

Draft LAFCO Resolution No. 3216

Attachment 9

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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PROPOSAL NO.:

LAFCO 3200

HEARING DATE:

FEBRUARY 17, 2016

RESOLUTION NO. 3216

RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY MAKING DETERMINATIONS ON LAFCO 3200; APPROVING THE REORGANIZATION TO INCLUDE ANNEXATIONS TO THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT, ITS SOUTH DESERT SERVICE ZONE AND SERVICE ZONE FP-5 OF SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT AND DIVESTITURE OF THE FIRE FUNCTION FROM THE TWENTYNINE PALMS WATER DISTRICT (generally representing the boundaries of the Twentynine Palms Water District encompassing approximately 59,919 acres (93.6 square miles) for the annexation to County Fire and 63,899 acres (99.8 square miles) to Service Zone FP-5).

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 as the "Commission") in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 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 this 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 the proposal to expand the annexation to Service Zone FP-5 to include the area generally described as the peninsula of land between Morongo Road and the City of Twentynine Palms, south of the Marine Corps Air Ground Combat Center currently within the San Bernardino County Fire Protection District South Desert Service Zone but without a source of funding for fire protection and emergency medical response; and,

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" and "A-1" attached this resolution;

Condition No. 2. The following distinctive short form designation shall be used through this proceeding: LAFCO 3200;

Condition No. 3. The effective date of this reorganization shall be no earlier than July 1, 2016 subject to completion of terms and conditions outlined in this resolution for approval as authorized by Government Code Sections 56886(p) and 57202;

Condition No. 4. Upon the effective date of the reorganization, the San Bernardino County Fire Protection District (hereafter "County Fire" or "SBCFPD") South Desert Service Zone, as the Successor District to the fire and emergency medical response obligations of the Twentynine Palms Water District through divestiture of its fire function, shall succeed and/or be assigned all rights, duties, responsibilities, properties (both real and personal except as further described in conditions below), contracts, equipment, assets, liabilities (excluding California Public Employees Retirement Fund as detailed in Condition 6 below), obligations, functions, executory provisions, entitlements, permits and approvals of the Twentynine Palms Fire Department (a division of the Water District hereafter identified as "29 Palms Fire"). All outstanding special parcel tax revenues attributable to the Twentynine Palms Water District Ordinance #89 for fire protection and emergency medical response including delinquent taxes and any and all other collections or assets of 29 Palms Fire, shall accrue and be transferred to the Successor District pursuant to 56886(i). Said Successor District shall be subject to the terms and conditions contained herein;

Condition No. 5. Upon the effective date of the reorganization including annexation and divestiture, pursuant to the terms specified in the Plan for Service, attached as Exhibit "B" and the updated Employee/Property Transition Plan, attached as Exhibit "C", all current 29 Palms Fire employees (excluding the Fire Chief) shall transfer to

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the San Bernardino County Fire Protection District South Desert Service Zone with comparable position classifications, rates of pay, accrued vacation and sick leave, vacation and sick leave accrual rates, seniority rights. Said employees shall become subject to the terms and conditions set forth in said Plan for Service. All transferred employees shall be subject to the terms and conditions of the respective San Bernardino County Fire Protection District Memorandum of Understanding in place as of the effective date of the reorganization including annexation for their successor classification;

Condition No. 6 Upon the effective date of the reorganization including annexation and divestiture, the Twentynine Palms Water District shall retain the obligations for PERS unfunded retirement obligations attributed to the safety portion of the District's CalPERS plan, or other contractual obligations related to retirement approved by the District for all suppression and prevention District employees transitioning to County Fire. Prior to issuance of the Certificate of Completion a copy of the signed contractual agreement between the Twentynine Palms Water District and the City of Twentynine Palms shall be provided to the Local Agency Formation Commission. Such agreement shall address the full satisfaction of such unfunded liability, both during inactive status and upon termination of the safety portion of the District's CalPERS plan, minus a lump sum payment of the estimated ongoing unfunded liability as of June 30, 2016 by the District out of the Fire Department fund balance made prior to the effective date of the reorganization. The remaining unfunded liability, both during inactive status and upon termination of the safety portion of the District's CalPERS plan, shall be paid first from assets deposited in an irrevocable trust dedicated exclusively to the payment of such unfunded liability and consisting of, but not limited to:

- (i) Fire Department fund balance at June 30, 2016 less amounts for payment of severance, compensated sick leave transfer to County Fire, payment of vacation buyouts and annexation costs specified in the contractual agreement;
- (ii) Receipts for the sale of the Fire Station to the City of Twentynine Palms; and
- (iii) The payment of additional annual revenues as specified in the contractual agreement.

Any remaining unfunded liability not covered from assets in the irrevocable trust shall be provided for in full pursuant the terms of the contractual agreement;

Condition No. 7. Prior to the issuance of the Certificate of Completion, the Twentynine Palms Water District shall provide to the Executive Officer of LAFCO documentation that it has obtained a Workers' Compensation tailing insurance policy covering all worker compensation claims of all Twentynine Palms Water District fire suppression personnel transitioning to County Fire;

Condition No. 8. Upon the effective date of the reorganization including annexation and divestiture, the Successor District shall accept all facilities transferred from the Twentynine Palms Water District in "as is" condition [pursuant to Government Code Section 56886(h)]. All assets including, but not limited to, equipment (vehicles, apparatus, supplies, etc.) rolling stock, tools, office furniture, fixtures and equipment, lands, buildings, real and personal property and appurtenances held by the Twentynine Palms Water District, except for Fire Station #421 to be transferred to the City of Twentynine Palms, for the purpose of providing fire protection and emergency medical response, shall be transferred to the Successor District, the South Desert Service Zone of

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SBCFPD. All quitclaim deeds to effectuate the transfer of land and/or buildings and the title transfer documents for vehicles shall be prepared by the Twentynine Palms Water District to be filed upon the effective date of the change with copies provided to LAFCO;

Condition No. 9. Upon the effective date of the reorganization to include annexation and divestiture, Ordinance #89 for collections of a special tax upon the real property within the boundaries of the Twentynine Palms Water District for Fiscal Year 2016-17 and beyond shall be void;

Condition No. 10. Pursuant to the provisions of Government Code Section 56886(e) the SBCFPD Board of Directors shall be required to create a new sub-service zone under FP-5 to isolate the special tax revenue contributed by the territory within the Twentynine Palms community proposed for annexation into Service Zone FP-5 by LAFCO 3200. After conclusion of the protest hearing pursuant to Government Code Section 57000 et seq., but prior to the issuance of the Certificate of Completion, as authorized by Government Code Section 56886(o), the Board of Directors of the SBCFPD shall provide the LAFCO Executive Officer with documentation identifying how the provisions contained in Health and Safety Code Section 13950 to form the new Service Zone of FP-5 will be implemented by County Fire. All actions required by the SBCFPD to implement the special tax shall be completed prior to the August 8, 2016 due date for placement of the special tax on the tax rolls by the San Bernardino County Treasurer/Tax Collector;

Condition No. 11. Prior to the issuance of the Certificate of Completion for the reorganization to include annexation and divestiture, pursuant to the provisions outlined in Government Code Section 56886 (i), (o) and (s), the Commission requires that the successor district, the South Desert Service Zone of SBCFPD and the City of Twentynine Palms finalize a lease agreement for the continuing use of Fire Station #421. The lease payments are identified by the affected parties to provide for payment of the following:

- (1) Repayment of improvements at the station funded by the City of Twentynine Palms with a seven year payment schedule for a total of approximately \$210,000; and
- (2) Transfer of 50% of the proceeds of prior Twentynine Palms Water District Ordinance #89 special fire taxes and fines, forfeitures and penalties attributable to the operations of the Twentynine Palms Water District to be placed in the Irrevocable Trust for Unfunded Retirement payments annually outlined in Condition 6 above. These payments are scheduled to begin in Fiscal Year 2018-19;

Condition No. 12. The Successor District, South Desert Service Zone, shall also assume all joint use, maintenance, automatic aid or mutual aid agreements held by the Twentynine Palms Water District Fire Department [Government Code Section 56886(r)]. Amendments of existing agreements required for successful transfer shall be completed and submitted to the Local Agency Formation Commission prior to the issuance of the Certificate of Completion to address any changes [Government Code Section 56886(r)(v)];

Condition No. 13. Upon the effective date of this reorganization, any funds currently deposited for the benefit of the Twentynine Palms Water District fire operations which have been impressed with a public trust, use or purpose, shall be transferred to

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the Successor District and said District shall separately maintain such funds in accordance with the provisions of Government Code Section 57462;

Condition No. 14. Upon the effective date of this reorganization, any funds currently deposited with the 29 Palms Fire for the benefit of its Explorer program shall be transferred to the successor district and said district shall maintain those funds impressed with a public trust, use or purposes separately in accordance with the provisions of Government Code Section 57462;

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 Directors of the Twentynine Palms Water District shall be prohibited from taking the following actions unless it first finds an emergency situation exists as defined in Government Code Section 54956.5, and such action is supported by the San Bernardino County Fire Protection District:

a) **No Increase in Compensation or Benefits:** No increase in calculation for payment of benefits or compensation for employees of the Twentynine Palms Water District Fire Department shall be allowed. Exceptions to this prohibition include planned and budgeted increases identified in the adopted budget for Fiscal Year 2015-16.

b) **Bound by Current Budget:** No appropriating, encumbering, expending, or otherwise obligating any revenue of the Twentynine Palms Water District Fire Department beyond that provided in the current budget at the time of Commission approval, unless agreed to by the Successor District, shall be allowed.

Condition No.16. The Twentynine Palms Water District and the San Bernardino County Fire Protection District, applicants for this change of organization, 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 noted in conformance with Commission policy and Government Code Section 56668:

1. The County Registrar of Voters Office has determined that the study area is legally inhabited with 4,668 registered voters as of October 15, 2015.
2. The reorganization area is within the sphere of influence assigned the San Bernardino County Fire Protection District through approval of the companion proposal identified as LAFCO 3199.
3. The County Assessor's Office has determined that the total assessed valuation of land and improvements for the area is \$901,124,079 as of November 10, 2015. This figure is broken down as \$232,028,198 for land and \$669,095,881 for improvements.

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4. Notice of this hearing was published as required by law in *The Sun* and *The Desert Trail*, newspapers of general circulation in the area. As required by State law and Commission policy a 1/8th page legal ad was provided in compliance with the provisions of Government Code Section 56157. Individual notices were provided to all affected and interested agencies, County departments and those individuals and agencies requesting special notice. Comments from registered voters and any affected local agency have been reviewed and considered by the Commission in making its determination.
5. In compliance with the requirements of Government Code Section 56125, individual notice was mailed to landowners within the reorganization area for Service Zone FP-5 as amended (totaling 12,011) due to the special tax being extended. Comments from landowners have been considered by the Commission in making its determination.
6. The proposed reorganization does not conflict with the established City's General Plan. The proposed reorganization has no direct impact on such land use designations.
7. The Southern California Association of Governments (SCAG) has adopted a Regional Transportation Plan and Sustainable Community Strategy pursuant to the provisions of Government Code Section 65352.5. Approval of LAFCO 3200 has no direct impact on these determinations. The Sustainable Community Strategy includes as a determination the need to assure the ongoing availability of health and safety services which approval of LAFCO 3200 will support.
8. The Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates, has indicated his recommendation that the review of this reorganization proposal is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the proposal will not change the area in which the service is provided; therefore, no physical affect upon the environment can be foreseen. The Commission certifies it has reviewed and considered the environmental recommendation and finds that a General Rule Statutory Exemption as authorized under Section 15061(b) (3) of the State CEQA Guidelines is appropriate. The Commission directs the Executive Officer to file a Notice of Exemption within five (5) working days.
9. The study area is presently served by the following public agencies: County of San Bernardino, City of Twentynine Palms (portion of the area), Twentynine Palms Water District, Twentynine Palms Cemetery District, Mojave Desert Resource Conservation District, Morongo Basin Healthcare District (formerly Hi-Desert Memorial Healthcare), County Service Area 70 and its Zones TV-04 and TV-05 (portion of the area). The Twentynine Palms Water District is affected through the divestiture and transfer of its fire protection and emergency medical response obligation to County Fire as a function of the reorganization. In addition, the change anticipates that the San Bernardino County Fire Protection District, its South Desert Service Zone and its Service Zone FP-5 will be expanded to include the territory of the Twentynine Palms Water District and the "peninsula area" as a function of the reorganization. None of the other agencies

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are affected jurisdictionally by this reorganization proposal as they are regional in nature.

10. Upon reorganization, the primary successor district, the South Desert Service Zone of County Fire, will extend the defined range of services to residents, landowners and governments within the boundaries of the jurisdictional change. The Plan for the Extension of Service, jointly submitted by the Water District and County Fire, provides a general outline of the delivery of services mandated by Government Code Section 56653. This Plan and the Fiscal Impact Analysis indicates that the transfer of service to the South Desert Service and County Fire, can, at a minimum, maintain the level of service delivery currently received by the area. The Plan for Service including Employee/Property Transition Plan and Fiscal Impact analysis 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 and Fiscal Impact Analysis conforms to those adopted standards and requirements.
11. The proposal complies with Commission policies and reflects a mechanism to address the long-term sustainability of the delivery of fire suppression, prevention and emergency medical response to the citizens and community of Twentynine Palms. The reorganization area can benefit from the assumption of fire protection and emergency medical response by the South Desert Service Zone of the San Bernardino County Fire Protection District as evidenced by the Plan for Service.
12. This proposal will not affect the fair share allocation of the regional housing needs assigned to the City of Twentynine Palms through the Southern California Association of Government's (SCAG) Regional Housing Needs Allocation (RHNA) process.
13. With respect to environmental justice, the reorganization provides for the continuation of existing fire protection, and emergency medical response services within the area and will not result in the unfair treatment of any person based upon race, culture or income.
14. The County Board of Supervisors has successfully completed the process for the determination of a transfer of ad valorem property tax revenues upon successful completion of this reorganization to the successor agencies, SBCFPD and its South Desert Service Zone noting there will be no exchange of property tax, general levy or tax increment, as the Twentynine Palms Water District receives no share currently. This fulfills the requirements of Section 99 of the Revenue and Taxation Code.
15. The maps and legal descriptions prepared by the County Surveyor are in substantial compliance with LAFCO and State standards.

SECTION 3. Approval by the Local Agency Formation Commission indicates that completion of this proposal would accomplish the proposed change or organization in a

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reasonable manner with a maximum chance of success and a minimum disruption of service to the functions of other local agencies in the area.

SECTION 4. The Executive Officer is hereby authorized and directed to mail certified copies of this resolution in the manner provided by Section 56882 of the Government Code.

SECTION 5. The Commission hereby directs that following completion of the reconsideration period specified by Government Code Section 56895(b), the Executive Officer is hereby directed to initiate protest proceedings in compliance with this resolution and State law (Part 4, commencing with Government Code Section 57000), provide for a 30-day protest proceeding, set the matter for consideration of the protest proceedings, and provide notice of the hearing pursuant to Government Code Section 57025 and 57026.

SECTION 6. Upon conclusion of the protest proceedings, the Executive Officer shall adopt a resolution setting forth her determination on the levels of protest filed and not withdrawn and setting forth the action on the proposal considered.

SECTION 7. Upon adoption of the final resolution by the Executive Officer, either a Certificate of Completion or a Certificate of Termination, as required by Government Code Sections 57176 through 57203, and a Statement of Boundary Change, as required by Government Code Section 57204, shall be prepared and filed for the proposal.

THIS ACTION APPROVED AND ADOPTED by the Local Agency Formation Commission for San Bernardino County by the following vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

STATE OF CALIFORNIA)
) SS.
COUNTY OF SAN BERNARDINO)

I, KATHLEEN ROLLINGS-McDONALD, Executive Officer of the Local Agency Formation Commission for San Bernardino County, California, do hereby certify this record to be a full, true, and correct copy of the action taken by said Commission by vote of the members present as the same appears in the Official Minutes of said Commission at its regular meeting of February 17, 2016.

DATED:

KATHLEEN ROLLINGS-McDONALD
Executive Officer