

**DRAFT - ACTION MINUTES OF THE - DRAFT
LOCAL AGENCY FORMATION COMMISSION
HEARING OF FEBRUARY 17, 2016**

REGULAR MEETING

9:00 A.M.

FEBRUARY 17, 2016

PRESENT:

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

STAFF: Kathleen Rollings-McDonald, Executive Officer
Michael Riddell, 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: Larry McCallon
Janice Rutherford, Alternate
Sunil Sethi, Alternate

LEGAL COUNSEL: Clark Alsop

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.

(It is noted that Commissioner Farrell arrives at 9:07)

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 January 27, 2016
2. Approval of Executive Officer's Expense Report
3. Ratify Payments as Reconciled for Months of January 2016 and Note Cash Receipts

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

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

Commissioners Lovingood and Ramos state abstention to item 1.

Commissioner Cox moves approval of the consent calendar, second by Commissioner Bagley. There being no opposition, the motion passes unanimously with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Lovingood, Ramos, Williams. Noes: None. Abstain: On Item 1 – Lovingood and Ramos. Absent: McCallon.

PUBLIC HEARING ITEMS:

ITEM 4. CONSENT ITEMS DEFERRED FOR DISCUSSION

No items deferred for discussion.

(It is noted that Commissioner Warren arrives at 9:10.)

ITEM 5. CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3193; AND (2) LAFCO 3193 – SPHERE OF INFLUENCE AMENDMENT (EXPANSION) FOR THE PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT

Chairman Curatalo opens the public hearing. Assistant Executive Officer Samuel Martinez presents the staff report for LAFCO 3193, a complete copy of which is on file in the LAFCO office and is made a part of the report by its reference here. The item has been advertised in *The Daily Press* newspaper, a newspaper of general circulation, through a 1/8th page legal ad and individual notice as required by statute.

Mr. Martinez reviews the background information for the Phelan Pinon Hills Community Service District Sphere Expansion and states that the District initiated an application to expand its sphere of influence for the purpose of including District-owned properties into its sphere of influence, which is a requirement for annexation. He states that the proposed expansion not only includes the District-owned properties that are proposed for annexation, but also encompasses a much larger area that addresses a more comprehensive planning boundary for the District.

Mr. Martinez states that staff had previously identified issues with regard to the sphere expansion into the El Mirage Community, a LAFCO defined community located north of the communities of Phelan and Pinon Hills. He states that staff is proposing two possible alternatives. The first option would be to expand the sphere to include only the properties that the District owns which are proposed for annexation-. He states that it is staff's opinion that this option would be considered short sighted since the District would be obligated to serve the properties once they are annexed, and if the District needed to provide water service to these properties, it would have to run water mains along either Tanner and/or Sheep Creek Roads to access its properties. He states that it is staff's opinion that a more comprehensive approach to the expansion of the sphere of influence would make sense from a planning perspective.

Mr. Martinez states that the second option would be to expand the sphere of influence to include the entirety of the community of El Mirage which would be a logical option that could address the service needs of the entire community. Those services needs in general are identified as water quality issues within the El Mirage community. Since there is no public entity that provides retail water service to the area, the inclusion of the entire community into the District's sphere of influence would allow the District to provide long range planning for the entire community,. However, it is the staff's opinion that this would be impractical since the District is not prepared to serve the entirety of the El Mirage community. Mr. Martinez states that another concern related to the potential inclusion of the entire community is the loss of community identity.

Mr. Martinez states that both alternatives would allow for expansion of the sphere of influence for the District in order to move forward with its companion reorganization proposal; however, staff believes that the sphere of influence expansion as originally proposed by the District provides for a logical sphere boundary that would allow the District to plan to serve the area between Tanner and Sheep Creek Roads, north and south of El Mirage Road and should be supported.

Mr. Martinez states that it is staff's position that the sphere of influence amendment does not require a service review to be conducted pursuant to Government Code Section 56430 since LAFCO 3193 is a sphere of influence amendment pursuant to Government Code Section 56428. In addition, Commission's policy only would require a service review for an amendment to a retail water district's sphere of influence under two scenarios which do not apply in this case; therefore, staff is recommending that the Commission determine that LAFCO 3193 does not require a service review.

Mr. Martinez states that the sphere of influence factors of consideration are outlined in the staff report, made a part of the record by their reference here, and that he would be happy to answer any questions the Commission may have on these factors. He states that for functions and services of the District, staff is recommending that the Commission affirm the service description for the District as currently identified in the *LAFCO Policy and Procedure Manual*.

Mr. Martinez states that for environmental consideration, the Commission's Environmental Consultant recommends that the review of LAFCO 3193 is statutorily exempt from CEQA based on the finding that the sphere of influence amendment does not appear to have any potential to alter the existing physical environment in any manner different from the existing environmental circumstance.

Mr. Martinez states that the notice of the Commission's consideration of this issue has been advertised as required by State law through publication in *The Daily Press*, a newspaper of general circulation and that individual notice was provided to affected and interested agencies, County departments and those individuals and agencies requesting mailed notice. He states that staff also provided individual notices to landowners and registered voters within and surrounding the expansion area, and that to date staff has not received written comments in support or opposition regarding the consideration of this proposal. Mr. Martinez states that the map and legal description of the sphere of influence has been certified by the County Surveyor's office.

Mr. Martinez states that LAFCO 3193 represents a reasonable expansion of the sphere of influence for the Phelan Pinon Hills CSD for future planning purposes and that the proposal has been submitted in order to move forward with the reorganization proposal submitted by the District to annex the properties it owns that are currently outside of its boundaries. Therefore, staff recommends approval of LAFCO 3193 and reviews the recommendations as outlined in the staff report.

Chairman Curatalo asks for comments and questions from the Commission for staff. There are none.

Chairman Curatalo opens the public comment session

Bobbie Farquar, Resident of El Mirage and President of the El Mirage Chamber of Commerce, speaks in opposition of the sphere of influence expansion and its companion annexation proposal. She states that annexation will divide the community and that she is representing members of the community who are opposed to the sphere of influence amendment and annexation. She states that they have a small park district in that area and the CSD is asking to be exempt and not pay the tax. She states they do not understand what the issues are regarding the paying of the tax. She states that the loss of funds will be bad for the park.

Commissioner Bagley thanks Ms. Farquar for her comments. He states that he is not familiar with the El Mirage area and explains that the areas that are to be annexed into the District are parcels that the District currently owns. He asks if the people in that area have wells or if they are receiving their water from a municipal water service. Ms. Farquar states that most of the community residents have wells. Commissioner Bagley states that he understands the need of individual identification of a community and explains that the sphere of influence is used as a planning tool for the future. Ms. Farquar states that the sphere amendment and the annexation will divide the community and is also worried about the loss of funding that supports the park.

Commissioner Lovingood thanks Ms. Farquar and states that representatives from his office have been involved with the El Mirage community and that a change needs to be made in order to address the needs that affect the whole community. George Calloway, resident of El Mirage and Chair of the El Mirage Council, speaks in opposition to the proposal and states that the proposal has not received the support of the community and that approval of the proposed sphere of influence amendment will divide the community.

Chairman Curatalo asks for any additional comments from the public or the applicant. There are none. Chairman Curatalo closes the public hearing.

Mr. Martinez reviews the recommendations as listed in the staff report.

Commissioner Ramos asks for a review of the El Mirage area on the overhead map.

Executive Officer Kathleen Rollings-McDonald states that the discussion regarding the El Mirage community has been an on-going discussion and that staff's recommendation for sphere expansion is the most reasonable for the use of a planning tool for the future.

Commissioner Cox states that the District would be a good water provider for the area since they have good water resources and that the District has a role to plan in the future of the area.

Commissioner Bagley asks what powers can be provided by CSA 70 to which Ms.

McDonald responds that CSA 70 has the full range of services including water authority but does not provide fire service. She notes that fire service is provided by County Fire, however, it does have a tax through FP-3. She states that the park and recreation has a tax under CSA 70 of \$9 per parcel.

Commissioner Farrell asks how many parcels are in the sphere expansion and what the zoning is; Mr. Martinez states that there are around 80 parcels inside the expansion area and that the zoning includes 480 acres designated AG, 838 acres designated RL, 640 acres designated RL-5 and 120 acres designated IR.

Commissioner Cox moves approval of staff recommendation for LAFCO 3193, second by Commissioner Lovingood. There being no opposition, the motion passes unanimously with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Lovingood, Ramos, Warren Williams. Noes: None. Abstain: None. Absent: McCallon (Ms. Warren voting in his stead).

ITEM 6. CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3194; AND (2) LAFCO 3194 – REORGANIZATION TO INCLUDE ANNEXATIONS TO THE PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT AND DETACHMENT FROM COUNTY SERVICE AREA 70 ZONE P-6

Chairman Curatalo opens the public hearing. Assistant Executive Officer Samuel Martinez presents the staff report for LAFCO 3194, a complete copy of which is on file in the LAFCO office and is made apart of the report by its reference here. The item has been advertised in *The Daily Press* newspaper, a newspaper of general circulation, through a 1/8th page legal and provided individual notice as required by statute.

Mr. Martinez states that the proposal was initiated by the Phelan Pinon Hills CSD to annex three separate areas into the District which encompass District owned lands. He states that the proposal also includes the detachment from the CSA 70 Zone P-6, which is an entity that provides park and recreation services for the unincorporated El Mirage community. He states that the District would like to declare these properties exempt from property taxes but must first include the areas within its boundaries to do so. Mr. Martinez states that the staff report provides the information related to the four major areas of consideration required for a jurisdictional change – boundaries, land uses, service issues and the effects on other local governments, and environmental considerations.

Mr. Martinez reviews the three areas proposed for annexation and states that for boundary considerations, the three areas being annexed are quarter sections of land, which are easily identifiable boundaries for service delivery and that the annexation to a community service district does not require contiguity, therefore the proposal presents no boundary concerns. He states that for land use consideration, the County's land use designation for all three areas is Agricultural and no change in land use is anticipated for the reorganization area. He states that for service issue consideration, the Plan for Service includes a Fiscal Impact Analysis indicating that the project will have a positive financial effect in the form of savings for the District. In addition the three areas are generally vacant agricultural lands with the exception of the existing solar facility of the CSD; therefore, the service needs are expected to be minimal and as required by Commission policy and State law, the Plan for Service shows that the extension of its service will maintain and/or exceed current service levels provided through the County or other detaching entities.

Mr. Martinez states that for environmental considerations, the Commission's Environmental Consultant, Tom Dodson, recommends that the review of LAFCO 3194 is statutorily exempt from the CEQA and that the recommendation is based on the finding that the Commission's approval of the reorganization has no potential to cause any significant adverse effect on the environment.

Mr. Martinez states that the District is the current landowner for all five parcels being considered for the reorganization proposal and that if the Commission approves the annexation, and if none of the affected agencies submit a written opposition to a waiver of protest proceedings, staff recommends that the protest proceedings be waived and that the Executive Officer be directed to complete the action following the exhaustion of the mandatory reconsideration period of 30 days.

Mr. Martinez states that the proposal was submitted by the Phelan Pinon Hills CSD in order to relieve itself of a recurring annual property tax obligation of approximately \$30,000, which is a savings that would benefit the District as a whole. He states that a public agency is only exempt from paying property taxes on lands that it owns if the lands are within the agency's boundaries and that therefore, for these reasons, and those outlined throughout the staff report, staff supports the approval of LAFCO 3194.

Mr. Martinez reviews the determinations noting that the reorganization proposal is legally uninhabited containing no registered voters within any of the three areas as certified by the

Registrar of Voters as of August 7, 2015. He reviews staff's recommendations as listed in the staff report.

Chairman Curatalo asks the Commission for comment and questions for staff regarding the proposal.

Commissioner Cox states that the annexation area is made up of five parcels. Mr. Martinez confirms her statement. Ms. Cox states that the only adverse impact is the loss of \$9.00 per parcel, or \$45 per year, to the El Mirage Community to which Mr. Martinez responds in the affirmative. Commissioner Cox asks if a condition can be included to ensure that the \$45 per year amount is given to the El Mirage Community for its park and recreation services. Executive Officer Kathleen Rollings-McDonald states that the CSD, Special Districts and the community tried to come up with a contract but have been unsuccessful in their efforts. She states that the Commission can include as a condition of approval that a contract to return those funds to the El Mirage Community be imposed and that such contract must be finalized and received by staff prior to the issuance of the Certificate of Completion.

Commissioner Bagley states that he would like to see those fees returned to the El Mirage Community and asks if the Commission has a precedent for the return of fees. Ms. McDonald states that the Commission included a condition of approval for the City of Big Bear Lake for a similar issue. She states that the CSD is willing to provide the amount annually to the El Mirage Community and that staff is working to get a contract completed.

Commissioner Ramos asks if there is wording that can be added prior to the Certificate of Completion. Ms. McDonald states that the Commission has in the past included language in the conditions of approval for many different types of terms and that a modification to staff recommendations can be approved by the Commission.

Commissioner Lovingood states that changes must be made for the betterment of the community for the future and that the First District does try to address and work through all the challenges that it faces with both large and small communities and CSDs.

Commissioner Farrell states that he is concerned over the sense of separation of community and that the map does not appropriately reflect the density of the area. He further states that he does not feel that the annexation will change the community in a big way and that this is a planning time for the future and that the change makes sense for future development and growth.

Commissioner Lovingood states that the District is moving in a proactive way by annexing and is looking at the future of the area.

Chairman Curatalo opens the public comment session

Bobbie Farquhar, resident of El Mirage, states that she is hopeful that a contract with the District can be approved so that the District can pay the \$45 annual tax. She states that

\$45 a year may not seem like a lot but that funding does a lot to keep the park maintained and that the Community is fighting to survive.

Commissioner Bagley states that the Commission understands the Community's need for funding and that the Commission tries to do what is in the best interest over all and for the long term.

George Calloway, resident of El Mirage, states that he is concerned with the main water well in the area and that the County and CSD need to be aware of the issues related to that water well.

Don Bartz, General Manager, Phelan Pinon Hills CSD, states that the Board has talked about the payment to El Mirage and that the District is not opposed to the Commission's recommendation to enter into a contract with the County to pay that annual tax. He states that with regard to the water well issues, the District is familiar with the issues.

Chairman Curatalo closes the public comment session. He asks for further questions and comments from the Commission. There are none. He closes the public hearing

Commissioner Ramos moves approval of staff recommendation, as modified to include a condition of approval to return the annual \$45 fee to the El Mirage Community, for LAFCO 3194, second by Commissioner Williams. There being no opposition, the motion passes unanimously with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Lovingood, Ramos, Warren Williams. Noes: None. Abstain: None. Absent: McCallon (Ms. Warren voting in his stead).

Commissioner Lovingood recuses himself from agenda items 7 and 8 and leaves the dais at 10:08 a.m.

Executive Officer Kathleen Rollings-McDonald introduces Michael Riddell from Best Best and Krieger and states that he is substituting for Clark Alsop, the Commission's Legal Counsel.

Executive Officer Kathleen Rollings-McDonald introduces Shay Lowry, and states that she is substituting for Tom Dodson, the Commission's Environmental Consultant.

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

Chairman Curatalo opens the public hearing for LAFCO 3199 and 3200 to be heard together.

ITEM 7 CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3199 AND (2) LAFCO 3199 –SPHERE OF INFLUENCE AMENDMENT FOR SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT (TWENTYNINE PALMS WATER DISTRICT AREA)

Executive Officer Kathleen Rollings-McDonald presents the staff report for LAFCO 3199, a complete copy of which is on file in the LAFCO office and is made apart of the report by its reference here. The item has been advertised in *The Sun* and *The Desert Trail* newspapers, both

are newspapers of general circulation in the area. In addition, individual notice was provided to affected and interested agencies, County departments and those individuals and agencies requesting special notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report for LAFCO 3199 and states that the Twentynine Palms Water District initiated an application to expand the sphere of influence of the San Bernardino County Fire Protection District to include the entirety of the Twentynine Palms Water District, in order to encompass its Fire Department. She states that the initiation also included the annexation of its territory to County Fire, its South Desert Service Zone and Service Zone FP-5 and the divestiture of the fire functions of the Water District. She states that this sphere of influence expansion application is a companion to the Water District's request for annexation.

(It is noted that Commissioner Warren returns to the dais at 10:15 a.m.)

Ms. McDonald states that the proposed sphere expansion encompasses the entirety of the 29 Palms Fire service territory and that the Commission determined at their September 16, 2015 hearing that they would not require a municipal service review for the sphere amendments proposed for County Fire.

Ms. McDonald reviews the sphere of influence determinations and states that for present and planned land uses the expansion includes approximately 56,919 acres of varied land uses including rural living, single family residential, open space residential and public uses and floodway. Staff has determined that the growth for the area will be marginal based on historical data.

(It is noted that Commissioner Ramos recuses himself from LAFCO 3199 and 3200 and leaves the dais at 10:36 a.m.)

Ms. McDonald states that for present and probable need for public facilities and services in the area that the current provision of fire protection and emergency medical response services provided by 29 Palms Fire was reduced from two fire stations to one staffed fire station on June 1, 2013 due to a lack of a sustainable revenue source. She states that without a change in governance, further reductions in service will be required to be implemented on July 1, 2016.

Ms. McDonald states that for present capacity of public facilities and adequacy of public services that the agency to be expanded provides or is authorized to provide that County Fire operates 75 fire stations serving approximately 750,000 residents in approximately 16,535 square miles of unincorporated territory plus seven incorporated cities including Adelanto, Fontana, Grand Terrace, Hesperia, Needles, Victorville, and Yucca Valley. She states that the package of applications submitted by the Water District is intended to ensure adequate, long-term fire protection and emergency medical response services for the residents of the District. She states that the Water District can no longer afford to continue funding these services at appropriate levels.

Ms. McDonald states that for the existence of any social or economic communities of interest as determined by the Commission to be relevant to the agency that the social and economic communities of interest include: the City of Twentynine Palms, the Twentynine Palms Marine Corps Base, Joshua Tree National Park and the Morongo Unified School District. She states that the Commission's 2012 Municipal Service Review clearly identified the community of Twentynine Palms as being the area of the sphere of influence assigned the Twentynine Palms Water District and that the implementation of a fiscally sustainable agency to provide adequate levels of fire protection, and emergency response, will support the economic and social community defined by the boundaries of the Water District over the long-term and is critical for the safety and well-being of the community's residents and travelers along Highway 62.

Ms. McDonald reviews the services of the agency and states that Government Code Section 56425(i) requires that during a sphere of influence amendment or update for a special district, that the Commission is required to review and identify the range of services to be provided, as well as the nature and location of those services. She reviews the present functions of the San Bernardino County Fire Protection District and states that it has the full range of fire function assigned. Ms. McDonald states that it is proposed that the Water District be divested of its fire authority, through the approval of LAFCO 3200, which would change its listing of active functions and services to be water and sewer, as noted in the staff report.

Ms. McDonald states that for environmental considerations, that the Commission's environmental consultant Tom Dodson recommends that the sphere amendment is exempt from the requirements of CEQA as outlined in his letter included in the attachments to the staff report. She states that the legal notice of the Commission's consideration has been provided through publication of a 1/8 page ad and that the map and legal description of the sphere of influence amendment was prepared and certified by the County Surveyor's Office.

Ms. McDonald states that LAFCO 3199 is the first step in a two-part process to provide for continuing fire protection, and emergency medical response services to the territory of the Twentynine Palms Water District which includes the City of Twentynine Palms and surrounding communities. She states that without a change in governance, further reductions in service will be required to be implemented on July 1, 2016 and that for all the reasons outlined in the staff report, LAFCO staff supports the change in sphere of influence designation to expand the sphere for County Fire and its related service zones.

ITEM 8 CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3200 AND (2) LAFCO 3200 – REORGANIZATION TO INCLUDE ANNEXATIONS TO THE SAN BERNARDINO FIRE PROTECTION DISTRICT, ITS SOUTH DESERT SERVICE ZONE AND SERVICE ZONE FP-5 AND DIVESTITURE OF FIRE POWERS FROM THE TWENTYNINE PALMS WATER DISTRICT

Executive Officer Kathleen Rollings-McDonald presents the staff report for LAFCO 3200, a complete copy of which is on file in the LAFCO office and is made a part of the report by its reference here. The item has been advertised in *The Sun* and *The Desert Trail* newspapers, both of which are newspapers of general circulation in the area. In addition, individual notice was

provided to affected and interested agencies, County departments and those individuals and agencies requesting special notice. Individual notice has been provided to landowners within the area proposed for annexation, including the area modified by staff, as required by Government Code Section 56121 related to the imposition of an existing special tax.

Ms. McDonald states that the actions related to the proposal include Annexation of the territory within the Water District boundaries to the San Bernardino County Fire Protection District (hereafter County Fire), South Desert Service Zone and FP-5 and the divestiture of the fire function of the Water District allowing for the transfer of the operation to County Fire. Ms. McDonald states that as with all applications for change of organization, the Commission's review will center on making the required determinations in four areas: boundaries, land use, financial and service considerations, and environmental review.

Ms. McDonald states that for the issue boundaries, that there are two areas; area 1 of the reorganization includes the entirety of the Water District's boundary (approximately 56,919 acres) which is proposed for annexation into County Fire, and its South Desert Service Zone; and Area 2 which was modified by staff and includes annexation of the Water District boundary and the approximate 3,980 acre area outside of the Water District boundary into County Fire's Service Zone FP-5. She states that the area outside the Water District boundary is currently served by County Fire and its South Desert Service Zone but is proposed for inclusion within Service Zone FP-5 to address financing to capture the service delivery area in its entirety. She states that annexation of the reorganization territory into Service Zone FP-5 allows for the collection of a special tax from property owners to fund ongoing fire protection and emergency medical response to be provided.

Ms. McDonald states that one of the concerns staff identified was the need for transparency in the collection and use of the Service Zone FP-5 special tax applied to parcels within individual communities. She states that in order to identify a means to isolate the revenues received within the Twentynine Palms community, staff is proposing a condition of approval that requires County Fire to develop a subzone of FP-5 to address the study area of LAFCO 3200 prior to placement of the special tax on the tax rolls and an outline of the process and signed statements from County Fire be provided prior to the issuance of the Certificate of Completion for the reorganization.

Ms. McDonald states that the Twentynine Palms Band of Mission Indians has tribal lands located in the southeastern portion of the Water District's boundaries abutting the Joshua Tree National Park and that staff contacted the Tribal Council to request that it review the proposed annexation and, if it did not object, to provide a resolution to allow for the overlay of County Fire and its Service Zones South Desert and FP-5 over its tribal lands. She states that on December 2, 2015, the Tribal Council consented to the inclusion of its tribal area within County Fire and that a copy of the resolution is included as a part of the attachment to the staff report.

Ms. McDonald states that based upon the review of the proposal, it is staff's position that LAFCO 3200 provides for a definite and certain boundary as required by LAFCO law for all the affected agencies, both Successor and continuing service providers

Ms. McDonald states that for the issue of land use that the approval of LAFCO 3200 will have no direct effect on the land use designations assigned within the annexation area by the City or County and that it will assist in implementing the goals of both the City's General Plan and the County's General Plan.

Ms. McDonald states that for the issue of financial and service considerations, the staff report details the financial elements. At the outset of the review, it was estimated that the unfunded retirement obligation for termination of the Safety portion of the District's PERS contract would be in the range of \$1,000,000 and that staff proposed the creation of a separate service zone to address that liability. She states that it was learned in late November that the amount was actually estimated at \$2,950,000, three times the original estimate, setting in motion fervent discussions on the best method to resolve this liability.

Ms. McDonald states that it was determined that the Safety portion of the District's PERS contract will be placed in "inactive" status upon the effective date of the reorganization; and that the City of Twentynine Palms will assume the long-term obligation for the unfunded balance not covered by existing financing through a contractual relationship. She states that this unprecedented mechanism to have an agency that is not directly affected by a jurisdictional change assuming an uncapped liability for the Water District's retirement burden caused concern for staff. She states that this concern was tempered by the fact that should the Water District's fire operation cease without a jurisdictional change, the City would be required to provide fire service to its territory by statute. She states that in effect the use of City funds to resolve this liability dilemma protects the residents of the City of Twentynine Palms while also assisting the residents in the unincorporated sphere area.

Ms. McDonald states that in yet another twist to these discussions, in late January, staff learned that the creation of a service zone under County Fire to hold and annually receive the funds necessary to ultimately pay this retirement obligation would not be allowed by the County Auditor-Controller which shifted the discussion to determine a means to provide for a secure financing mechanism to hold the funds as well as receive additional funds. She states that City staff and its Legal Counsel along with Water District staff and its Legal Counsel met and negotiated the development of a mechanism to address this funding and that staff's understanding of the draft document is that it proposes the creation of a public agency Irrevocable Trust, under the entity identified as "Public Agency Retirement Services (PARS)", between the City and PARS to hold the revenues which will ultimately pay for termination of the Water District's Safety Plan under PERS. She states that there are a number of unique aspects to the mechanism as outlined in the staff report and that it also specifies that the termination of the Water District's safety contract will be at the sole discretion of the City of Twentynine Palms. She states that staff understands this provision as the City may be assuming an obligation of \$2,000,000 or more depending upon the economy and the termination timing of the contract.

Ms. McDonald states that there are issues related to transfer of fire responsibility from the Water District to County Fire and that staff has recommended terms and conditions to address those issues as detailed in the staff report. She states that prior to the issuance of the certificate of completion, a copy of the signed contractual agreement between the Water District and the City shall be provided to staff that will address the mechanism to fully satisfy

the unfunded liability; documentation that Worker's Compensation tailing insurance has been obtained by the Water District; and the rescission of Ordinance #89 as detailed in the staff report.

Ms. McDonald states that as noted in the staff report, Station #421 is to be sold to the City of Twentynine Palms and leased back to the South Desert Service Zone for at least seven years in order to provide service. She states that at no time has the Commission authorized an arrangement where a public facility is purchased for future use such as being presented for LAFCO 3200. She states that Station #421 was built from the revenues received by the Water District's fire operation through the residents of the community and staff has grave concerns regarding the establishment of a precedent for future proposals. However, the unique issues associated with the repayment of the unfunded retirement obligation necessitate this action. She says that staff has proposed conditions of approval related to this issue as outlined in the staff report.

Ms. McDonald states that a Plan for Service, a Fiscal Impact Analysis (FIA), updates to the Plan and FIA, and the Employee/Property Transition Plan identifying the expenditures and revenues for transferring the Water District's service responsibility to the South Desert Service Zone of SBCFPD have been submitted. She reviews the financial information as noted in the staff report. She states that an additional item was identified while reviewing the Water District's audits and that in Fiscal Year 2014-15, an Explorer's Fund was created to isolate donations to support the Fire Explorer program as well as expenses. She states that as a condition of approval that upon the successful completion of LAFCO 3200, the fund balance for this program will transfer to County Fire and that the funds are to be used to support the same type program within County Fire.

Ms. McDonald states that for environmental review the Commission's environmental consultant Tom Dodson has reviewed this proposal and has recommended that the reorganization is statutorily exempt from CEQA and that the determination is based on the fact that the reorganization will transfer the delivery of fire protection and emergency medical response from one entity to another which will not result in any physical impacts on the environment.

Ms. McDonald states that staff has received comments from the public requesting additional information on the proposal and that the areas of concern generally included objection to the imposition of a special tax due to financial hardships of homeowners, requests for additional clarification as to why residents do not have the opportunity to vote on the imposition of a special tax, and comments that the City should provide the necessary funding to allow for the Water District to maintain its Fire Department.

Ms. McDonald states that adequate emergency medical response and fire protection are key health and safety issues for any community and that emergency medical response is the first order of business as it is more than three quarters of the Twentynine Palms Fire Department's responses. She states that the proposal does require that the landowners within the community provide the financial support necessary to continue the emergency service but that the alternative is to retain an insolvent service through the Water District which cannot use its other funds to assist in the fire operation due to legislative restrictions.

She states that it also requires that the City of Twentynine Palms assume a generally unknown future liability for payment of the Water District's retirement liability for its Fire Department, an unheard of precedent for the Commission.

Ms. McDonalds reviews the recommendations as noted in the staff report. She states that staff supports the approval of this proposal and recommends approval of LAFCO 3200 as modified and presented in the staff report.

Chairman Curatalo calls for questions and comments from the Commission for staff.

Ms. McDonald states that she would like to express her thanks and commends all the parties involved with this proposal and their willingness to cooperate to come to agreements that will benefit the community now and in the future.

Commission Cox asks if there has been a prior attempt by the water district to raise revenue for the fire department. Ms. McDonald states that two attempts to raise the revenue have been tried and both have failed. Commissioner Cox states that it is troubling that a community would not take a more involved stance in supporting their public services. She states that she is a strong proponent for self-governance and that she is disappointed in the elected officials who are charged with oversight of these matters and that when they fail agencies such as this Commission are needed to step in and help communities govern themselves. She asks why the issue regarding unfunded pension liability was not identified during the service review. Ms. McDonald states that the information was not available from CALPERS at the time of the service review.

Commissioner Cox states that the City must proceed with caution and that the liability may continue to grow. She asks why the City is willing to pay for the liability. Ms. McDonald states that if the annexation to County Fire fails, the City will be responsible to provide the fire service and the City cannot afford to do so.

Commissioner Cox states that she did not see a recommendation to lower the District's appropriation limits. Ms. McDonald states that since it will be divesture, there will be no more appropriation.

Commissioner Cox states that she would like the Commission to extend the protest period to 45 days. Ms. McDonald states that the timeline does not allow for an extended protest period as the completion must be finalized by July 1, 2016.

Commissioner Bagley asks how staff determined the 50% funding transfer. Ms. McDonald states that the number was negotiated by the two parties not by staff. Commissioner Bagley gives a quick synopsis of his background and states that he is personally familiar with the local government in Twentynine Palms and that the proposal before the Commission shows a failure of local government. He further states that he is concerned with the purchase and leasing of the fire station since the community will have paid for that asset twice. He asks what will happen to station at the end of the lease. Ms. McDonald states that County Fire feels that there is larger and better site needed to provide fire service for the community in the future and that during the seven year lease period, they

intend to secure funding in order to build a new station. At that time the leased station will be converted to a different use through the City.

Michael Riddell, LAFCO Legal Counsel, states for the record that Commissioner Ramos recused himself and left the dais at 10:36 a.m.

Ray Kolisz, General Manager, Twentynine Palms Water District, states that the challenges of sustainability for fire protection and emergency medical care are great and that the board is in support of the annexation to County Fire. He expresses his thanks to the City of Twentynine Palms for their cooperation and support and also thanks LAFCO staff for all of their work in this endeavor.

Dan Mintz, Mayor, City of Twentynine Palms, states that the city council passed a resolution in support of the annexation. He states that one of the issues has been that two communities, Twentynine Palms and Desert Heights, do not agree and do not support each other on local issues and it makes it difficult to get the financial support necessary to sustain the fire service. He states that the City is fiscally responsible and that the council is very financially conservative which is why they can afford to help with the unfunded liability. He states that the situation has been addressed for a long time to no avail and that the decision to move forward with annexation was not an easy one and he thanks all those involved for all their efforts in this proposal.

Frank Luckino, City Manager, City of Twentynine Palms, clarifies the issue regarding PERs and states that the City is risk adverse and that when a plan is terminated in PERs, the full unfunded liability is due. So PERs has outlined the mechanism to put the retirement plan on hold in order to pay the unfunded liability in full at a more advantageous future date.

Commissioner Bagley states that the two unusual elements of the proposal are the selling and leasing of the fire station and that of the City taking on the District's unfunded liability. He states that the fire department has five employees with a three million dollar unfunded pension liability. He states that during the service review, LAFCO pointed out the need to fix the situation and that now the people are going to have an increase in property tax in order to help to sustain the fire department. He states that it is his opinion that the Water District has acted irresponsibly in the issue of the fire department sustainability. He asks what the negative side of the City taking on the Water District's unfunded liability is.

Mr. Luckino states that the City has reserves and that the negative part is there is no cap on the liability but that the marginal increase in the bonds in the future will help with the liability. He states that they are aware of the calculated risk and that when the appropriate time comes they will terminate PERs and pay the balance of the unfunded liability.

Commissioner Bagley states that Twentynine Palms is the only community that does not receive tax funding for their fire department and that it was a decision made in the past that is hurting the community now and that it is a complicated situation.

Mr. Lukino states that the City council deliberated over this issue and that they felt that they made the best decision they could for the situation.

Mark Hartwig, Fire Chief, San Bernardino County Fire Protection District, states that he appreciates all of the work put forth in this endeavor by the County Finance Staff, Fire Department staff, LAFCO staff, the City and Water District and that County Fire is in support of the annexation.

Commissioner Bagley asks if County Fire has a capital improvement plan in place for the building of a new facility to replace the City owned fire station that they will be leasing. Chief Hartwig states that County Fire understands that they are inheriting everything as is and that they currently do not have a capital improvement plan but they know the City wanted to keep the station as a City-owned property so a compromise has been made.

Commissioner Bagley states that it is important to look to the future and keep a sustainable funding source for fire protection and emergency medical service.

Chairman Curatlo calls for a recess of the hearing at 11:34 a.m., reconvening at 11:46 a.m.

Chairman Curatlo makes the announcement that agenda items 9 through 14 will be continued to the March hearing.

(It is noted that Commissioner Warren returns to the dais at 11:48 a.m.)

Chairman Curatlo opens the public comment session.

Andre Harris, resident of Twentynine Palms, speaks in opposition of the annexation. She states she feels the mismanagement of funds will continue and that the residents have not been given an opportunity to vote for or against the increase in property tax. She states that the community has not been given the opportunity by the City of Twentynine Palms to voice their opinions. She feels that the City has enough resources to fund the fire department. She feels that the community should take care of their own issues.

Commissioner Bagley thanks Ms. Harris for her comments and asks where she resides and explains the public protest process and that the County will be in control of the finances. He gives an explanation of how the water agency and the City were created and how the boundaries were determined. Ms. Harris asks if an increase to the water bill will help to support the financing of the fire department. Legal Counsel Riddell states that the law does not allow the District to incorporate water service charges with fire charges and that water service charges must be used to provide water service only.

Commissioner Bagley states that every other community has property tax revenue to fund its fire department, but Twentynine Palms does not, which is what has created this issue of non-sustainability.

Robert Warrenton, resident of Twentynine Palms, states that his family has 4 parcels, which are not improved parcels, and he has no objection to paying for fire protection but he is opposed to such a large increase in cost. He is unhappy to learn of the large deficit and that he feels that the whole situation is a bad reflection on the Water District. He further

states that he has put his trust in the community leaders and that they have disappointed him. He states that he is opposed to the tax increase without the right to vote.

Commissioner Cox asks for staff to explain the process of combining parcels for tax purposes, to which Ms. McDonald states that properties that are contiguous can be combined for the purpose of property tax savings, not for development, and that the County Assessor's Office can help him with his process.

Commissioner Bagley states that he hopes that the combination of parcels will be a financial help. He states the situation in Twentynine Palms is not unique and that LAFCO raises the question of sustainability all the time and that the public has a responsibility to monitor their elected officials to make sure that they are performing in a fiscally appropriate manner. He states that the City or the District can come before LAFCO in the future and have the situation re-evaluated and that maybe in the future, Twentynine Palms can become financially solvent enough to take back their fire services if they so desire.

Mr. Warrenton asks about the protest process. Ms. McDonald states if the proposal is approved today, there is a 30-day reconsideration period followed by a 30-day protest period and that a legal ad will be published and a protest notice will be mailed to all property owners as required by law. She reviews the thresholds for protest.

Ed Valderan, property owner in Twentynine Palms, speaks in opposition to the annexation. He questions the labor rates for the fire department, he asks what date the protest will be held and asks for a 45-day reconsideration. Ms. McDonald states that the date is not known exactly but it should be near the end of March and will last for 30 days.

Patrick Munoz, City Attorney, Twentynine Palms, states that the annexation is a solution to a problem that has been around for a long time and that the City is looking out for the citizens of Twentynine Palms. He states that the City of Twentynine Palms is not required to provide a fire department, they are only required to provide a fire chief. He states that the City is taking a risk with the unfunded liability and that the City is doing what is best for the citizens' protection. He states that the City is in support of a 30-day protest period.

Commissioner Cox states that the citizens of Twentynine Palms will get excellent service from County Fire and that the community will get more than they are paying for. She states that she would encourage transparency in the budgets for fire protection.

Commissioner Warren states that bodies like the commission have been put in place to help facilitate communication when needed and that the commission helps to facilitate transparency and helps to ensure that the citizens are receiving appropriate municipal services.

Chairman Curatalo asks what the response time are and asks about the "two-in" mode of operation. Chief Hartwig states that "two-in two-out" was meant to keep firefighters safe, and that if the situation arises for a rescue on a three man truck, that there are policies in place to ensure life-saving in a dire situation.

Chairman Curatalo calls for further testimony; there being none, closes the hearing.

Commissioner Bagley moves approval of staff recommendation for LAFCO 3199, second by Commissioner Warren. There being no opposition, the motion passes unanimously with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Warren, Williams. Noes: None. Abstain: None. Absent: Lovingood, McCallon (Ms. Warren voting in his stead), Ramos.

Commissioner Warren moves approval of staff recommendation for LAFCO 3200, second by Commissioner Williams. There being no opposition, the motion passes unanimously with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Warren, Williams. Noes: None. Abstain: None. Absent: Lovingood, McCallon (Ms. Warren voting in his stead), Ramos.

DISCUSSION ITEMS

ITEM 9 STATUS REPORT ON LAFCO 3176 – SPECIAL STUDY FOR YERMO, DAGGETT AND NEWBERRY COMMUNITY SERVICE DISTRICTS

Continued to the March 16, 2016 hearing.

ITEM 10. STATUS REPORT ON LAFCO 3189 – SPECIAL STUDY FOR MORONGO VALLEY COMMUNITY SERVICE DISTRICT

Continued to the March 16, 2016 hearing.

ITEM 11 STATUS REPORT ON RIM OF THE WORLD PARK AND RECREATION DISTRICT

Continued to the March 16, 2016 hearing.

INFORMATION ITEMS

ITEM 12. LEGISLATIVE UPDATE REPORT

Continued to the March 16, 2016 hearing

ITEM 13. EXECUTIVE OFFICER'S REPORT

Continued to the March 16, 2016 hearing

ITEM 14 COMMISSIONER COMMENTS

Commissioner Cox states that she hopes this is the end of the painful decisions for the Commission.

Commissioner Farrell thanks staff for their efforts in the processing of the proposals.

ITEM 15 COMMENTS FROM THE PUBLIC

There are none.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION THE HEARING IS ADJOURNED AT 12:25 P.M.

ATTEST:

REBECCA LOWERY
Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

JAMES CURATALO, Chairman

DRAFT