tax; Ms. McDonald states that it was a lawsuit over extension of city taxes that determined that the taxes can be extended and that the provisions of Prop 218 do not apply to the island annexation.

Lynn Boshart, member of the public, states her concerns over creating another island in the City and if members of the public can opt out of being in the City. She also asks about the utility users' tax and if staff has conducted an age demographic of the area. She asks if those living in the annexation area would have to connect to the sewer. Ms. McDonald states that no demographic study has been conducted, and that in the in depth discussion, that a plan for service would require, has not been held, as clearly stated in the staff report. She states that no information regarding the annexation of Rancho Verde has been presented to LAFCO and that in the past that area has been against annexing to the City of Rialto; however, Rancho Verde residents will receive notice of the Commission hearing when the proposal is ready to be heard, since they are in the area surrounding the annexation.

Commissioner Bagley gives a summary of how LAFCO is structured.

Commissioner Cox asks where the Rancho Verde area is located. Ms. McDonald points out the area on the map.

Commissioner Farrell asks if it is appropriate to consider the utility tax, since it does have a sunset. Ms. McDonald states that it is the existing tax structure for the City, and the City would

need to address that revenue issue at the time of the sunset.

Rob Steel, Assistant City Administrator, City of Rialto, submits a letter from the City to be made part of the record. He states that the City disagrees with the recommendation to pursue the annexation of the north Rialto islands in conjunction with the Lytle Creek annexation, stating that it will place a financial hardship on the City. He says that the staff report does not take into consideration the cost of providing fire services to the City. He says that the City is willing to move in good faith toward the annexing of the islands, once they are able to conduct their analysis of the project.

Commissioner Cox asks Mr. Steel why it costs more to serve their island residents than those in other parts of the City. Mr. Steel says that the City spends more on services than the revenue it receives in the residential areas.

Commissioner Williams asks what the ad valorem tax rate is; Mr. Steel states that it is a 13.6% tax rate. Ms. McDonald states that is within the Lytle Creek Ranch Annexation through the County's "share the pain" plan, but for the islands, the share increases it to approximately 21%.

Commissioner McCallon states that the discussion on annexing these islands has been going on for 20 years, and how can the Commission rely on the City's good faith word to address this issue. Mr. Steel states that he understands the Commission's concern and that the City wants to ensure that all its residents receive the same level of service without causing fiscal issues for the City.

Commissioner Lovingood asks for clarification of how the City manages to provide service with its current deficit. Mr. Steel states that for new residential developments they require a formation of a Community Facilities District, which charges an annual fee or special tax, to ensure that they at least break even; with existing residents, the City cannot apply that charge. Commissioner Lovingood asks how long that has been in place; Mr. Steel says since 2005.

Commissioner Bagley asks how granting more time can help; Mr. Steel state that there is some mutual interests in the County that require time to acquire. Commissioner Bagley states that it does not make sense for the City not to be the provider of service for these island areas and that there is an opportunity to move forward. Mr. Steel states that the City's government officials would want to be involved in the process and that the City has not conducted any outreach on the annexing of the islands.

Commissioner Ramos states that the item in front of the Commission is that of the Annexation Policy and that no determination regarding the annexation of the Rialto Islands is to be voted on at this time. He says he has concerns regarding the utility tax and asks how far out staff analyzed the finances. Ms. McDonald states that staff projected out a single year.

Commissioner Cox asks who provides water, sewer and trash service to the City. Ms. McDonald says that West Valley Water District, Burrtec (trash) and the City of Rialto (sewers) are the providers.

Commissioner Warren asks if the City has the trunk line for sewer; Mr. Steel states he is not sure where the lines are. Ms. Warren says that connection to sewer lines can be costly to the

residents.

Commissioner Farrell asks about the percent of fire costs not included in the financial information; Mr. Steel says that the costs are high since they have to compensate the County for shared services. Mr. Farrell asks that finances regarding fire provision be clarified if the annexation is proposed in the future. Ms. McDonald states that information came from the Fiscal Impact Analysis for LAFCO 3201, which is listed at \$149.91 per unit.

(It is noted that Commissioner Lovingood leaves the dais at 10:01 a.m.)

Jane Hunt, member of Save Lytle Creek Wash, states that she supports the residents of the El Rancho Verde area and asks for clarification of the Lytle Creek Ranch Specific Plan. Ms. McDonald states that Ms. Hunt is not impacted by LAFCO 3201 and that the notation regarding the Lytle Creek Ranch Specific Plan is related to the Commission's Annexation Policy for discussion on island annexations and not an action item for consideration.

(It is noted that Commissioner Lovingood returns to the dais at 10:05 a.m.)

Commissioner Cox states that more discussion needs to be held between staff, the City and the County and that staff should move forward in addressing the Rialto Islands. Ms. McDonald states that LAFCO 3201 will continue to be processed and that currently staff is waiting for the required property tax transfer resolutions from the City and the County to be completed, so that it can be heard by the Commission.

Chairman Curatalo asks if staff will present information regarding the annexation of the islands at the time that the staff report for LAFCO 3201 is heard by the Commission. Ms. McDonald states that if the Commission directs staff to prepare and present that information, it will be presented at that time.

Commissioner Bagley states that the Commission has an obligation to protect the public and that the Commission has an opportunity to improve the municipal services. He is in agreement with staff continuing the discussions to annex the islands.

Commissioner Lovingood asks if there will be a definitive time limit for the completion of the island annexation discussions. Ms. McDonald states that prior to the Commission's hearing of 3201 would be a logical time.

Commissioner Bagley modifies the recommendation to include the discussion of the annexation of the Rialto Islands at the time LAFCO 3201 is heard.

Chairman Curatalo calls for further comments. There being none, he closes the discussion.

Commissioner Bagley moves approval of the modified recommendation, second by Commissioner Cox. There being no opposition, the motion passes unanimously with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Lovingood, McCallon, Ramos, Williams. Noes: None. Abstain: None. Absent: None.

(It is noted that Commissioners Warren and Ramos leave the dais at 10:15 a.m.)

ITEM 8. WORKSHOP: OUTLINE OF ISSUES RELATED TO COMMISSION CONSIDERATION OF LAFCO 3197/3198 – CITY OF SAN BERNARDINO FIRE REORGANIZATION WITH THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT AND LAFCO 3199/3200 TWENTYNINE PALMS FIRE REORGANIZATION WITH THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

Executive Officer Kathleen Rollings-McDonald presents the staff report for the workshop, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here.

Ms. McDonald states that staff has placed this workshop on the agenda to review the issues related to the City of San Bernardino and the Twentynine Palms Water District. She states that the proposals as presented represent a good government approach to providing a continuing and sustainable fire protection and emergency response service. She states that LAFCO is responsible for addressing the details to assure a smooth transition,, to assure that the constituents understand the ramifications and that staff has done their best at due diligence for these proposals.

Ms. McDonald states for notices, Legal Counsel has directed that individual notice be provided to landowners and registered voters for both the Commission and Protest hearings. This means that approximately 44,000 notices will be mailed for each of the hearings for the San Bernardino proposal and approximately 15,500 notices for each of the hearings for the Twentynine Palms proposal. She states that based on that information, staff has requested the Commission's concurrence in changing the January hearing date to the 27th with the notices being mailed on January 4th. She states that the concurrence has been received and staff is recommending that the Commission officially change the hearing date by ratification.

Ms. McDonald reviews the County fire area maps for the San Bernardino Proposal and for the Twentynine Palms Proposal on the overhead.

(It is noted that Commissioner Ramos returns to the dais at 10:19 a.m.)

Ms. McDonald states that the primary issues for San Bernardino are regarding the property tax transfer, the Plan for Service and Fiscal Impact Analysis. She says that a substantial portion of the property tax pledged to provide for the ongoing delivery of service is derived from the swap of Motor Vehicle In-Lieu fee for property tax which a fire protection district is not statutorily authorized to receive. She says that a condition of approval will be developed to transfer these funds in perpetuity and that the discussions are on-going.

Ms. McDonald states that the Plan for Service and the Fiscal Impact Analysis are currently being updated to reflect the information required by LAFCO staff and include the transfer of equipment funded by the San Manual Tribe of Mission Indians, the Community Facilities District funding the Verdmont Fire Station, and a question of the transfer of ownership of that station as it is function of lease back financing with the California Infrastructure and Economic Development Bank. She states that in addition, a new issue has been brought to staff attention regarding Inland Valley

Development Agency. She states that this proposal will be heard in January.

Ms. McDonald states that for Twentynine Palms the primary issue to be resolved is that of the unfunded PERS pension liability. She states that it has been determined that the estimated liability is \$3,000,000. She states that this proposal will be heard in February.

Ms. McDonald states that staff continues to work with all parties in the discussion to resolve the issues that have been presented, and that the purpose of the workshop is to outline these issues and to hear from the members of the Commission on additional questions it requires staff to address in its reports on these proposals.

Commissioner Cox asks what the Inland Valley Development Agency is; Ms. McDonald states that it is a redevelopment agency that was created by the legislature to address the closure of Norton Air Force Base with a board made up of the Cities of San Bernardino, Loma Linda, Colton, and the County of San Bernardino.

Commissioner Cox asks what the significance of the July 1 target date is for the proposals to be completed; to which Ms. McDonald states that it is when the 16/17 budgets are adopted and that the special tax information, based on those budgets, must be given to the tax collector by August 8, the financial information and plan must be in place by then.

Commissioner Cox asks if the City of Needles has the same time line; Ms. McDonald states that the City of Needles has a contract with the County Fire District as does the City of Hesperia; there will be no transfer of employees or unfunded liability issues with these proposals so there may be some latitude.

Commissioner Bagley states that he has familiarity with the financial issues related to the fire service in Twentynine Palms. He asks how the Marine Corp base will be addressed in the reorganization; Ms. McDonald states that except for the area that is in the City boundary, the Marine Corps Base is within the Fire District's boundary, so if a closure were to happen, the transfer of fire services would be simple.

Commissioner Bagley states that it is important to look at these reorganizations on a long range basis and try to plan for what may happen. He asks for clarification to the comment of the pension hold ability; to which Ms. McDonald responds that there are several ways, under PERS, in which this can be done, either termination, or the placement of the contract in inactive status; this allows for a payment schedule rather than a lump sum for the pension liabilities. Ms. McDonald states that the details will be reviewed once staff has received a plan and other information from the City of Twentynine Palms related to their obligation in the process. Commissioner Bagley says that it is his opinion that the issue of unfunded liabilities and existing debt needs to be addressed for all reorganizations that come before the Commission.

Ms. McDonald states that staff continues to move forward and continues to try to educate the public on the issues at hand, help them to understand that it is about ensuring that fire protection continues to be provided to the residents of the cities and districts and that the service remains sustainable.

Commissioner Ramos states that staff is working with all the parties toward an agreeable solution to the issues of fire reorganization. He asks for clarification of the hearing dates; Ms. McDonald states that the San Bernardino Reorganization will be heard on January 27th and Twentynine Palms will be heard in February.

Chairman Curatalo calls for comments. There are none.

Commissioner Ramos moves approval of staff recommendations, second by Commissioner Lovingood. There being no opposition, the motion passes unanimously with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Lovingood, McCallon, Ramos, Williams. Noes: None. Abstain: None. Absent: None.

INFORMATION ITEMS:

ITEM 9 LEGISLATIVE UPDATE REPORT

Executive Officer Kathleen Rollings-McDonald provides an oral legislative report update and states that she attended the CALAFCO Legislative Committee Meeting in Sacramento on December 11. Ms. McDonald states that CALAFCO will be sponsoring a single bill this year that will address JPAs; she states that CALAFCO will continue to monitor the fallout of the signing of SB 88 and the new issues regarding water service consolidations as well.

(It is noted that Commissioner Lovingood leaves the dais at 10:50 a.m.)

Ms. McDonald states that CALAFCO will work with the stakeholders of the water agencies on these water issues, but will not be taking the lead. She states that she will continue to be involved with the Legislative Committee but does not plan on taking the lead on any legislative projects at this time.

ITEM 10 EXECUTIVE OFFICER'S ORAL REPORT:

Executive Officer Kathleen Rollings-McDonald states that Kathleen Tiegs, from Cucamonga Valley Water District is the new President of ACWA. She also states that the Commission's Hearing Calendar will be very busy and lists the items that are forthcoming in the New Year and wishes the Commission happy holidays. She introduces new staff member, Jeffrey Lum, LAFCO Analyst, to the Commission.

Commissioner Cox welcomes Mr. Martinez back from his absence and wishes him well and asks that the Commission adjourn today's hearing in memory of the victims of the terrorist attack on December 2, 2016. She states her concern over the current location of the LAFCO staff office and asks for an update on the move from the current office to a new space. Ms. McDonald states that staff is continuing its negotiations with SANBAG to secure space in the historic Harvey House and that more information will be presented to the Commission once it is available.

Ms. McDonald states that the Commission's second training event regarding how to improve

public participation will be held on January 13, 2016 at the Mojave Water Agency.

ITEM 11 COMMENTS FROM THE PUBLIC

Stephen Rogers, member of the public, states that he has concerns regarding the project that the Commission is currently reviewing. He states that in Mentone, where he lives, there are also unique issues to be addressed. He states that he has concerns over the projects that are possibly pending in Mentone and perhaps there is a better way to go forward.

ITEM 12 COMMISSIONER COMMENTS

Chairman Curatalo states that the tragic events that occurred in the City of San Bernardino were horrific, but that the effective, high level of performance that was shown by the fire, police, medical emergency departments, and others is a direct result of communication and vigilant training and we should be very proud of them.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION THE HEARING IS ADJOURNED IN MEMORY OF THE VICTIMS OF THE TERRORIST ATTACK IN THE CITY OF SAN BERNARDINO ON DECEMBER 2, 2015 AT 11:08 A.M.

ATTEST:

REBECCA LOWERY
Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

JAMES CURATALO, Chairman