

AGENDA

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

**NORTON REGIONAL EVENT CENTER
1601 EAST THIRD STREET, SAN BERNARDINO**

REGULAR MEETING OF MARCH 21, 2018

9:00 A.M. – CALL TO ORDER – FLAG SALUTE

ANNOUNCEMENT: Anyone present at the hearing who is involved with any of the changes of organization to be considered and who has made a contribution of more than \$250 in the past twelve (12) months to any member of the Commission will be asked to state for the record the Commission member to whom the contribution has been made and the matter of consideration with which they are involved.

CONSENT ITEMS:

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 February 21, 2018
2. Approval of Executive Officer's Expense Report
3. Ratify Payments as Reconciled and Note Cash Receipts for Month of January 2018
4. Consent Items Deferred for Discussion

DISCUSSION ITEMS:

5. Update on LAFCO 3187 -- Countywide Water Service Review Required Continued Monitoring for:
 - a. County Service Area 70 Zone CG (Cedar Glen)
 - b. County Service Area 70 Zone J (Oak Hills)
 - c. Daggett Community Services District
 - d. County Service Area 70 Zone W-4 (Pioneertown)
(Continued from February 21, 2018 Hearing)
6. Review and Consideration of Policy Related to Retention of Electronic Communications
(Continued from the February 21, 2018 Hearing)
7. Workshop on Countywide Habitat Conservation/Preservation Framework Study Update and Changes in State Legislative Direction

INFORMATION ITEMS:

8. Legislative Oral Report
9. Executive Officer's Oral Report
 - a. New Proposals Received
 - b. Update on Proposals Filed with LAFCO
 - c. Update on Executive Officer Recruitment
 - d. FY 2018-19 Budget Preparation Update
10. Commissioner Comments
(This is an opportunity for Commissioners to comment on issues not listed on the agenda, provided that the subject matter is within the jurisdiction of the Commission and that no action may be taken on off-agenda items unless authorized by law.)
11. Comments from the Public
(By Commission policy, the public comment period is limited to five minutes per person for comments related to other items under the jurisdiction of LAFCO not on the agenda.)

The Commission may adjourn for lunch from 12:00 to 1:30 p.m. The Commission may take action on any item listed in this Agenda whether or not it is listed For Action. In its deliberations, the Commission may make appropriate changes incidental to the above-listed proposals.

Materials related to an item on this Agenda submitted to the Commission or prepared after distribution of the agenda packet will be available for public inspection in the LAFCO office at 1170 West Third Street, Unit 150, San Bernardino, during normal business hours, on the LAFCO website at www.sbclafco.org, and at the hearing.

Current law and Commission policy require the publishing of staff reports prior to the public hearing. These reports contain technical findings, comments, and recommendations of staff. The staff recommendation may be accepted or rejected by the Commission after its own analysis and consideration of public testimony.

IF YOU CHALLENGE ANY DECISION REGARDING ANY OF THE ABOVE PROPOSALS IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED DURING THE PUBLIC TESTIMONY PERIOD REGARDING THAT PROPOSAL OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE LOCAL AGENCY FORMATION COMMISSION AT, OR PRIOR TO, THE PUBLIC HEARING.

The Political Reform Act requires the disclosure of expenditures for political purposes related to a change of organization or reorganization proposal which has been submitted to the Commission, and contributions in support of or in opposition to such measures, shall be disclosed and reported to the same extent and subject to the same requirements as provided for local initiative measures presented to the electorate (Government Code Section 56700.1). Questions regarding this should be directed to the Fair Political Practices Commission at www.fppc.ca.gov or at 1-866-ASK-FPPC (1-866-275-3772).

A person with a disability may contact the LAFCO office at (909) 388-0480 at least 72-hours before the scheduled meeting to request receipt of an agenda in an alternative format or to request disability-related accommodations, including auxiliary aids or services, in order to participate in the public meeting. Later requests will be accommodated to the extent feasible.

**DRAFT – ACTION MINUTES OF THE – DRAFT
LOCAL AGENCY FORMATION COMMISSION
HEARING OF FEBRUARY 21, 2018**

REGULAR MEETING

9:00 A.M.

FEBRUARY 21, 2018

PRESENT:

COMMISSIONERS:

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

STAFF:

Kathleen Rollings-McDonald, Executive Officer
Clark Alsop, LAFCO Legal Counsel
Samuel Martinez, Assistant Executive Officer
Michael Tuerpe, Project Manager
Jeffrey Lum, LAFCO Analyst
La Trici Jones, Commission Clerk
Bob Aldrich, LAFCO Consultant

ABSENT:

Janice Rutherford, Alternate

**CONVENE REGULAR SESSION OF THE LOCAL AGENCY FORMATION COMMISSION
– CALL TO ORDER – 9:00 A.M. – NORTON REGIONAL EVENT CENTER**

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

ITEM 1. Chair Cox calls for comments from the public regarding the closed session items. There are none.

ITEM 2. Convene Closed Session of the Local Agency Formation Commission

Conference with Legal Counsel – Existing Litigation (Government Code Section 54956.9(d)(1) – San Antonio Heights Association v. County of San Bernardino et al, San Bernardino County Superior Court Case No CIVDS1712771 and San Antonio Heights Association v. Local Agency Formation Commission for San Bernardino County et al Superior Court Case No. CIVDS1715504

RECONVENE PUBLIC SESSION – 9:26 A.M.

Chair Cox asks LAFCO Legal Counsel Clark Alsop to report on the closed session. Mr. Alsop states that no reportable action was taken in closed session.

CONSENT ITEMS:

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.

- ITEM 3.** Approval of Minutes for Regular Meeting of January 17, 2018
- ITEM 4.** Approval of Executive Officer's Expense Report
- ITEM 5.** Ratify Payments as Reconciled for Month of December 2017 and Note Cash Receipts
- ITEM 6.** Consent Items Deferred for Discussion

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

DISCUSSION ITEMS:

- ITEM 7** **REVIEW AND CONSIDERATION OF POLICY RELATED TO RETENTION OF ELECTRONIC COMMUNICATIONS (Continued from January 17, 2018)**

Executive Officer Rollings-McDonald states that this item was continued from the hearing on January 17, 2018 due to the absence of LAFCO's Legal Counsel.

Executive Officer Rollings-McDonald introduces the item and states that staff is proposing a policy related to the San Jose v. Superior Court decision on disclosure of public official records. She states that the Court determined that electronic messages, sent or received on a public official's private devices or accounts, are subject to disclosure under the California Public Records Act. Ms. McDonald states that staff has worked closely with LAFCO legal counsel which has drafted a policy for all of its municipal clients. She states that the proposed San Bernardino LAFCO policy is consistent with those efforts.

Project Manager Michael Tuerpe presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. Mr. Tuerpe states that LAFCO staff is recommending that the Commission consider and adopt the proposed electronic communications policy and amend the records retention policy to comply with the court's decision. He states that pursuant to this proposed policy, each Commissioner would be assigned a LAFCO email account.

Mr. Tuerpe states that 30 days following the adoption of this policy, each LAFCO official will be required to search their own files for any LAFCO related material and forward it to their LAFCO email account.

He states that if a LAFCO official conducts or receives an electronic message regarding LAFCO business on his/her non-LAFCO electronic messaging account, the LAFCO official shall:

- a. Copy ("cc") any communication from the LAFCO official's personal electronic messaging account to his/her LAFCO electronic messaging account; or
- b. Forward the associated electronic communication to his/her LAFCO account no later than 10 days after the original creation or transmission of the electronic communication.

Chair Cox states that since our government accounts are already discoverable under the Public Records Act, is this a necessary additional step?, to which Executive Officer Rollings-McDonald states that staff believes it is a necessary step and describes how it can be a potential problem for officials in communication with constituents. She states that there was a recent instance at a City Council meeting in the City of Chino in which an attorney quoted verbatim a text message exchange between a city council person and a constituent in public session.

Mr. Tuerpe states that staff has identified two products to obtain a LAFCO email address: Microsoft 365 (via County ISD) or Gmail Business, with the ultimate recommended choice being provision through County ISD. Mr. Tuerpe states that staff is also recommending that a footer message be placed at the bottom of personal or other public agency email addresses that directs LAFCO business to the LAFCO email addresses. He states that the recommended language is:

CONFIDENTIALITY NOTICE:

This Email address is intended for LAFCO business. This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

Mr. Tuerpe states that the LAFCO Records Retention Policy is currently localized to finances but is now proposed to be expanded to include electronic communications. He states that communications related to the conduct of public business are not excluded from being public records under the California Public Records Act simply because they were sent or received using a personal account or personal device. He further states that the California Supreme Court ruled it is the local agency itself that is in the best position to adopt policies that will reduce the likelihood of public records being held in private accounts of employees or officials that pertain to the public's business.

Mr. Tuerpe states that staff is requesting that the Commission provide any additional changes, corrections or amendments to the proposed policies.

Chair Cox asks for comments from the Commission.

Commissioner Bagley states that \$15.00 per user, per month, will add up. He states that as a private individual, he is not thrilled about paying \$15.00 a month to retain electronic records. He states that as a LAFCO Commissioner he does not believe that any communication he has with anyone about LAFCO is privileged.

Executive Officer Rollings-McDonald states that this is for ease and simplicity. She states that with Commissioners coming and going, it's important to have access to documents. She states that in one recent instance of anticipated litigation, staff was required to retrieve all electronic communications from their personal accounts. She states that the cost of going through a subpoena process is far more expensive than the cost of setting up Commissioner Email accounts.

Commissioner Farrell states that he would like to know if the email will be incoming as well as out-going? He asks if he could have the email forwarded, automatically? To which Mr. Tuerpe states that this is something that staff did not look into, but will get an answer. Commissioner Farrell states that if we have a six-month retention policy, does the Commission need to search for emails further back? Executive Officer Rolling-McDonald states that she does not believe so, but asks LAFCO Counsel Clark Alsop to answer the question. Mr. Alsop states that there is no need to go back further than six months. Commissioner Farrell states that it concerns him that we would retain paper records for seven years, but emails only six months since we have some proposals that can be delayed for eight months or longer, questioning whether six months is an adequate time period? To which Counsel Alsop states that six months is just for regular communication. He states that if LAFCO is aware it will be involved in some type of long-term project activity, then legal counsel will send out a request to maintain all information, even if it goes beyond the records retention time.

Commissioner Farrell directs that the Policy include language that emails regarding a LAFCO proposal be retained for six months following completion of the proposal. Executive Officer Rollings-McDonald notes that the Status Reports identify when proposals are completed (through issuance of the Certificate of Completion).

Discussion ensues.

Commissioner Ramos states that with the suggested changes, it would be best to put this action off until the Commission has the final version of the policy.

Executive Officer Rollings-McDonald states that the bulk of the policy remains unchanged, but this is a decision for the Commission.

Chair Cox states that under item #7, it refers to electronic communication per the County of San Bernardino's record retention policy. She states that she would like to see the language of the County's policy. Executive Officer Rollings-McDonald states that if this is the case, we can continue to the March 21, 2018 hearing.

Chair Cox asks the Commission for comment. She states the Commission can either defer to March or move on it, understanding that minor changes will be made to the final version.

Commissioner Lovingood states that if Commissioner Ramos made a motion based on his comments, he would second and continue to the March hearing.

Commissioner Ramos moves approval to continue to March 21, 2018 hearing, Second by Commissioner Lovingood. There being no opposition, the motion passes with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Lovingood, McCallon, Ramos and Williams. Noes: None. Abstain: None. Absent: None.

ITEM 8 MID-YEAR BUDGET REVIEW FOR FISCAL YEAR 2017-18: (Continued from January 17, 2018)

- **FINANCIAL REPORT FOR PERIOD JULY 1 THROUGH DECEMBER 31, 2017**
- **AUTHORIZATION TO FUND TRANSER TO ADDRESS INCREASED REVENUES AND EXPENDITURES DUE TO INCREASED ACTIVITY RELATED TO LITIGATION**

Executive Officer Kathleen Rollings-McDonald presents the staff report for the Mid-Year Budget Review, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. Executive Officer Rollings-McDonald states that this is the mid-year review for Fiscal Year 2017-18 where staff provides the Commission with information on expenditures and revenues to date and projections for the end-year.

She states that as the Commission is well aware, this year has had profound issues. One of those is the transition of the LAFCO staff office to the Santa Fe Depot assuring a potential home for the Commission for up to 15 years.

Ms. Rollings-McDonald states that LAFCO to date has expended 49% of approved budget authority for salaries and benefits. She states that services and supplies, which are the bulk of the discretionary costs for the Commission, had expenditures of 66% of approved budget authority through December 30, 2017.

Ms. Rollings-McDonald states that LAFCO has expended \$86,000 for legal costs for non-recoverable items. She states that to accommodate these unanticipated expenditures, staff is requesting that the Commission take a series of actions to account for the increase in legal costs which include: Approving an increase in expenditure account 2400 (Legal Counsel) by \$95,814 to \$130,114 by: (a) Transferring \$40,000 from account 2310 (Postage); (b) Transferring \$25,229 from reserve account 6025 (Legal Reserve), resulting in a balance of \$200,000, and (c) Increasing reserve account 9555 (Legal Services) by \$30,585 to a total of \$40,185.

Commissioner Lovingood states that he will move staff's recommendation as long as in April the Commission will have an opportunity to look for additional budget adjustments if there will be a long-term deficit.

Commissioner Lovingood moves approval of Staff Recommendation, Second by Commissioner McCallon. There being no opposition, the motion passes with the following

roll call vote: Ayes: Bagley, Cox, Curatalo, Lovingood, McCallon, Ramos and Williams. Noes: None. Abstain: None. Absent: None.

ITEM 9 UPDATE ON LAFCO 3187 – COUNTYWIDE WATER SERVICE REVIEW
REQUIRED CONTINUED MONITORING FOR:

- a. County Service Area 70 Zone CG (Cedar Glen)
- b. County Service Area 70 Zone 70 J (Oak Hills)
- c. Daggett Community Services District
- d. County Service Area 70 Zone W-4 (Pioneertown)

Executive Officer McDonald states that staff is recommending that Item 9 be continued to the March 21, 2018 hearing due to notification issues.

Commissioner Curatalo moves approval of staff's recommendation for continuance, Second by Commissioner Ramos. There being no opposition, the motion passes with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Lovingood, McCallon, Ramos and Williams. Noes: None. Abstain: None. Absent: None.

INFORMATION ITEMS:

ITEM 10 LEGISLATIVE ORAL REPORT

Executive Officer Rollings-McDonald states that the Legislative session is in full steam. She states that CALAFCO works with the Assembly Local Government Committee each year on an omnibus bill to address non-substantive technical changes for the Cortese Hertzberg Knox statute. She states there are seven items included in that bill.

Chair Cox states that staff has presented the Commission with the legislative report and has asked the Commission to accept and indicate support of the omnibus bill

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

ITEM 11 EXECUTIVE OFFICER'S ORAL REPORT

Executive Officer Rollings-McDonald states that staff anticipates the submission of the East Valley Water District proposal and staff is currently processing a sphere of influence amendment for an exchange of territory between the cities of Loma Linda and Colton. Additionally, staff is processing an exchange of territory between IEUA and the San Bernardino Valley Municipal Water District.

She states that following last month's review and discussion regarding the audit presentation, staff has reviewed the issue with the auditor. She states that a presentation by the auditor to the Commission will be provided for all considerations.

Ms. Rollings-McDonald states that the recruitment for the Executive Officer opened on February 1, 2018 and Bob Aldrich is handling the initial review of the applications.

ITEM 12 COMMISSIONER COMMENTS

Commissioner Lovingood states that if anyone happens to be in the High Desert on February 22, he would like them to join him at the "Made in the High Desert" Job Fair which introduces students to well-paying careers with local manufacturers.

ITEM 13 COMMENTS FROM THE PUBLIC

There are none.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS ADJOURNED AT 10:35 A.M.

ATTEST:

LA TRICI JONES
Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

KIMBERLY COX, Chair

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West 3rd Street, Unit 150 San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
E-MAIL: lafco@lafco.sbccounty.gov
www.sbclafco.org

DATE : MARCH 12, 2018



FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #2 – APPROVAL OF EXECUTIVE OFFICER'S EXPENSE REPORT

RECOMMENDATION:

Approve the Executive Officer's Expense Report for Procurement Card Purchases from January 22, 2018 through February 22, 2018 and Executive Officers expense claim as presented.

BACKGROUND INFORMATION:

The Commission participates in the County of San Bernardino's Procurement Card Program to supply the Executive Officer a credit card to provide for payment of routine official costs of Commission activities as authorized by LAFCO Policy and Procedure Manual Section II – Accounting and Financial Policies #3(H). Staff has prepared an itemized report of purchases that covers the billing period of January 22, 2018 through February 22, 2018.

A copy of the Executive Officer's expense claim is also provided for the Commission's approval.

Staff recommends that the Commission approve the Executive Officer's expense report as shown on the attachment.

KRM/llj

Attachment



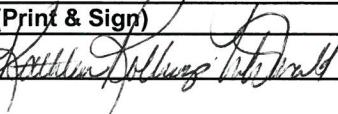
PROCUREMENT CARD PROGRAM

MONTHLY PROCUREMENT CARD PURCHASE REPORT

PAGE 1 OF

Card Number		Cardholder						Travel	Billing Period	
DATE	VENDOR NAME	#	Kathleen Rollings-McDonald						TRIP NUMBER	SALES *R/D
			DESCRIPTION	PURPOSE	COST CENTER	G/L ACCOUNT	\$ AMT			
01/22/18	Sitoa	1	Taxi	Travel	8900005012	52942946	\$39.60		R	
01/22/18	Park N Fly	2	Parking	Parking at Airport	8900005012	52942946	\$11.65		R	
01/23/18	SMF Cafeteria	3	Meals	Meals	8900005012	52942943	\$27.83		R	
01/23/18	Thomson West	4	Publication	Law Library Update	8900005012	52002080	\$203.82		R	
01/24/18	Jobs Available	5	Publication	Job Advertisement	8900005012	52002080	\$491.40		R	
01/24/18	Jobs Available	6	Publication	Job Advertisement	8900005012	52002080	\$390.00		R	
01/25/18	Frontier	7	Service	Internet	8900005012	52002035	\$672.96		R	
01/29/18	Starbucks	8	Coffee	Governance Training	8900005012	52002305	\$15.95		R	
01/31/18	Western City Magazine	9	Publication	Job Advertisement	8900005012	52002080	\$250.00		R	
01/31/18	Boxwood Technologies	10	Publication	Job Advertisement	8900005012	52002080	\$105.00		R	
01/31/18	SouthWest Airlines	11	Airline	Airline Flight	8900005012	52942945	\$342.97		R	
02/05/18	Amazon	12	Computer wire	Supplies	8900005012	52002305	\$8.56		R	
02/06/18	Amazon	13	Computer Cable	Supplies	8900005012	52002305	\$29.19		R	
02/14/18	Daisy IT	14	Supplies	Supplies	8900005012	52002305	\$101.83		R	
02/15/18	Sitoa	15	Taxi *	CALAFCO Leg Meeting	8900005012	52942946	\$40.00		R	
02/16/18	Park N Fly	16	Parking	Parking at Airport	8900005012	52942946	\$23.30		R	
02/16/18	Thomson West	17	Publication	Law Library Update	8900005012	52002080	\$203.82		R	
02/17/18	Embassy Suites SAC	18	Hotel	CALAFCO Leg Meeting	8900005012	5292942	\$274.30		R	

The undersigned, under penalty of perjury, states the above information to be true and correct. If an unauthorized purchase has been made, the undersigned authorizes the County Auditor/Controller-Recorder to withhold the appropriate amount from their payroll check after 15 days from the receipt of the cardholder's Statement of Account.

Cardholder (Print & Sign)	Date	Approving Official (Print & Sign)	Date
Kathleen Rollings-McDonald 	03/12/18	Kimberly Cox	03/21/18

* \$20.00 share of cost for taxi pd by George Spiliotis

ASBCSD
P.O. Box 400654
Hesperia, CA 92340
760-680-9666
SD.sec@foxbank.org

President:
Richard D. Hall

Vice President:
Al Morissette

Secretary-Treasurer:
Randall Reed

Director:
Steve Copelan

Director:
Ron Coats

Director:
T. Milford Harrison

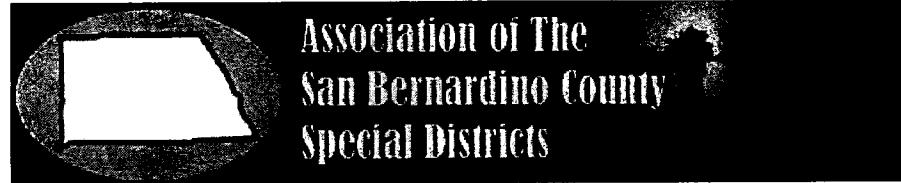
Director:
Bob Stadium

Administrative Secretary:
Natalie Chamberland-Hall

Member Challenge:
Bring someone new! Bring a Board Member, employee or someone from another Special District to the meeting!

Make checks payable to:

ASBCSD
Attention:
Natalie Chamberland-Hall
PO Box 400654
Hesperia, CA 92340-0654



The Inland Empire Resource Conservation District (IERCD) will be hosting the **February 26th, 2018** Membership Meeting at:
The Castaway Restaurant in San Bernardino
670 Kendall Drive
San Bernardino, CA 92405
(909) 881-1502

The social hour will begin at 6:00 PM with a call to order at 6:45 PM.

Menu: buffet with options including shrimp and scallop penne pasta, chicken picatta, tortellini marinara, Mediterranean salad, caprese salad, Caesar salad, vegetable medley, and green bean almondine

Dessert: three options to be determined by the chef

Beverages: Ice Tea, Water, and Coffee

Cost: \$35.00 per person

RSVP by February 19th 2018 to Jennifer Castillo
Tel: 909-799-7407 or jcastillo@iercd.org

Speaker: Second District Supervisor Janice Rutherford

Payment Due: February 26th, 2018

***District/Associate Attendee: Please make your reservations by the deadline. You will also be billed for the dinner if your cancellation is not received prior to the deadline. A \$2.00 surcharge will be applied if payment is not received after 30 days of the meeting.**

RECEIPTDATE 2/26/18No. **468316**RECEIVED FROM Kathleen Rollings McDonald\$ 35.00

DOLLARS

 FOR RENT
 FORASB ASD Feb Dinner CASH CHECK MONEY ORDER CREDIT CARD

FROM

TO

3-11

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West 3rd Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
E-mail: lafco@lafco.sbccounty.gov
www.sbcclfco.org

DATE : MARCH 12, 2018

FROM:  KATHLEEN ROLLINGS-MCDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

**SUBJECT: AGENDA ITEM #3 - RATIFY PAYMENTS AS RECONCILED FOR
MONTH OF JANUARY 2018 AND NOTE REVENUE RECEIPTS**

RECOMMENDATION:

Ratify payments as reconciled for the month of January 2018 and note revenue receipts for the same period.

BACKGROUND INFORMATION:

Staff has prepared a reconciliation of warrants issued for payments to various vendors, internal transfers for payments to County Departments, cash receipts and internal transfers for payments of deposits or other charges that cover the period of January 1, 2018 through December January 31, 2018

Staff is recommending that the Commission ratify the payments for January 2018 as outlined on the attached listings and note the revenues received.

KRM/lj

Attachment

MONTH OF JANUARY 2018 PAYMENTS PROCESSED						
Document Number	Account	Posting Date	Activity	Reference	Vendor	Amount
1900067506	52002085	1/5/2018	LAFCO SC #421 NOTICE OF HEARING	INVOICE B3090253	DAILY JOURNAL	\$646.80
1900071373	52002085	1/10/2018	LAFCO 3222 NOTICE OF HEARING	INVOICE B3080256	DAILY JOURNAL	\$1,054.92
1900081661	52002182	1/22/2018	SO CAL EDISON	2-39-945-2309	SO CAL EDISON	\$353.16
1900083117	52002245	1/24/2018	PROPERTY LIABILITY INSURANCE	INVOICE 621455	SDRMA	\$47.50
1900083167	52002400	1/24/2018	BBK GENERAL	BBK 813106	BEST BEST KRIEGER	\$1,824.90
1900083182	52002400	1/24/2018	BBK SAN ANTONIO HEIGHTS ASSOCIATION	BBK 813107	BEST BEST KRIEGER	\$435.65
1900083184	52002400	1/24/2018	BBK CITY OF SAN BDNO V. EVWD	BBK 813108	BEST BEST KRIEGER	\$355.20
1900083185	52002400	1/24/2018	BBK SAN ANTONIO HEIGHTS ASSOCIATION	BBK 813109	BEST BEST KRIEGER	\$188.10
1900083186	52002400	1/24/2018	BBK EMPLOYEE BENEFITS	BBK 813110	BEST BEST KRIEGER	\$577.50
1900081664	52002424	1/22/2018	TOM DODSON & ASSOCIATES	LAFCO 17-2	TOM DODSON & ASSC.	\$510.00
1900067505	52002445	1/5/2018	CLEANING SERVICE	INVOICE 59332	JAN PRO	\$475.00
1900071334	52002445	1/10/2018	ALDRICH & ASSOCIATES	INVOICE #55	ALDRICH & ASSOCIATES	\$3,150.00
1900074919	52002445	1/16/2018	INLAND EMPIRE MEDIA GRP COMM HRNG 11/15/17	INVOICE 2038	IEMG	\$270.00
1900082162	52002445	1/23/2018	ALDRICH & ASSOCIATES	INVOICE #56	ALDRICH & ASSOCIATES	\$3,600.00
1900082253	52002445/2940	1/23/2018	COMMISSION STIPEND & MILEAGE	BAGLEY 1/17/18	JAMES BAGLEY	\$298.00
1900052259	52002445/2940	1/23/2018	COMMISSION STIPEND & MILEAGE	FARRELL 1/17/18	STEVEN FARRELL	\$218.75
1900082262	52002445/2940	1/23/2018	COMMISSION STIPEND & MILEAGE	WILLIAMS 1/17/18	DIANE WILLIAMS	\$225.73
1900052280	52002445/2940	1/23/2018	COMMISSION STIPEND & MILEAGE	COX 1/17/2018	KIMBERLY COX	\$258.86
1900082281	52002445/2940	1/23/2018	COMMISSION STIPEND & MILEAGE	WARREN 1/17/18	ACQUANETTA WARREN	\$217.44
1900082286	52002445/2940	1/23/2018	COMMISSION STIPEND & MILEAGE	CURATALO 1/17/18	JAMES CURATALO	\$227.25
1900082287	52002445	1/23/2018	COMMISSION STIPEND	RUTHERFORD 1/17/18	JANICE RUTHERFORD	\$200.00
1900082288	52002445	1/23/2018	COMMISSION STIPEND	LOVINGOOD 1/17/18	ROBERT LOVINGOOD	\$200.00
1900082289	52002445	1/23/2018	COMMISSION STIPEND	MCCALLON 1/17/18	LARRY MCCALLON	\$200.00
1900074964	52002305	1/16/2018	LAFCO PETTY CASH	PETTY CASH	LAFCO PETTY CASH	\$191.53
1900067435	52002905	1/5/2018	JANUARY 2018 RENT & QUARTERLY CAM CHARGES	UNIT 150	CITYCOM	\$15,057.90
1900067502	52002905	1/5/2018	QUARTERLY TENANT AMORTIZATION PAYMENT NO. 3	AMORTIZATION #3	SBCTA	\$8,448.33
1900071339	52002905	1/10/2018	COMMISSION HEARING ROOM JANUARY 2018	INVOICE #519	IVDA	\$405.00
5105623422	52002895	1/8/2018	KONICA MINOLTA NOVEMBER 2017	INVOICE 30934797	KONICA MINOLTA	\$630.12
5105623423	52002895	1/8/2018	KONICA MINOLTA DECEMBER 2017	INVOICE 31069618	KONICA MINOLTA	\$419.51
5105623424	52002895	1/10/2018	KONICA MINOLTA JANUARY 2018	INVOICE	KONICA MINOLTA	\$425.94
TOTAL						\$41,113.09
MONTH OF DECEMBER 2017 INTERNAL TRANSFERS PROCESSED						
4200003667	52002310	1/5/2018	MAIL SERVICES	County Mail	County Mail	\$178.60
4200003669	52002310	1/5/2018	MAIL SERVICES	County Mail	County Mail	\$411.38
4200003684	52002310	12/5/2017	MAIL SERVICES	County Mail	County Mail	\$558.79
4200004297	52002445	1/22/2018	LAFCO 3222 NOTICE OF EXEMPTION	COB	COB	\$50.00
4200004302	52002037	1/22/2015	LAFCO SC #421 NOTICE OF DETERMINATION	COB	COB	\$50.00
4200003245	52002115	1/17/2018	ANNUAL MICROSOFT LICENSE	ISD	ISD	\$1,706.88
TOTAL						\$2,955.65
MONTH OF JANUARY 2018 CASH RECEIPTS						
	40308500	1/31/2018	2ND QUARTER APPORTIONMENT INTEREST	ATC		\$3,778.88
	40709655	1/19/2018	LAFCO 3224	INDIVIDUAL NOTICE		\$700.00
	40709655	1/23/2018	LAFCO 3225	INDIVIDUAL NOTICE		\$700.00
	40709655	1/19/2018	LAFCO 3224	LEGAL		\$1,200.00
	40709800	1/23/2018	LAFCO 3225	LEGAL		\$1,200.00

	40759930	1/31/2018	LAFCO 3216 INDEMNIFICATION	CITY OF UPLAND		\$1,753.46
	40709660	1/19/2018	LAFCO 3224	ENVIRONMENTAL		\$750.00
	40709660	1/23/2018	LAFCO 3225	ENVIRONMENTAL		\$750.00
	40709800	1/19/2018	LAFCO 3224	LAFCO FEES		\$5,000.00
	40709800	1/23/2018	LAFCO 3225	LAFCO FEES		\$5,000.00
	40709800	1/31/2018	LAFCO 3223	LAFCO FEES		\$5,000.00
TOTAL						\$25,832.34
MONTH OF JANUARY 2018 INTERNAL TRANSFERRED RECEIVED						
	40759930	1/29/2018	LAFCO 3216 INDEMNIFICATION	COUNTY FIRE		\$13,792.70
TOTAL						\$13,792.70
<i>[Signature]</i> LA TRACI JONES, Clerk to the Commission				DATE	3/12/2018	
RECONCILIATION APPROVED BY:						
<i>Kathleen Rollings</i> KATHLEEN ROLLINGS-McDONALD, Executive Officer				DATE	3/12/2018	

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbccounty.gov
www.sbcclfco.org

DATE: MARCH 12, 2018



FROM: KATHLEEN ROLLINGS-MCDONALD, Executive Officer
MICHAEL TUERPE, Project Manager

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #5: Update on LAFCO 3187 – Countywide Service Review for Water Continued Monitoring
(Continued from February 21, 2018 hearing)

RECOMMENDATION:

Staff recommends that the Commission take the following actions:

1. Note receipt of status report and file.
2. Close monitoring of County Service Area 70 Zone CG (Cedar Glen).
3. Set the next status report for the August 2018 hearing for County Service Area 70 Zone J, County Service Area Zone W-4, and Daggett Community Services District.

BACKGROUND:

At the February 21, 2018 hearing, the Commission continued this item to the March hearing. The report in its entirety is presented below.

As a part of its Countywide Service Review for Water (LAFCO 3187), LAFCO at its July 19, 2017 hearing directed staff to:

1. Monitor two board-governed agencies and provide an update to the Commission at the February 2018 hearing:
 - A. County Service Area 70 Zone CG (Cedar Glen)
 - B. County Service Area 70 Zone J (Oak Hills)

2. Coordinate with Mojave Water Agency (“MWA”) to seek further assistance for the Daggett Community Services District through MWA’s Small Water Assistance Program.

Resolution No. 3248 for LAFCO 3187 memorialized the Commission’s actions, and this staff report provides the updates directed by the Commission.

Additionally, during the service review’s presentation significant public comment was provided regarding the water quality challenges of County Service Area 70 Zone W-4 (PioneerTown). The service review classifies CSA 70 W-4 as a “hot spot”, and the Commission questioned if there was a LAFCO solution for the matter. Staff responded that multiple agencies are involved, including the Federal Environmental Protection Agency, and that the Commission cannot initiate a change of organization related to this matter. However, due to significant challenges identified in the service review coupled with public comments, LAFCO staff is also providing the Commission with an update on CSA 70 W-4.

County Service Area 70 Zone CG (Cedar Glen)

Agency and Area Description

County Service Area 70 Zone CG (“Zone CG”) is governed by the County Board of Supervisors, and is located in the Mountain Region adjacent to the Lake Arrowhead community. In 2005 the County Board formed CSA 70 Zone CG for the purposes of providing water and future road maintenance service to the area impacted by the Old Fire of 2003 (Cedar Glen Disaster Recovery Redevelopment Project Area). The Zone provides water service to the community of Cedar Glen and serves approximately 1,221 customers (330 connections).

Service Review Recap

Below is the summary from the water service review for Zone CG:

- Issue - County Service Area 70 Zone CG (Cedar Glen) experiences ongoing challenges due to County’s purchase of a failing water system as detailed in Section IV.
- Staff Recommendation - *Direct staff to continue to monitor the Zone CG system and provide an update to the Commission by February 2018.*

Update

The County Special Districts Department is continuing to improve the water system with many projects to ensure that customers in Cedar Glen have a safe potable water supply now and in the future. The Department has already completed numerous pipeline projects, valve and hydrant projects, and the construction of Western Tank. The following is a list of current projects now in process:

Project	Location	Project Stage	Anticipated Construction Completion
Cypress Tank Construction	Located on Cypress Road	Construction phase	March 2018
Cypress Tank Pipeline Project	Located on Cypress Road	Design phase – 100%	October 2018
Hook Creek Pneumatic Tank Site	Located on Hook Creek Road	Design phase – 100% completed	October 2018
Horizontal Well Site - Pump Station	Located off of Pineridge	Design phase – 100% completed	December 2018
Cypress Tank Site – Pump Station	Located on Cypress Road	Design phase – 100% completed	January 2019

LACFO Analysis

As a part of the Countywide Service Review for Water, Zone CG was classified as a “hot spot” due to the infrastructure challenges it faces. No Commission action was recommended as the water system is a county service area zone, which do not have spheres of influence.

The County Special Districts Department has provided information that shows improvements to the failing system that the County purchased. Therefore, LACFO staff recommends that no further formal monitoring occur.

County Service Area 70 Zone J (Oak Hills)

Agency and Area Description

County Service Area 70 Zone J (“Zone J”) is governed by the County Board of Supervisors,. The zone provides funding for retail water service to 12,143 customers (3,282 connections) in Oak Hills within the Hesperia community.

Service Review Recap

Below is the summary from the water service review for Zone J:

- Issue - All sources have hexavalent chromium above MCL; Zone J is currently working on a hexavalent chromium compliance plan under Senate Bill 385 to achieve compliance; previous service review determined the need to resolve boundary conflicts between the Hesperia Water District and Zone J in the Maple/Topaz strip which is currently a part of the City of Hesperia.
- Hot Spot Identification – CSA 70 Zone J has been identified in this service review as a hot spot due to the issues identified above and detailed in Section V.

- Staff Recommendation - Indicate the Commission's preference that the Hesperia Water District and Zone J implement a mechanism (e.g., joint powers agreement or memorandum of understanding) to provide stability to the water source and boundary challenges in the overall Hesperia and Oak Hills communities.

Although LAFCO staff is working with the Hesperia Water District and CSA 70 Zone J on a mechanism to resolve the boundary conflicts, staff recommends that the Commission direct staff to continue to monitor the Zone J system and provide an update to the Commission by February 2018.

Update

County Special Districts Department provide the following update to the Zone J system:

While the district currently does not exceed the MCL for total chromium and is not currently in violation of hexavalent chromium, the Department continues to evaluate the elevated hexavalent chromium in CSA 70 J and continues to monitor the State's re-evaluation of the hexavalent chromium MCL. The Department conducted three pilot studies in CSA 70 J in 2017 to evaluate the removal of hexavalent chromium, including: Layne Christensen Company conducted Zone Testing at Well #1; Layne Christensen Company conducted a pilot of Weak Based Anion hexavalent chromium removal; and Water Remediation Technology (WRT) pilot tested packed-bed media filtration for hexavalent chromium removal. The Department is continuing to keep apprised of the State's action regarding this issue and should the State set an MCL for hexavalent chromium, the Department is evaluating and monitoring Coachella Valley Water District's pilot test in which stannous chloride is being used to convert chromium-6 to chromium-3, which is a nutrient that the body needs to process certain sugars, fats, and proteins.

The Department is continuing to work with the City of Hesperia [Hesperia Water District] on a Joint Powers Agreement to manage the water system and water exchange in those areas where CSA 70 J is providing water service within the City of Hesperia. County Counsel has reviewed the agreement and it was sent to the City of Hesperia. The City had comments and questions that the County is currently answering. The County is anticipating to have the agreement sent back to the City in March 2018 for their review

LAFCO Analysis

As a part of the Countywide Service Review for Water, Zone J was classified as a "hot spot" due to the water quality challenges it faces, as well as lingering boundary irregularities that have patch work fixes. No Commission action was recommended as the water system is a county service area zone, which do not have spheres of influence.

The County Special Districts Department has provided information identifying that the water contaminants do not currently exceed the MCL. However, staff's understanding of the State's reevaluation of the hexavalent chromium MCL is that the State will be re-adopting a lower MCL level but with adequate substantiation to support that level. As for the boundary

irregularities and water exchange with the City of Hesperia subsidiary Hesperia Water District, progress towards forming a JPA is occurring.

While progress has been made, LAFCO staff recommends that the Commission direct staff to return at the August 2018 hearing, with an update on the Zone J system and the potential contractual relationship with the Hesperia Water District.

Daggett Community Services District

Agency and Area Description

Daggett is an unincorporated community located in the North Desert Region of San Bernardino County. The town is located along Interstate 40, ten miles east of Barstow. The community has a population of approximately 300 residents. The community was founded in 1883 just after the discovery of silver in the mines near Calico to the north. The Daggett Community Services District (“CSD”) is authorized by LAFCO to provide water, streetlighting, fire protection, and park and recreation services. The CSD’s water service area includes 26 square miles, extending into the Yermo CSD territory which includes Yermo High School and the Silver Valley Unified School District offices. The CSD serves potable water through 196 residential and commercial service connections serving a population of approximately 500 residents. The CSD’s groundwater basin is adjudicated, and Mojave Water Agency is the Watermaster.

Service Review Recap

Below is the summary from the water service review for the CSD:

- Issue - Classified as a disadvantaged community; lacks intertie with an adjacent agency; significant deficiencies identified in sanitary survey report; located within the Mojave Basin Baja subarea which is at 45% ramp down; significant financial challenges identified in audits; prior service review identified concerns with the aging pipes; lack of adequate managerial oversight.
- Staff Recommendation - *Reaffirm the Commission’s position that Daggett CSD and Yermo CSD have a combined sphere of influence signaling the Commission’s position for consolidation.*

Senate Bill 88 (2015) authorizes the State Water Board to order consolidation with a receiving water system where a public water system¹, or a state small water system² within a disadvantaged community³, consistently fails to provide an adequate supply of safe drinking water. This law expedites permanent solutions for failing water systems and those

¹ A public water system is a system that supplies water that has 15 or more service connections or regularly serves 25 individuals daily at least 60 days out of the year.

² A state small water system is a system which provides water to the public that serves 5 to 14 service connections and does not serve more than an average of 25 people for more than 60 days of the year.

³ “Disadvantaged community” means a disadvantaged community, as defined in Section 79505.5 of the Water Code, which is located in an unincorporated area or is served by a mutual water company.

that have run out of water. Consolidation may involve physical consolidation of the participating water systems, management of the participating water systems, or both.

Update

The CSD is taking any and all efforts not to be on the radar for a potential SB 88 consolidation required by the State Water Board with the adjacent Yermo System of Liberty Utilities (private water company). MWA and the California Rural Water Association (“CRWA”) are actively engaging with the CSD on its water and managerial challenges.

For water challenges, a Proposition 1 Technical Assistance Grant was awarded to the CSD in the amount of \$325,657 from the State Water Resources Control Board in December 2016. The Technical Assistance Funding Agreement describes water distribution system and water quality deficiencies as well as anticipated solutions to these issues. California Rural Water Association (“CRWA”) is the non-profit that is performing the technical assistance work with the CSD. CRWA has been intermittently on-site at the CSD since late 2017 performing multiple tasks that are outlined in the approved Needs Assessment and Work Plan.

According to the data provided by MWA, water quality treatment does not appear to be a viable option for the CSD and that locating good quality groundwater in the service area, or near the service area, of Daggett CSD was necessary. In January 2018, MWA provided CRWA with data of wells and associated water quality within or near the CSD.

The next steps are for submission of an Engineering Report to the SWRCB which would identify a plan of action to include new well locations. If approved, the construction schedule for the potential project would be based on a timeline established by SWRCB.

As for managerial challenges, CRWA assisted the CSD in developing mechanisms for more efficient billing, organization, and rate setting. However, the CSD is a small office and recently hired a new general manager. Further, LAFCO has requested the 2015 and 2016 audits from the CSD, and the CSD was not able to provide these documents. Therefore, managerial challenges persist.

LAFCO Analysis

As a part of the Countywide Service Review for Water, the Commission reaffirmed its position that Daggett CSD and Yermo CSD have a combined sphere of influence signaling the Commission’s position for consolidation. Although a consolidation of Daggett CSD and Yermo CSD would provide pooled resources for improved management of the entities the communities have expressed distaste for such a measure. Historically San Bernardino LAFCO has been reluctant to move forward to initiate a consolidation, opting instead to try to encourage districts or communities to resolve their issues. Initiation by the Commission to consolidate would bypass the boards and place the matter for final approval by a protest vote of the registered voters. Further, a proposal initiated by the Commission (consistent with the recommendations or conclusions of the Water Service Review) and subsequently

approved by the Commission would change the protest process to a lower threshold. Therefore, this option has the least chance of success.

However, the adjacent Yermo CSD is not a water provider; rather, Liberty Utilities (a private company) is the water provider for a portion of the Yermo community, not provided service through wells or the Daggett CSD. Any potential consolidation of the two systems would be through the State Water Board under the provisions of SB 88.

The managerial issues persist at the Daggett CSD and require outside assistance. In addition, assistance from outside entities is needed to increase the water system's supply source, safety, and effectiveness.

While progress has been made, LAFCO staff recommends that the Commission direct staff to return at the August 2018 hearing, with an update on the Daggett CSD system.

County Service Area 70 Zone W-4 (Pioneertown)

Agency and Area Description

The domestic water system of County Service Area 70 Zone W-4 (Zone W-4), which has been maintained and managed under the County Special Districts Department's Water and Sanitation Division since 1980, has 120 service connections in the desert community of Pioneertown northwest of Yucca Valley. Zone W-4 is within the sphere of influence of Hi-Desert Water District, but not its boundary.

Service Review Recap

Below is the summary from the water service review for the CSD:

- Issue - Notice of Violation issued in March 2016 by U.S. EPA indicating water system in violation of Safe Drinking Water Act for exceeding MCL for arsenic, fluoride and uranium; state grant funding provides customers with bottled water supplies every two weeks.
- Staff Recommendation – No Commission action because zones do not have spheres of influence. See “Opportunities” below.
- Opportunities - Classified as a small water system and eligible for SB 88 funds; funding requires consolidation with an adjacent system; CSA 70 W-4 under consideration for potential SB 88 consolidation with Hi-Desert Water District.

Update

On October 31, 2017, the County Board of Supervisors took actions related to the Zone W-4 water system, to include:

- Approving the submittal of a grant application to the United States Department of Agriculture (USDA)-Rural Development requesting federal funding in the amount of \$2,500,000 for the Pioneertown Pipeline and Water System Improvement Project.
- Approving the Water Exchange Agreement with the Hi-Desert Water District (HDWD) allowing Zone W-4 access to groundwater within the Warren Valley Sub-basin in exchange for an equal amount of groundwater provided to HDWD from within the Ames/Reche Basin pursuant to the water rights of Zone W-4 for a term of 20 years, with an annual service and exchange charge to Zone W-4 of \$1,000 that increases by 5% after each five years of the agreement.

The Water Exchange Agreement with HDWD is a required stipulation to both SWRCB and USDA grant funding, as the Project is not viable without securing a clean water source.

On December 12, 2017, the HDWD approved the Water Exchange Agreement with the County. The board agenda items from the County and HDWD are included as attachments to this report. According to County Special Districts Department, a project job walk was conducted on March 7, 2018.

LAFCO Analysis

As a part of the Countywide Service Review for Water, Zone W-4 was classified as a “hot spot” due to the water quality challenges it faces. No Commission action was recommended as the water system is a county service area zone, which do not have spheres of influence. Further, Zone W-4 is already within the sphere of influence of HDWD. Therefore, the service review did not have any recommendations for Commission action.

While progress has been made, LAFCO staff recommends that the Commission direct staff to return at the August 2018 hearing, with an update on the Zone W-4 system.

CONCLUSION:

Due to issues identified in the Countywide Service Review for Water in July 2017, the Commission directed staff to return in six months with updates for three water systems. Additionally, staff included an update for the CSA 70 Zone W-4 system due to the gravity of the situation related to water quality.

Significant progress has been made on improving the County Service Area 70 Zone CG system; therefore, LAFCO staff recommends no further monitoring. LAFCO staff does recommend, however, that the Commission direct staff to return at the August 2018 hearing, with an update on Daggett Community Services District, CSA 70 Zone J, and CSA 70 Zone W-4 systems.

KRM/MT

Agenda Item 5
Water Service Review Update
March 12, 2018

Attachments:

1. LAFCO Resolution 3248 for LAFCO 3187 and Executive Summary from LAFCO 3187
2. County Service Area 70 Zone CG (Cedar Glen)
 - a. Map
3. County Service Area 70 Zone J (Oak Hills)
 - a. Map
4. Daggett Community Services District
 - a. Map
5. County Service Area 70 Zone W-4 (Pioneertown)
 - a. Map
 - b. County of San Bernardino Board Item 53 from October 31, 2017
 - c. Hi-Desert Water District Board Item from December 12, 2017
 - d. Copy of Contract between the County and Hi-Desert Water District

**LAFCO Resolution 3248 for
LAFCO 3187 and Executive
Summary from LAFCO 3187**

Attachment 1

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

215 North D Street, Suite 204, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 885-8170
E-MAIL: lafco@lafco.sbccounty.gov
www.sbcclafco.org

PROPOSAL NO.: LAFCO 3187

HEARING DATE: JULY 19, 2017

RESOLUTION NO. 3248

A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY MAKING DETERMINATIONS ON LAFCO 3187 – COUNTYWIDE SERVICE REVIEW FOR WATER (RETAIL, WHOLESALE, RECYCLED).

On motion of Commissioner Curatalo, duly seconded by Commissioner Williams, and carried, the Local Agency Formation Commission adopts the following resolution:

WHEREAS, a service review mandated by Government Code 56430 has been conducted by the Local Agency Formation Commission for San Bernardino County (hereinafter referred to as "the Commission") in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Sections 56000 *et seq.*); 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 the 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, a public hearing by this Commission was called for July 19, 2017 at the time and place specified in the notice of public hearing and in any order or orders continuing the hearing; and,

WHEREAS, at the hearing, this Commission heard and received all oral and written support and opposition; the Commission considered all objections and evidence which were made, presented, or filed; and all persons present were given an opportunity to hear and be heard in respect to any matter relating to the service review, in evidence presented at the hearing; and,

WHEREAS, at this hearing, this Commission certified that the service review is statutorily exempt from environmental review pursuant to the provisions of the California Environmental Quality Act (CEQA) and such exemption was adopted by this Commission on July 19, 2017. The Commission directed its Executive Officer to file a Notice of Exemption within five working days of its adoption; and,

WHEREAS, the determinations required by Government Code Section 56430 and local Commission policy are included in the report prepared and submitted to the Commission dated July

RESOLUTION NO. 3248

5, 2017 and is recommended for acceptance and filing by the Commission on July 19, 2017, a complete copy the service review is on file in the LAFCO office.

WHEREAS, the following additional determinations are made in conformance with the Government Code and local Commission policy:

- A stakeholder group was convened within each region (Valley on May 8, 2017; Mountain on June 15, 2017; North Desert on January 31, 2017; and South Desert on May 15, 2017) to provide a peer review of the service review's purpose, objective, and methodology. The stakeholder groups were composed of a variety of public agencies and at least one private system.
- Following the peer review, each water system identified in this review was provided a draft of the report for review and comment. Comments from the water purveyors are included in Appendix A of the service review.
- As required by State Law, notice of the hearing was provided through publication in newspapers of general circulation within the area, the *Big Bear Grizzly*, *Daily Press*, *Desert Dispatch*, *Hi-Desert Star*, *Inland Valley Daily Bulletin*, *Mountain News*, and *San Bernardino Sun*. Individual notice was not provided as allowed under Government Code Section 56157 as such mailing would include more than 1,000 individual notices. As outlined in Commission Policy, in-lieu of individual notice the notice of hearing publication was provided through an eighth page legal ad.
- As required by State law, individual notification of the hearing was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.
- Due to the size and scope of the report, the service review document was provided in advance of the staff report to allow additional time for review. The service review document was published July 5, 2017 and a copy was provided to affected and interested agencies and County departments, as well as those agencies and individuals requesting mailed notice. The service review document was also made accessible on the LAFCO website.

NOW, THEREFORE, BE IT RESOLVED by the Local Agency Formation Commission for San Bernardino County, State of California, that this Commission shall:

1. Accept and file the Countywide Service Review (Retail, Wholesale, Recycled), included as Exhibit A to this resolution, which sets forth the written statements for the six determinations outlined in Government Code Section 56430 as presented and as amended at the hearing.
2. Initiate the establishment of a sphere of influence for Metropolitan Water District of Southern California within San Bernardino County to be coterminous with the sphere of influence of its member agency, Inland Empire Utilities Agency.
3. Direct LAFCO staff to continue to monitor County Service Area 70 Zone CG (Cedar Glen) and provide an update to the Commission by February 2018.

RESOLUTION NO. 3248

4. Indicate the Commission's intent to reduce the City of Adelanto's sphere of influence following the completion of the countywide wastewater service review.
 5. Indicate the Commission's preference that the Hesperia Water District and County Service Area Zone J implement a mechanism (e.g., joint powers agreement or memorandum of understanding) to provide stability to the water source and boundary challenges within the territory of southwestern Hesperia and Oak Hills communities.
 6. Direct LAFCO staff to continue to monitor County Service Area 70 Zone J (Oak Hills) and provide an update to the Commission by February 2018.
 7. Reaffirm the Commission's position that the Apple Valley Foothill, Apple Valley Heights, and Mariana Ranchos County Water Districts have a combined sphere of influence signaling the Commission's position that a future consolidation of the agencies is appropriate.
 8. Reaffirm the Commission's position that Daggett Community Services District and Yermo Community Services District have a combined sphere of influence signaling the Commission's position that a future consolidation of the agencies is appropriate, and direct LAFCO staff to coordinate with Mojave Water Agency to further assist Daggett Community Services District through its Small Water Assistance Program.

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

AYES: COMMISSIONERS: Bagley, Cox, Curatalo, Williams
NOES: COMMISSIONERS: None
ABSENT: COMMISSIONERS: Lovingood, McCallon, Ramos

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 meeting of July 19, 2017.

DATED: July 24, 2017

KATHLEEN ROLLINGS-McDONALD
Executive Officer

Executive Summary

This service review consists of a countywide service review on water (wholesale, retail and recycled) within San Bernardino County. It fulfills the service review requirements identified in the Cortese-Knox-Hertzberg Local Reorganization Act of 2000 (Government Code §56000 et. seq.). The report is organized geographically by the county's four major regions: Valley, Mountain, North Desert and South Desert. A stakeholder group was formed within each region to provide a peer review of the service review's purpose, objectives and methodology. A draft copy was circulated to all water systems reviewed in this report as well as interested parties for review and comment. The final version of this report includes LAFCO staff's responses to the comments. LAFCO may use this report as a basis to initiate agency sphere of influence updates, where warranted, and to help address identified service deficiencies.

Approach

Legislation adopted since 2012 impacting service reviews or the provision of services has been incorporated into the report's analysis. These laws are detailed in the Introduction portion of this report and address:

- Mutual water companies in service reviews
- Disadvantaged unincorporated communities
- Pilot program for San Bernardino LAFCO regarding services outside an agency sphere of influence
- The Sustainable Groundwater Management Act of 2014, and
- Authorization for the State Water Resources Control Board to consolidate water systems that are serving disadvantaged communities with unreliable and unsafe drinking water with other water systems.

The primary goal of this service review is to provide the Commission with recommendations to: (1) update the determinations from previous service reviews, and (2) initiate sphere of influence updates where appropriate. To arrive at these recommendations, the service review focuses on two areas:

- (1) Identification of "hot spots" – Those areas or agencies within the county which have significant water-related issues including, but not limited to, insufficient water supply, water quality related issues, deficient infrastructure, financial constraints, and/or inadequate oversight and monitoring.
- (2) Service review update – Update of water agencies' determinations since the prior service review.

To identify the County's water "hot spots," staff utilized a multi-pronged approach using prior service reviews, audits, budgets, consumer confidence reports, sanitary survey reports, and GIS data to identify future population growth areas, disadvantaged communities, and small community water systems. This Executive Summary summarizes the hot spots identified in the report and staff recommendations. Additionally, staff has identified opportunities for efficiencies for the community at large to consider – these do not have a recommendation for Commission action.

What Did We Learn?

Countywide

- 80% of the land in the county (roughly 16,200 sq. miles) is primarily vacant and outside the governing control of the County's Board of Supervisors and 24 cities.
- Significant opportunities for economies of scale via consolidation exist in the Mountain, North Desert, and South Desert regions.
- San Bernardino County and the broader Inland Empire region are anticipated to see more population growth in the near term than the coastal regions of Southern California. The high cost of housing in the coastal counties of Los Angeles, Orange and San Diego has made the Inland Empire a destination of choice for many residents willing to commute to those areas.
- The Metropolitan Water District of Southern California has never been assigned a sphere of influence in San Bernardino County.
- LAFCO staff has comprehensively digitally mapped all the water systems identified in this report. The following entities requested access to this data which LAFCO has provided: Department of Water Resources, Division of Drinking Water of the State Water Resources Control Board, California Environmental Health Tracking Program of the Department of Public Health, and the County of San Bernardino as a part of its upcoming general plan update.

Legislation/Regulations

- Senate Bill 88 authorizes the State Water Board to order consolidation with a receiving water system where a public water system, or a state small water system within a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water. This authority provides an opportunity for water system improvements by offering inducements or by ordering consolidation of systems.
- Other State agencies, such as the California EPA, use alternative criteria to identify disadvantaged communities for grant funding purposes. The different criteria at the local and state government levels is confusing and complicates implementation of a consistent approach to address our disadvantaged residents. While staff recognizes the difficulty in developing a one-size-fits-all definition, LAFCO staff's position is that additional work needs to be done state-wide to develop a method for identifying disadvantaged communities that is more consistent yet recognizes the diversity of communities and geographies in California.
- Agencies have adopted resolutions to form Groundwater Sustainability Agencies for areas identified as fringe areas – areas outside a local agency boundary.
- There is a systemic lack of understanding and compliance with the California Land Conservation Act of 1965 (known as the Williamson Act) statutes and implementation by the County and cities. Government Code §51243 states that when annexing properties into a city, "...the city shall succeed to all rights, duties, and powers of the county under the contract." As a whole, the data provided to LAFCO by the County and cities is either incomplete, outdated, and/or not in compliance between Agricultural Preserves and Williamson Act parcels. LAFCO staff will continue work on this matter and present a final product to the Commission as a part of the wastewater service review.

Water Systems

- Many systems identified in the first round of service reviews as having experienced significant challenges, remain as having significant challenges.
- There are clusters where challenges are difficult to overcome due to groundwater quality and economic status (being defined as a disadvantaged community).
- There are areas where agencies provide, or plan to provide, service outside of its sphere of influence: (1) City of Colton, (2) City of Big Bear Lake via its Department of Water and Power, and (3) Town of Apple Valley (potential condemnation and purchase of the Liberty Utilities system). This is addressed in the context of Gov't. Code §56133.5 - a pilot program, through 2020, for Napa and San Bernardino LAFCOs to authorize a city or district to extend services outside of a sphere for additional purposes beyond responding to threat to public health or safety.
- During the course of the service review, two areas were identified that warrant identification but are not considered a hot spot as remediation efforts are well underway: (1) Rockets, Fireworks, and Flares Site (Rialto area), and (2) County Service Area 70 CG – Cedar Glen.
- During the drought, many local agencies that self-reported water usage data to the state (which meant that a zero state conservation standard was applied) opted to implement a higher conservation standard.
- On average, the 33 water systems that were required to report to the State their water usage during the drought reported in February 2017 a 16.7% cumulative savings as compared to the same month in 2013.

Successes

The following provides one positive effort for each region:

- *Valley Region* - There is extensive coordination amongst agencies within groundwater basins. Between certain basins conflict is present.
- *Mountain Region* - The County purchased a failing water system in Cedar Glen which is now operated under County Service Area 70 Zone CG. Great progress has been made to improve this once failing system, although challenges remain.
- *North Desert Region* - To assist small water systems within the boundaries of Mojave Water Agency (“MWA”), MWA’s Small Water Systems Assistance Program provides resources for disadvantaged and severely disadvantaged small water systems that lack staff, expertise, and funding to meet their individual water reliability, conservation and quality standards. The MWA service area includes 36 small water systems of which 65% meet the criteria of disadvantaged communities.
- *South Desert* – The Twentynine Palms Water District (“TPWD”) has become a test district for the EPA’s research into an economical method for small, low-income water agencies to remove arsenic. This new method brings the TPWD drinking water into compliance with the new maximum contaminant levels for arsenic and saves the district over \$20,000 annually. Not only does this clean the local water, the results from this test case will support the removal of arsenic in other areas of the country with a lower cost method. Additionally, the District operates a 3MGD Fluoride Removal Plant that removes high levels of naturally occurring fluoride from the Mesquite Lake sub-basin.

Staff Recommendations for Commission Action

The following outlines staff's recommendations for the Commission. The first recommendation concerns the lack of a sphere of influence for the Metropolitan Water District of Southern California within San Bernardino County. The remaining five recommendations stem from the agencies being identified a "hot spot".

Metropolitan Water District of Southern California

- Issue - Metropolitan Water District of Southern California lacks sphere of influence within San Bernardino County. Metropolitan is a special district subject to LAFCO purview. Therefore, San Bernardino LAFCO is obligated to establish a sphere of influence. This issue is detailed in Section III.
- Staff Recommendation - *Initiate the establishment of a sphere of influence for Metropolitan within San Bernardino County to be coterminous with the sphere of its member agency, Inland Empire Utilities Agency.*

County Service Area 70 Zone CG (Cedar Glen)

- Issue - County Service Area 70 Zone CG (Cedar Glen) experiences ongoing challenges due to County's purchase of a failing water system as detailed in Section IV.
- Staff Recommendation - *Direct staff to continue to monitor the Zone CG system and provide an update to the Commission by February 2018.*

City of Adelanto

- Issue - Water operations of the Adelanto Public Utilities Authority, a component of the City, in significant debt to the City; 2014 audit (most recent completed) questions agency's ability to continue given inability to secure financing to address debt payments; City's water system has multiple deficiencies; City under a conservation order from the State Board; City has inadequate water storage facilities to accommodate future growth.
- Hot Spot Identification – The City of Adelanto has been identified in this service review as a hot spot due to the issues identified above and detailed in Section V.
- Staff Recommendation - *Indicate the Commission's intent to initiate a sphere of influence review to reduce the City's sphere of influence following the completion of the wastewater and fire service reviews.*

Apple Valley Foothill County Water District

Apple Valley Heights County Water District

Mariana Ranchos County Water District

- Issue:
 - Apple Valley Foothill County Water District - Lack of audit internal controls; lack of inter-tie with another water system; classified as a disadvantaged community.
 - Apple Valley Heights County Water District - Lack of audit internal controls; lack of inter-tie with another water system. The Sanitary Survey Report identifies that additional source capacity is needed to meet State regulation and for reliability. Additionally, the District is deficient in storage capacity and must develop a plan of action to meet the storage capacity requirements.

*Countywide Service Review for Water
Executive Summary*

Deterioration of its tanks and failure of its existing pipeline resulted in emergency repairs.

- Hot Spot Identification – The Apple Valley Foothill CWD and Apple Valley Heights CWD have been identified in this service review as a hot spots due to the issues identified above and detailed in Section V. Mariana Ranchos CWD is not identified as a hot spot but is contiguous to the other two districts.
- Staff Recommendation - *Reaffirm the Commission's position that Apple Valley Foothill, Apple Valley Heights, and Mariana Ranchos County Water Districts have a combined sphere of influence signaling the Commission's preference that the three districts consolidate.*

County Service Area 70 Zone J

- Issue - All sources have hexavalent chromium above MCL; Zone J is currently working on a hexavalent chromium compliance plan under Senate Bill 385 to achieve compliance; previous service review determined the need to resolve boundary conflicts between the Hesperia Water District and Zone J in the Maple/Topaz strip which is currently a part of the City of Hesperia.
- Hot Spot Identification – CSA 70 Zone J has been identified in this service review as a hot spot due to the issues identified above and detailed in Section V.
- Staff Recommendation - *Indicate the Commission's preference that the Hesperia Water District and Zone J implement a mechanism (e.g., joint powers agreement or memorandum of understanding) to provide stability to the water source and boundary challenges in the overall Hesperia and Oak Hills communities.*

Although LAFCO staff is working with the Hesperia Water District and CSA 70 Zone J on a mechanism to resolve the boundary conflicts, staff recommends that the Commission direct staff to continue to monitor the Zone J system and provide an update to the Commission by February 2018.

Daggett Community Services District

- Issue - Classified as a disadvantaged community; lacks intertie with an adjacent agency; significant deficiencies identified in sanitary survey report; located within the Mojave Basin Baja subarea which is at 45% ramp down; significant financial challenges identified in audits; prior service review identified concerns with the aging pipes; lack of adequate managerial oversight.
- Hot Spot Identification – Daggett CSD has been identified in this service review as a hot spot due to the issues identified above and detailed in Section V.
- Staff Recommendation - *Reaffirm the Commission's position that Daggett CSD and Yermo CSD have a combined sphere of influence signaling the Commission's position for consolidation.*

*Countywide Service Review for Water
Executive Summary*

Systems Identified as Hot Spots – No Staff Recommendations

The following outlines water systems identified as hot spots but are either not under Commission purview or where no tangible Commission action is recommended. In the Mountain Region, no water systems were identified as hot spots.

In the Valley Region, staff identified one private water purveyor as a “hot spot”:

Hot Spots	Rationale	Summary
San Antonio Canyon Mutual Service Company	Non-compliance with source capacity requirements and interim drought measures.	Not under LAFCO purview. See “Opportunities” below.

In the North Desert, staff identified the following seven public water agencies and three private water purveyors as “hot spots”:

Hot Spots	Rationale	Summary
Baker CSD	Located within a disadvantaged unincorporated community; is an isolated area with no access to another water system; gross alpha and uranium levels exceed the MCL; Well #2 and Well #3 exceed the MCL for hexavalent chromium, Cr (VI), of 10 µg/L; lack of quarterly monitoring of Cr (VI) in violation of state regulations.	System is not eligible for SB 88 grant funds since there are no adjacent systems for potential consolidation.
Bar Len MWC	The sanitary survey report identifies significant deficiencies of the water system; system is under consideration by the State Water Board for potential Water System (SB 88) consolidation with the adjacent Hi Desert Mutual Water Company.	Not under LAFCO purview.
County Service Area 42	Classified as a disadvantaged community; system lacks an inter-tie connection; previous service review determined system did not meet required storage capacity; substantial rate increases have been implemented in order to pay for capital upgrades.	There are no recommendations for the Commission.
Desert Springs MWC	The sanitary survey report identifies issues with system leaks and inadequate storage capacity; 2015 Consumer Confidence Report indicates inadequate water quality testing.	Not under LAFCO purview.
Gordon Acres WC	System not complying with sampling requirements for a community water system; two violations issued by County Public Health in 2017 regarding failure to monitor and test for inorganic chemicals, perchlorate and secondary standards; system is under consideration by the State Water Board for potential Water System (SB 88) consolidation with the adjacent Jubilee Mutual Water Company.	Not under LAFCO purview.

*Countywide Service Review for Water
Executive Summary*

In the South Desert, staff identified the following three public agencies and one private water purveyor as “hot spots”:

Hot Spots	Rationale	Summary
CSA 70 Zone F (Morongo Valley)	2015 Consumer Confidence Report states source water violates gross alpha and uranium MCLs; 2016 Sanitary Survey Report notes water exceeds uranium MCL, and system has aging distribution lines requiring frequent maintenance.	No Commission action because zones do not have spheres of influence. See “Opportunities” below.
CSA 70 Zone W-3 (Hacienda Heights, Morongo Valley)	2015 Consumer Confidence Report notes that source water exceeds uranium MCL; 2016 Sanitary Survey Report reports that distribution lines are old and require frequent maintenance; Well #1 exceeds MCL for gross alpha and uranium; Well #2 is very close to the MCL; system lacks an emergency response plan.	No Commission action because zones do not have spheres of influence. See “Opportunities” below.
CSA 70 Zone W-4 (Pioneertown)	Notice of Violation issued in March 2016 by U.S. EPA indicating water system in violation of Safe Drinking Water Act for exceeding MCL for arsenic, fluoride and uranium; state grant funding provides customers with bottled water supplies every two weeks.	No Commission action because zones do not have spheres of influence. See “Opportunities” below.
Golden State Water Company – Morongo del Norte	2016 Sanitary Survey Report identifies Elm Well exceeding uranium MCL; well will not be placed in service until a uranium treatment system is in place and operational, or district submits a compliance plan; gross alpha and uranium levels are at or near MCL for Bella Vista and Highway Wells.	Not under LAFCO purview.

*Countywide Service Review for Water
Executive Summary*

Opportunities for Future Consideration

The following identifies opportunities for the Commission and the water systems to consider.

Opportunities – Valley Region

Agency	Issue	Opportunity
San Antonio Canyon Mutual Service Company	Insufficient source capacity.	Consolidation of San Antonio Canyon Mutual Service Company with Mt. Baldy HOA would allow eligibility for SB 88 funding to upgrade facilities.

Opportunities – Mountain Region

Agencies	Issue	Opportunity
Crest Forest-Crestline Village Water District and Crestline Sanitation District	Overlapping territory	Consolidation of water and wastewater services under a single agency would benefit the community and likely reduce staffing and admin costs.
CSA 70 Zone CG, Lake Arrowhead Community Services District, and Crestline-Lake Arrowhead Water Agency Improvement Districts	Multiple public agencies overlaying the same area providing the same service.	Consolidate or form a community services district to increase service delivery efficiency through a single agency.
Running Springs Water District, Arrowbear Park County Water District, CSA 79 (sewer only)	Adjacent agencies, which work together and share facilities, providing similar services under the same parent act.	Consolidation of water and wastewater services under a single agency would provide for an efficient delivery pattern.

Opportunities – North Desert Region

Agencies	Issue	Opportunities
Apple Valley Foothill County Water District, Apple Valley Heights County Water District	Lack of financial internal controls; lack of inter-ties with another system; Apple Valley Heights County Water District is deficient in storage capacity and water source capacity.	Districts should consider initiating consolidation and include Mariana Ranchos County Water District – all three share a single sphere of influence; consolidation would open up opportunities for SB 88 grant funding.
Bar Len Mutual Water Company	Sanitary survey report identifies significant deficiencies	Under consideration by State Water Board for potential water system (SB 88) consolidation with Hi-Desert Mutual Water Company.
Gordon Acres Water Company	Non-compliance with water quality monitoring requirements.	Under consideration by State Water Board for potential Water System (SB 88) consolidation with Hi-Desert Mutual Water Company.
Daggett Community Services District and Liberty Utilities Yermo	Significant deficiencies/financial challenges.	Consolidation of Daggett Community Services District and Liberty Utilities Yermo would allow eligibility for SB 88 funding to upgrade facilities.

*Countywide Service Review for Water
Executive Summary*

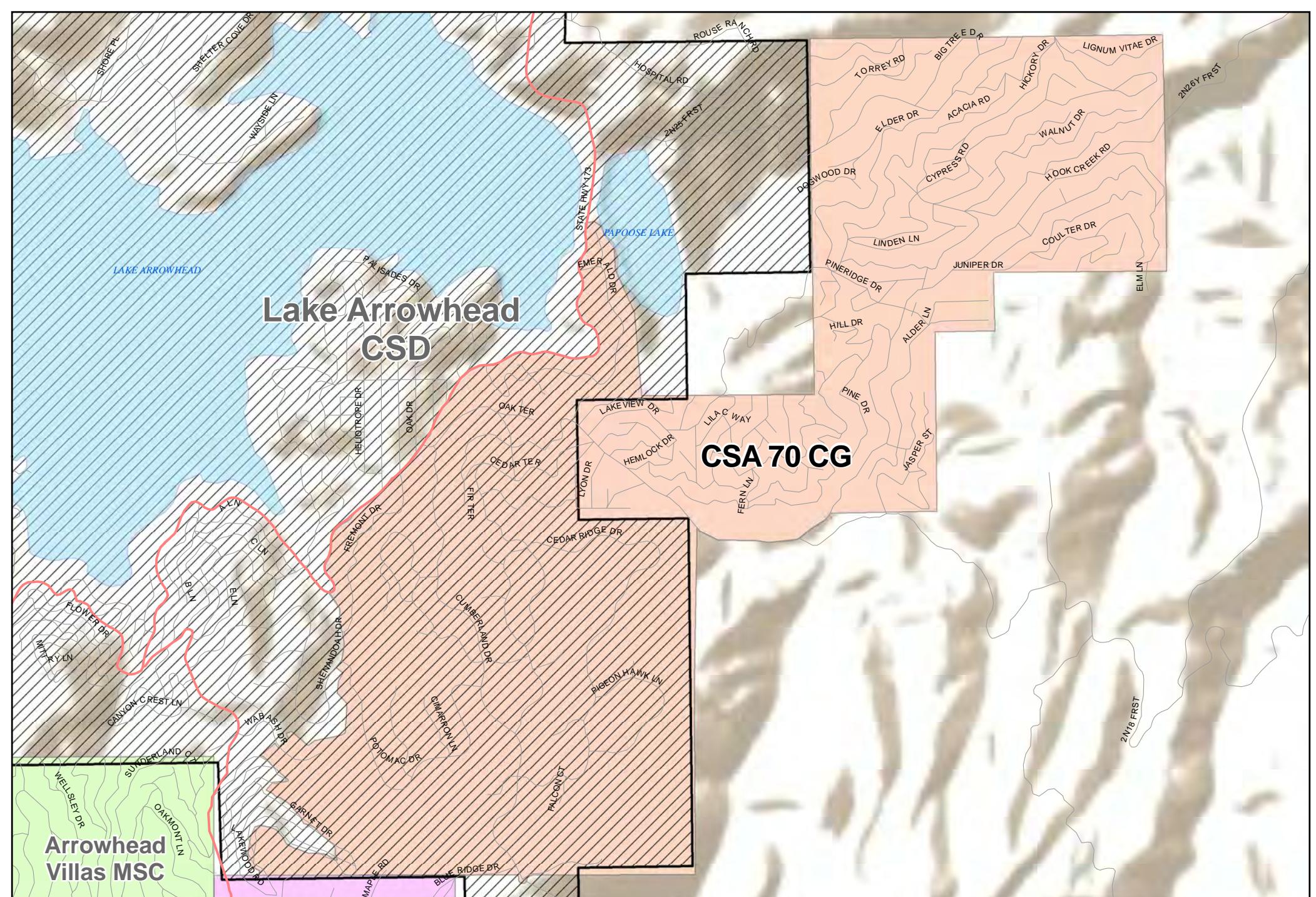
Opportunities – South Desert Region

Agencies	Issue	Opportunities
CSA 70 Zone F, CSA Zone W-3, Golden State WC Morongo del Norte and Golden State WC Morongo del Sur	High gross alpha, uranium levels; ongoing operation and maintenance issues.	All classified as small water systems; eligible for SB 88 funds if consolidated; all four agencies should consider jointly initiating a consolidation application to the state since additional resources are available when three or more agencies consolidate.
CSA 70 W-4	Water system exceeds MCLs for arsenic, fluoride and uranium.	Classified as a small water system and eligible for SB 88 funds; funding requires consolidation with an adjacent system; CSA 70 W-4 under consideration for potential SB 88 consolidation with Hi-Desert Water District.

**County Service Area 70 Zone
CG (Cedar Glen)**

a. Map

Attachment 2



County Service Area 70 Zone Cedar Glen

0 250 500 1,000 Yards

Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.

Map Created: 5/1/2017



*In instances of overlapping water systems, the boundary of the underlying government system is reduced.

- County Service Area 70 Zone Cedar Glen
- Arrowhead Villas Mutual Service Company
- Lake Arrowhead Community Service District (Water Service Area)
- Skyforest Mutual Water Company

**County Service Area 70 Zone
J (Oak Hills)**

a. Map

Attachment 3

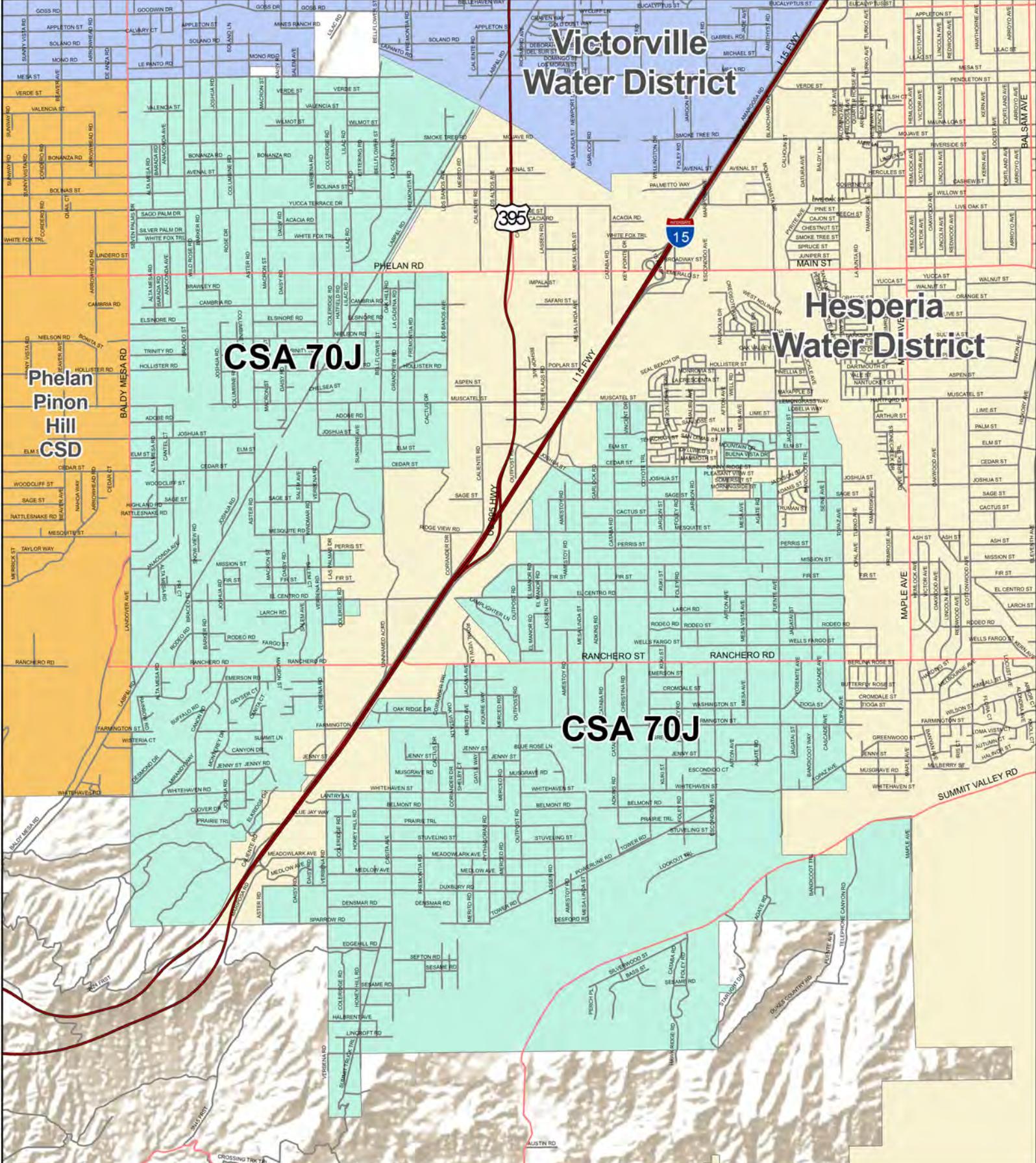
Victorville Water District

CSA 70J

CSA 70J

Hesperia Water District

**Phelan
Pinon
Hill
CSD**



County Service Area 70J

0 0.75 1.5 3 Miles



Map Created: 1/12/2017

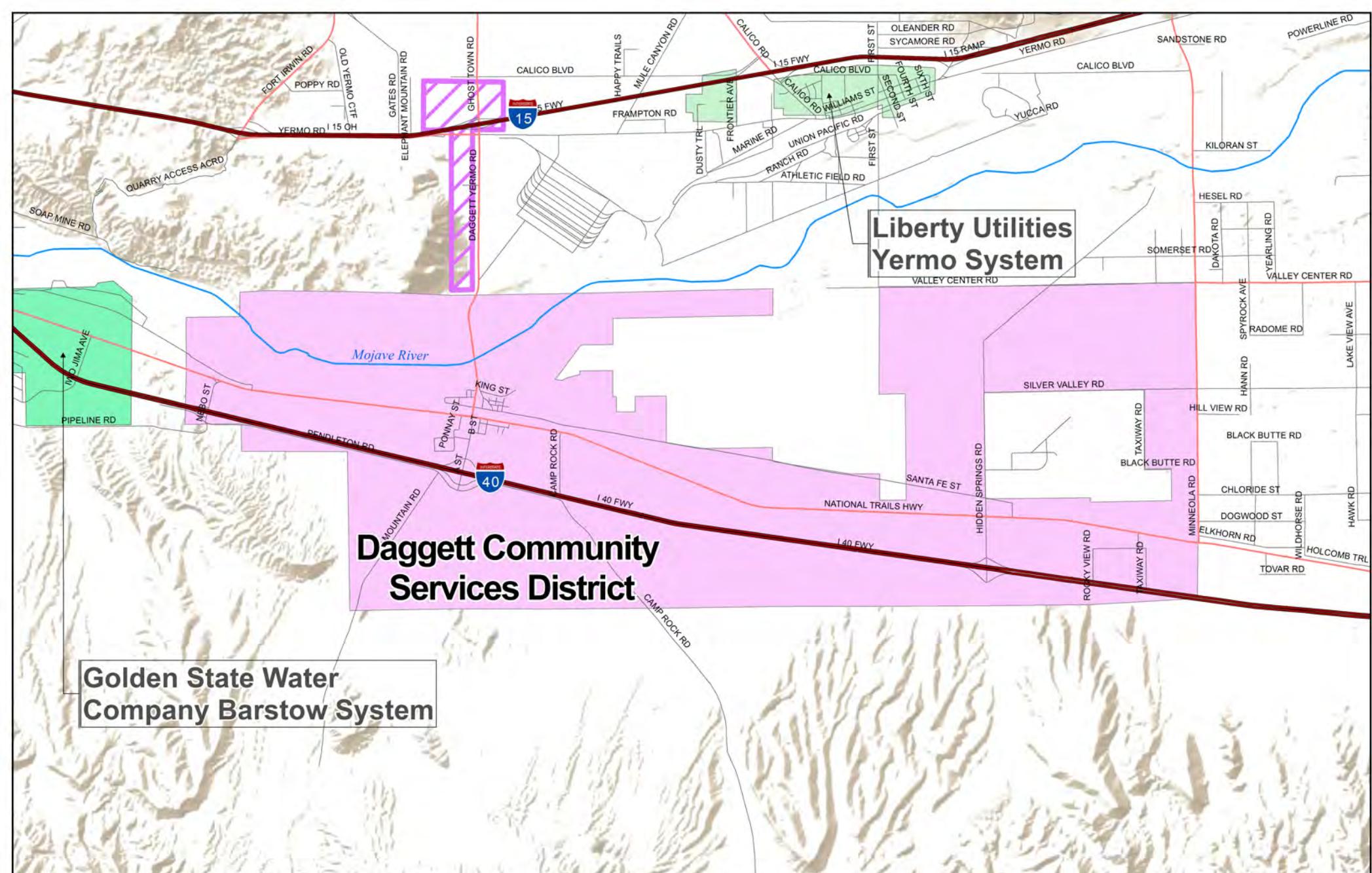
- █ Victorville Water District
- █ Phelan Pinon Hill Community Service District
- █ Hesperia Water District
- █ County Service Area 70 J

Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.

Daggett Community Services District

a. Map

Attachment 4



Daggett Community Services District

Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.

Map Created: 1/17/2017

0 0.5 1 2 Miles



- Daggett Community Service District
- Daggett CSD Out-of-agency Service Agreement into Yermo
- Golden State Water Company Barstow System
- Yermo Water Company

County Service Area 70 Zone W-4 (Pioneertown)

- a. Map**
- b. County of San
Bernardino Board Item
53 from October 31,
2017**
- c. Hi-Desert Water District
Board Item from
December 12, 2017**
- d. Copy of Contract
between the County and
Hi-Desert Water District**

Attachment 5

DODGE WAY

KEYS RD

MINNA GOMBELL RD

STUD VALLEY RD

COUNTY RD

COUNTY RD

Pioneertown

CSA 70 W4

COUNTY RD

WYANDOT RD

MOUNTAIN VIEW LN

MINNA GOMBELL LN

TOM MIX RD

ANNIE OAKLEY AVE

WILLIAM S HART RD

ANNIE OAKLEY RD

RED RYDER RD

PALOMA AVE

BRONCO RD

UPPER RD

LARIAT RD

PALOMA AVE

RODEO LN

KIMOSABE RD

RAWHIDE RD

ACCESS RD

PIONEERTOWN RD

ACCESS RD

MANE ST

CURRIS RD

SKYLINE RANCH RD

COUNTY RD

BUENA VISTA DR

WILLIAM S HART RD

COUNTY RD

CSA 70 W4

Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.

Map Created: 5/18/2017

0 150 300 600 Yards



**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE BOARD GOVERNED COUNTY SERVICE AREAS
AND RECORD OF ACTION**

53

October 31, 2017

FROM: JEFFREY O. RIGNEY, Director
Special Districts Department

SUBJECT: COUNTY SERVICE AREA 70 ZONE W-4 (PIONEERTOWN) WATER PIPELINE
AND SYSTEM IMPROVEMENT PROJECT

RECOMMENDATION(S)

Acting as the governing body of Board Governed County Service Area 70, Zone W-4 (Pioneertown):

1. Adopt resolution which:
 - a. Approves the submittal of a grant application to the United States Department of Agriculture (USDA)-Rural Development requesting federal funding in the amount of \$2,500,000 for the Pioneertown Pipeline and Water System Improvement Project (Project).
 - b. Designates the Chair of the Board of Supervisors, Chief Executive Officer, or Director of Special Districts Department, as required by the USDA-Rural Development to participate in the loan and grant program, to conduct all negotiations and execute and submit all documents, including, but not limited to, applications, support documents and non-substantive amendments, upon review by County Counsel, in relation to the USDA grant application.
2. Direct the Chair of the Board of Supervisors, Chief Executive Officer, or Director of Special Districts Department to transmit all documents and amendments in relation to the USDA grant application to the Clerk of the Board of Supervisors within 30 days of execution.
3. Approve Water Exchange Agreement with the Hi-Desert Water District (HDWD) allowing CSA 70 W-4 access to groundwater within the Warren Valley Sub-basin in exchange for an equal amount of groundwater provided to HDWD from within the Ames/Reche Basin pursuant to the water rights of CSA 70 W-4 for a term of 20 years, with an annual service and exchange charge to CSA 70 W-4 of \$1,000 that increases by 5% after each five years of the agreement.

(Presenter: Jeffrey O. Rigney, Director, 387-5967)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS AND OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

Pursue County Goals and Objectives by Working with Other Agencies.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The overall estimated cost of the Project is \$5.5 million. This cost, which includes

engineering, planning, construction of a pipeline and pumping stations, and renovation of a HDWD well, has the following potential funding sources:

- On September 1, 2015 (Item No. 45), the Board of Supervisors (Board) approved the submittal of a grant application to the State Water Resources Control Board (SWRCB) requesting \$5.0 million under the Drinking Water State Revolving Fund for the Project. Of the \$5.0 million requested, initial indications are that SWCB may commit \$3.0 million in grant funding.
- With Board approval of this item, submittal of a grant application to the USDA requesting \$2.5 million to augment the SWRCB funding.

If one or both of these grant applications is successful, the Special Districts Department (Department) will return to the Board for acceptance of the grant(s) in accordance with County policy.

As for the Water Exchange Agreement, CSA 70 W-4 will pay HDWD a base ground well lease service and exchange charge of \$1,000 annually with 5% increases after each five years. This charge will be funded through the CSA 70 W-4 annual operating budget.

BACKGROUND INFORMATION

The domestic water system of CSA 70 W-4, which has been maintained and managed under the Department's Water and Sanitation Division since 1980, has 120 service connections in the desert community of Pioneertown north of Yucca Valley. The existing CSA 70 W-4 well water sources supplying Pioneertown contain elevated levels of fluoride, arsenic, and uranium that either exceed or are approaching the maximum contaminant levels (MCL) set by the Environmental Protection Agency and the California Department of Public Health. The tap water from these well sources is not potable and CSA 70 W-4 is currently providing bottled water for residents and businesses to meet their daily consumption needs.

In response to drinking water deficiencies, and in partnership with the Hi-Desert Water District (HDWD), the Wildlands Conservancy (Conservancy), and the SWRCB through grant funds sought under the Drinking Water State Revolving Fund, CSA 70 W-4 has developed the Pioneertown Pipeline and Water System Improvement Project (Project). The Project entails construction of a four-mile long water distribution pipeline to convey water from a HDWD water well in the Town of Yucca Valley by way of a new transfer tank and pump station located at the midpoint on a 1.5-acre site made available by the Conservancy. On September 26, 2017 (Item No. 47), the Board approved the purchase of this land from the Conservancy in the amount of \$4,500. Along with the acquisition of property, the Project is dependent on the execution of a water exchange agreement between CSA 70 W4 and the HDWD to provide access to untainted water. The Water Exchange Agreement with HDWD is a required stipulation to both SWRCB and USDA grant funding as the Project is not viable without securing a clean water source.

The Project involves the installation of approximately 21,000 linear feet of eight-inch diameter pipeline aligned with Pioneertown Road and includes two booster stations to move water from the HDWD Well 2w site at Sunland Drive to CSA 70 W-4 existing pipe infrastructure in the vicinity of Mane Street and Curtis Road in Pioneertown. Section 15063 of the California Environmental Quality Act (CEQA) Guidelines (Title 14, California Code of Regulations) required the preparation and public circulation of an Initial Study to evaluate the potential environmental impacts

associated with the Project. The Initial Study determined that no significant environmental effects would occur because mitigation measures will be implemented to reduce all potentially significant impacts to less than significant levels. A Mitigated Negative Declaration was prepared and adopted by the Board on September 1, 2015 (Item No. 45) to serve as the CEQA findings for the Project.

The USDA's Water and Waste Disposal Loan and Grant Program specifically addresses the most financially needy rural areas and towns with populations of 10,000 or less. The USDA has identified the Project as qualifying for grant funding under this program to pay for such costs as engineering, project management, installation of pipeline, and booster station equipment and pumps needed to provide potable water. Submission of this USDA electronic grant application seeks supplemental funding to bring the CSA 70 W-4 system into compliance with drinking water standards. The USDA application requires that an authorized agent(s) of CSA 70 W-4 be established by resolution before completion of the electronic grant application. The authorized representative(s) is required to approve designated roles for staff to complete the application.

The Water Exchange Agreement with HDWD provides CSA 70 W-4 with an uncontaminated source of water, which can provide Pioneertown with potable tap water. The agreement is designed to assist CSA 70 W-4 in serving its customers with water of sufficient quality and quantity (not more than 50 acre feet per year) to meet the legal requirements of the San Bernardino County Department of Environmental Health Services, SWRCB and all other legal requirements for domestic water service. As part of the agreement with HDWD, CSA 70 W-4 will gain the ability to extract water from HDWD Sunland Drive Well 2w Site and interconnect to the HDWD distribution system for temporary emergency service when necessary. This agreement with HDWD shall remain in effect for 20 years and automatically renew for an additional ten years unless terminated by written notice from either party.

PROCUREMENT

N/A

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Julie J. Surber, Supervising Deputy County Counsel, 387-5455 on October 6, 2017 and Dawn Martin, Deputy County Counsel, 387-5455 on October 10, 2017); Finance (Tom Forster, Administrative Analyst, 387-4635) on October 12, 2017; and County Finance and Administration (Matthew Erickson, Chief Administrative Analyst, 387-5423) on October 16, 2017.



Date: December 12, 2017

To: Board of Directors

From: Ed Muzik, General Manager

Prepared/
Presented by: Ed Muzik, General Manager

Pioneertown Water Project

Recommendation: The Board authorize the General Manager to enter into the Water Exchange Agreement between San Bernardino County Service Area 70, Zone W-4 and Hi-Desert Water District.

Fiscal Impact: To be determined.

Background: Hi-Desert Water District (HDWD) is willing to exchange water with County Service Area 70 W-4 (CSA 70 W-4) by allowing access to groundwater within the Warren Valley Subbasin for use by CSA 70 W-4, in exchange for an equal amount of groundwater provided to HDWD from within the Ames/Reche Basin pursuant to the water rights of CSA 70 W-4 when there is available capacity in the HDWD Mainstream well and water system and such water is available. CSA 70 W-4 will provide water to HDWD before extracting any water from the Warren Valley Subbasin. No HDWD water supply will be deemed to be dedicated for use by CXSA 70 W-4 customers. This project is intended to provide a clean, reliable water supply to Pioneer Town, a community that is currently experiencing a water supply and quality emergency.

HDWD makes no representation concerning the quality of the water provided. CSA 70 W-4 shall be responsible for the quality of water provided to Pioneertown and shall be required to complete all required source and distribution water per State sampling guidelines. All water made available under this Agreement shall be for use by CSA 70 W-4 only and shall not be removed or rerouted for use by other agencies, water systems, or water haulers that deliver water outside of the CSA 70 W-4 service boundary.

CSA 70 W-4 shall be responsible for all engineering and construction work, and all improvements necessary to complete the interconnection between HDWD Well 2w and the HDWD water distribution system and CSA 70 W-4 transmission and distribution systems. CSA 70 W-4, at its sole cost, shall rebuild the well's pump and motor to its original specifications or replace it with equipment of the original equipment's equal.

HDWD shall provide at no cost to CSA 70 W-4, access for the life of this Agreement to the Sunland Drive Well 2w Site and the Interconnection site to allow construction, operation, maintenance and repair of Well 2w and the Interconnection by CSA 70 W-4. CSA 70 W-4 will be responsible for operating and maintaining all aspects of water production and extraction pertaining to Well 2w as generally outlined within the Agreement. CSA 70 W-4 shall adhere to all Warren Valley Basin Watermaster Rules and Regulations, current and as approved in the future.

CSA 70 W-4 shall install a flow meter of a size that suite the proper measurement of water extracted by Well 2w, and shall collect quarterly static groundwater surface elevations from Well 2w with equipment approved by HDWD. HDWD and CSA 70 W-4 shall reconcile the amount of water exchanged on an annual basis.

CSA 70 4-W will pay HDWD an "acquisition of service charge, a one-time fee, based on our current fee schedule and the meter size. In addition, CSA 70 4-W will pay a semi-annual fee of \$500 plus a 5% increase every 5 years, plus any other costs incurred by HDWD regarding this agreement.

The term of the agreement will be for 20 years, automatically renew for 10 year periods unless written notice is provided to cancel the agreement. Either party may terminate for cause upon 90 days written notice to the other Party.

CSA 70 4-W shall pay all costs associated with the preparation, review and approval of the Agreement.



**COUNTY SERVICE AREA 70
W-4**
F A S
STANDARD CONTRACT

FOR OFFICIAL USE ONLY

<input checked="" type="checkbox"/> New	<input type="checkbox"/> Change	FAS Vendor Code		SC	Dept.	A	Contract Number	
						17-819		
<input type="checkbox"/> Cancel								
ePro Vendor Number						ePro Contract Number		
COUNTY SERVICE AREA 70 W-4						Dept. EDD	Orgn. 360	Contractor's License No.
Contract Representative						Telephone () -		Total Contract Amount N/A
						Contract Type <input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input checked="" type="checkbox"/> Unencumbered <input type="checkbox"/> Other:		
If not encumbered or revenue contract type, provide reason: <u>Added service can change associated costs</u>								
Commodity Code		Contract Start Date		Contract End Date		Original Amount	Amendment Amount	
		January 1, 2017		January 1, 2037		\$1,000/yr	\$	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount \$		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount \$		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount \$		
Project Name			Estimated Payment Total by Fiscal Year					
Pioneertown Water Exchange			FY 17/18	Amount 1,000	I/D	FY 20/21	Amount 1,000	I/D
			18/19	1,000		21/22	1,000	
			19/20	1,000		22/23	1,050	

THIS CONTRACT is entered into in the State of California by and between the **COUNTY SERVICE AREA 70 W-4 (PIONEERTOWN)**, hereinafter called the **CSA 70 W-4**, and

Name
HI-DESERT WATER DISTRICT

Address
55439 Twentynine Palms Highway

Yucca Valley, CA

Telephone
(760) 365 - 8333

hereinafter called **HDWD**

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

**WATER EXCHANGE AGREEMENT BETWEEN COUNTY SERVICE AREA 70, ZONE W-4
AND HI-DESERT WATER DISTRICT**

This Agreement (the "Agreement") is entered into, by and between the Hi-Desert Water District ("HDWD") a County Water District organized and operating pursuant to the provisions of the County Water District Law, California Water Code Sections 30,000 et. seq., and County Service Area 70, Zone W-4 ("CSA 70 W-4"), a San Bernardino County Board of Supervisors-governed water district, which are hereafter collectively referred to as the "Parties."

Auditor-Controller/Treasurer/Tax Collector Use Only	
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RECITALS

WHEREAS, CSA 70 W-4 is a public agency authorized to provide water service within its boundaries; and

WHEREAS, the HDWD is also a public agency authorized to provide water service within its boundaries; and

WHEREAS, CSA 70 W-4 is unable to pump groundwater within CSA 70 W-4's boundaries of sufficient quality and quantity to meet the San Bernardino County Department of Environmental Health Services, the State Water Resources Control Board ("State Water Board"), or the State Clean Water Act requirements for domestic water service; and

WHEREAS, CSA 70 W-4 cannot currently meet its maximum contaminant levels for all primary drinking water standards or maximum day demand requirement and therefore cannot currently serve water to its customers in the Pioneertown portion of its service area of sufficient quality and quantity, which has resulted in a water service emergency situation; and

WHEREAS, CSA 70 W-4 and HDWD each has the right to pump groundwater from the Ames/Reche basin (which underlies lands near, but not within CSA 70 W-4) as confirmed in the Ames/Reche Groundwater Storage and Recovery Program and Management Agreement ("Ames/Reche Agreement"), a copy of which is attached as Exhibit A; and

WHEREAS, HDWD has rights to pump groundwater from within the Warren Valley Subbasin as confirmed by the Superior Court of San Bernardino County (the "Court") in its judgment pertaining to the case of Hi-Desert Water District vs. Yucca Valley Water Company Ltd., Case No. VCV 20368; and

WHEREAS, the Warren Valley Subbasin is an adjudicated basin in which the Board of Directors of the HDWD serve as the Court appointed Watermaster thereof; and

WHEREAS, the CSA 70 W-4 service area is located adjacent to HDWD's Service Area and also resides within HDWD's Sphere of Influence; and

WHEREAS, HDWD is willing to exchange water with CSA 70 W-4 by allowing access to groundwater within the Warren Valley Subbasin for use by CSA 70 W-4, in exchange for an equal amount of groundwater provided to HDWD from within the Ames/Reche Basin pursuant to the water rights of CSA 70 W-4 when there is available capacity in the HDWD Mainstream well and water system and such water is available, on the terms set forth below; and

WHEREAS, such a water exchange is designed to assist CSA 70 W-4 in serving its customers water in sufficient quality and quantity to meet the legal requirements of the San Bernardino County Department of Environmental Health Services, the State Water Board and all other legal requirements for domestic water service.

NOW THEREFORE, in consideration of the above and the mutual benefits that will accrue to the Parties in carrying out the terms of this Agreement, it is mutually understood and agreed as follows:

AGREEMENT

1. **Water Exchange**: On the terms set forth below, and to the extent there is unused conveyance capacity in the HDWD water system and unused capacity at HDWD's Mainstream Well to accommodate the needs of CSA 70 W-4, as well as sufficient CSA 70 W-4 Ames-Reche and HDWD Warren Valley Subbasin water supplies available to exchange, HDWD agrees to exchange water for the benefit of CSA 70 W-4 (hereafter referred to as the "Project"). HDWD will not be under any obligation to provide or deliver any water for the benefit of CSA 70 W-4 except to the extent an equivalent volume of water is extracted via HDWD's Mainstream Well using CSA 70 W-4 Ames/Reche allocations, and pursuant to all the terms and conditions contained herein. CSA 70 W-4 acknowledges that it is solely responsible for securing the entitlements required for HDWD to pump an amount of water equal to CSA 70 W-4's needs for Pioneertown from the Ames/Reche Basin, so long as the amount of water exchanged does not exceed 50 acre-feet in a single water year (October 1 – September 30) unless approved in writing by HDWD and so long as such additional exchange opportunities exist. CSA 70 W-4 acknowledges that this Project is for the benefit of Pioneertown and that HDWD will not "loan", sell, or otherwise advance any HDWD water or water entitlements to CSA 70 W-4 and that HDWD shall receive 50 acre feet of water from within the Ames/Reche Basin in advance of CSA 70 W-4 extracting water from within the Warren Subbasin.

Should CSA 70 W-4 produce from the Warren Valley Subbasin less than the 50 acre feet extracted by HDWD from the Ames/Reche Basin, then the unused balance will roll over to the next water year and HDWD will extract the balance required to meet that year's water exchange. The amount of water extracted by HDWD from the Ames/Reche Basin shall

not be allowed to fall negative in comparison to CSA 70 W-4's extractions from within the Warren Valley Subbasin. Should the CSA 70 W-4 violate any part of this Agreement, HDWD reserves the right in its sole discretion to impose restrictions by limiting CSA 70 W-4 extractions from within the Warren Valley Subbasin, reduce exchanges, sever interconnection ties, and/or terminate the Agreement per Section 13 of this Agreement. For purposes of Warren Valley Subbasin water rights accounting, all water produced for the benefit of CSA 70 W-4 within the Warren Valley Subbasin shall be considered to be produced under HDWD water rights.

The water required to serve CSA 70 W-4 under this Agreement will be extracted from within the Warren Valley Subbasin via HDWD's Well 2w, which well currently is and will remain the property of HDWD. These extractions will be offset by allowing the HDWD, through its Mainstream Well located in Pipes Canyon to extract an equal amount of water, pursuant to CSA 70 W-4's groundwater entitlements set forth in the Ames/Reche Agreement (including entitlements lawfully obtained via transfer or purchase under the Ames/Reche Agreement), and deliver such water to HDWD customers typically served by Warren Valley Subbasin groundwater wells.

The Parties acknowledge that the Project is intended to provide a clean, reliable water supply to Pioneertown - a community that is currently experiencing a water supply/quality emergency. Notwithstanding, the Parties also acknowledge that any and all CSA 70 W-4 customers are not now and will not become customers of HDWD, except with the written concurrence of HDWD. Accordingly, no HDWD water supply will be deemed to be dedicated for use by CSA 70 W-4 customers. The Parties acknowledge if, in the future, it is determined by HDWD there is or will be insufficient unused capacity in the Mainstream Well or within the HDWD water system, or water supply shortages within the Ames/Reche Basin or Warren Valley Subbasin, said water supply or capacity issues may lead to a further water supply/quality emergency in Pioneertown. As such, and in order to allow as much time as possible for CSA 70 W-4 to arrange an alternative water supply to Pioneertown, HDWD agrees to use best efforts to notify CSA 70 W-4 as soon as possible regarding any HDWD determination that there is not sufficient supply or conveyance capacity within the Warren Valley Subbasin, HDWD distribution system, or Ames/Reche Basin to meet the Pioneertown water demand. HDWD shall have no duty to provide water to CSA 70 W-4 if the CSA 70 W-4 Ames/Reche supplies are not first made available and actually pumped by HDWD.

HDWD makes no representation concerning the quality of the water provided. CSA 70 W-4 shall be responsible for the quality of water provided to Pioneertown, including the dosage of chemicals such as chlorine, and shall be required to complete all required source and distribution water sampling per State sampling guidelines. Results of those samples shall be delivered to HDWD by the 10th of each month. Should any required source and distribution sample be tested for the presence or absence of coliform, as required by the State, and that analysis yields a positive result for coliform, and is either positive or negative for E-coli, then CSA 70 W-4 shall immediately, but no more than 24 hours from the time CSA 70 W-4 was notified of the positive sample, notify HDWD per the State of California's Groundwater Rule. CSA 70 W-4 shall provide HDWD with a map showing each location of its dedicated sampling sites as well as its sampling plan 30 days prior to CSA 70 W-4's first use of water under this Agreement. HDWD will not agree to assist in the notification of CSA 70 W-4 customers as may be required for any emergency water quality notification required by the State or County.

CSA 70 W-4 administrators shall submit to the HDWD, by the 10th of each month, a water availability request on the form provided as Exhibit B, outlining the estimated water required to meet Pioneertown water demands for the following month. Each request shall be reviewed by HDWD staff and be subject to HDWD approval. The first installment of Exhibit B shall be provided to HDWD at least 30 days prior to the first production of water from Well 2w under this Agreement for the benefit of Pioneertown.

All water made available under this Agreement shall be for use by CSA 70 W-4 only and shall not be removed or rerouted for use by other agencies, water systems, or water haulers that deliver water outside of the CSA W-4 service boundary. Water from Well 2w may be untracked for firefighting purposes, however, all system maintenance such as flushing, as well as water used for construction purposes shall be metered and reported to HDWD by the 10th of each month. Upon request, CSA 70 W-4 shall make available, within 14 business days, the total billed water amounts used by CSA 70 W-4 accounts. CSA 70 W-4 shall, at a minimum, adopt and enforce all State of California Emergency Drought Regulations and landscape water use ordinances that are either equal to or more stringent than the State's Model Landscape Ordinance, including any amendments or changes to that ordinance, or to state law or regulations related to water conservation.

- 1. Engineering and Construction Work: CSA 70 W-4 shall be responsible for the preparation and funding of engineering drawings and specifications, advertisement for bids, and construction of all work and improvements necessary to complete an interconnection between the HDWD Well 2w - the HDWD water distribution system and CSA 70 W-4

transmission and distribution systems (all pipelines, booster stations, and appurtenances constructed on HDWD property or within its service boundaries shall hereafter collectively be referred to as the "Interconnection"). As part of this Agreement, CSA 70 W-4 shall remove, repair, rehabilitate, and reinstall HDWD Well 2w, which is currently not able to produce water due to equipment failure. CSA 70 W-4, at its sole cost, shall rebuild the well's pump and motor to its original specifications or replace it with equipment of the original equipment's equal. CSA 70 W-4 will then open and maintain its own account for all Well 2w and Interconnection operations with the area's electrical service provider for the duration of this Agreement. All Well 2w's electricity service and electricity usage charges will become the responsibility of CSA 70 W-4. The Interconnection will be constructed at or near the HDWD Well 2w site (located on APN 0594-061-05) at Sunland Drive between Wamego Trail and Pioneertown Road in Yucca Valley ("HDWD Well 2w Site"). Any work and cost to develop the Interconnection and any other facilities necessary to move Project water from the HDWD Well 2w site and emergency interconnect port to CSA 70 W-4, and then from CSA 70 W-4 to its customers, including permitting and CEQA compliance, will be the responsibility of CSA 70 W-4. HDWD shall have the right and opportunity to review and inspect all Project / Interconnection, and Well 2w facilities being installed / work being performed on HDWD property and/or CSA 70 W-4 work affecting HDWD facilities.

The Interconnection, as well as the interconnect pipeline and pump facilities needed to transfer water from HDWD Well 2w site at Sunland Drive to CSA 70 W-4 existing pipe infrastructure in the vicinity of Mane Street and Curtis Road in Pioneertown, will be fully constructed, owned, operated, and maintained by CSA 70 W-4. In total, CSA 70 W-4 intends to construct approximately 21,000 linear feet of eight-inch diameter pipeline along with two booster stations to move water from the Interconnection point and/or existing CSA 70 W-4 facilities to Pioneertown. Prior to construction of said facilities, CSA 70 W-4 shall provide HDWD with a set of detailed plans and specifications which will include a signature block for the HDWD General Manager to sign approving the Project/Interconnection facilities to be constructed as designed, including where those facilities are shown within those described to be part of the Interconnection. CSA 70 W-4 agrees to not begin construction of these Project or Interconnection facilities until HDWD has approved the plans. Two (2) copies of these plans shall be provided to HDWD on 24"x36" paper with one (1) electronic copy provided on a disc or thumb drive. CSA 70 W-4 agrees to have all changes during construction, either in material or design, approved by HDWD prior to approving the change as it relates to those appurtenances, materials, or construction activities taking place on HDWD property. Should HDWD require additional material or work as part of the required change, then said changes shall be performed at the cost of CSA 70 W-4. The approved plans, once prepared for construction, shall become EXHIBIT C to this Agreement. These plans shall be as-built and a final copy of the plans delivered to HDWD upon completion of the Project/Interconnection facilities with one 24" X 36" mylar plan set, and one electronic version on a disc or thumb drive. The final as-built plans shall replace the original plans in their entirety within EXHIBIT C once approved by the HDWD that such plans reflect the actual construction performed.

3. Lower Booster Station Site Use and Access: HDWD shall provide at no cost to CSA 70 W-4, access for the life of this Agreement to the Sunland Drive Well 2w Site and the Interconnection site to allow for construction, operation, maintenance and repair of Well 2w and the Interconnection by CSA 70 W-4. HDWD shall make available to CSA 70 W-4 on the Well 2w Site Sunland Drive Well Site, at an exact location agreed to by the Parties, sufficient space for the Interconnection described above (approximately 35-foot by 75-foot in size) near the southeast corner of the parcel. The Lower Booster Station site shall be made available to CSA 70 W-4 for the purposes of conveying water from the site to Pioneertown and remain available for CSA 70 W-4 use as long as CSA 70 W-4 uses such space for the purposes stipulated under this Agreement in compliance with the terms and conditions outlined within Section 12 of this document. CSA 70 W-4 shall prepare a "right of entry" agreement outlining the required area needed for CSA 70 W-4 to properly maintain and operate equipment on HDWD property. Subject to HDWD concurrence, the agreement will be approved and executed by HDWD and included as Exhibit D to this Agreement.

Well 2w and all Interconnection equipment requiring limited access, such as the booster facility and other appurtenances that are located on HDWD property, shall be fenced by and at the cost of CSA 70 W-4 with a minimum of one (1) 12' drive gate and one (1) 3' walk gate. HDWD shall have access to all equipment in case of emergency and all gates shall be secured by "daisy" chaining a lock of HDWD's choice. HDWD agrees to attempt to contact CSA 70 W-4 should any emergency arise which requires HDWD's entry into the facility. HDWD agrees not to make any changes to the operation of CSA 70 W-4 installed equipment; however, HDWD has the right to shut down or terminate the water service described in this Agreement under emergency conditions that are not responded to by CSA 70 W-4 within one (1) hour of notification by HDWD. HDWD does not take responsibility for any State required measures, manpower, cost of equipment needed to re-start the system resulting from the termination of water service.

4. Well 2w Maintenance: CSA 70 W-4 will be responsible for operating and maintaining all aspects of water production and extraction pertaining to Well 2w as generally outlined within the Agreement and as specifically required by industry standards, State regulations, and any rules, regulations, and standard operating procedures applied by CSA 70 W-4.

CSA 70 W-4 shall adhere to all Warren Valley Basin Watermaster Rules and Regulations, current and as approved in the future, (with the current regulations attached as EXHIBIT E), and shall respond to any required repairs of Well 2w as necessary including those brought to CSA 70 W-4's attention by HDWD employees. Should CSA 70 W-4 not respond to repairs that require immediate attention, such as but not limited to excessive leaks and/or threats to public safety and health, HDWD may elect to complete the necessary repair in which case CSA 70 W-4 will be liable for all costs incurred by the repair.

5. **Metered Connection:** CSA 70 W-4 shall install a flow meter of a size that suits the proper measurement of water extracted by Well 2w. The meter shall be equipped with a meter mounted signal converter on the discharge header of Well 2w. The meter shall include the capability to be read directly by HDWD staff and to indicate instantaneous flow in addition to total flow and shall be connected to the CSA 70 W-4 SCADA system. The meter shall be used for purposes of reconciliation of the volume of water extracted by CSA 70 W-4 from within the Warren Subbasin or provided through the HDWD's distribution system under this Agreement. HDWD shall have the right to request meter calibration, bench testing and/or replacement in accordance with the San Bernardino County Special Districts Department's standard operating policy, the AWWA standards, the meter manufacturer's recommendations and/or any written policy maintained by the HDWD. HDWD shall also have the right to receive information related to water conveyance generated by the CSA 70 W-4 SCADA system, upon request. CSA 70 W-4 shall report to HDWD, the total amount of water used by the 10th of each month for the prior month's extractions. Additional meters may be installed by CSA 70 W-4 as deemed necessary by the agency to track the production and flow of water.
6. **Watermaster Monitoring:** CSA 70 W-4 shall collect quarterly static groundwater surface elevations from Well 2w with equipment approved by HDWD using the Water Year format described in Section 1. The results of the measurements shall be reported to HDWD by the 10th of the following month. HDWD reserves the right to take additional measurements as needed. In addition, CSA 70 W-4 shall collect one (1) nitrate and one (1) Total Dissolved Solids Sample semi-annually using the Water Year format described in Section 1 of this Agreement. The results of the testing of those samples shall be reported to HDWD by the 10th of the following month.

Water Reconciliation: HDWD and CSA 70 W-4 agree that the Parties shall reconcile the amount of water exchanged using the meter described in Section 5 above and the meter currently in use at the Mainstream Well. During the first water year following approval of this Agreement, CSA 70 W-4 agrees that HDWD shall extract 50 acre-feet at any time it requires. Following the first water year, HDWD will adjust its extractions to match the water extracted by CSA 70 W-4 providing credit for previously extracted water.

8. **Service and Exchange Charges:** Prior to producing water from Well 2w, CSA 70 W-4 shall pay to HDWD an "acquisition of service charge," a one-time fee, based on the HDWD approved fee schedule, at the time of initiation of service. This charge will be based upon the meter size required for the proper measurement of water as extracted by Well 2w. On a semi-annual basis, with the first installment owed at the time of start-up of Well 2w, CSA 70 W-4 shall also pay to HDWD a "Groundwater Well Lease" base charge in the amount of \$500.00. This amount shall increase at a rate of 5% after each five (5) years of service until the end of the Agreement. The amount may be re-negotiated by both Parties if the term of the Agreement is extended. The base charge to be paid by CSA 70 W-4 to HDWD assumes the minimal amount in expense being incurred by HDWD under the Agreement. HDWD will invoice CSA 70 W-4 for the base charge with a net 30-day payment term. If payment is not received by HDWD within the allotted 30-day period, water service under this Agreement shall be terminated and the provision of notices under Section 13 will not be required. If HDWD is able to demonstrate expenses that exceed the base rate amount determined in a given year and expenses represent reasonable charges incurred by HDWD in exchanging water with CSA 70 W-4 under this Agreement, including: capital, operational maintenance, administration and replacement costs, increased cost from any necessitated purchase of supplemental power (including reasonable credit for any offsetting benefit for the use of the conveyance system), and any other proper charge (see Water Code, section 1811(c)), CSA 70 W-4 shall reimburse HDWD for those incurred expenses. In such cases, HDWD is to provide an itemized listing of all expenses and their corresponding need to demonstrate representative cost incurred exceeding the base charge and invoice CSA 70 W-4 annually for such expenses that exceed the base charge.
9. **CSA 70 W-4 Duty to Maintain Minimum Groundwater Credits:** As a party to the Ames/Reche Agreement and the August 7, 2014 Amended Judgment in the case entitled *Bighorn Mountains Water Agency v. Hi-Desert Water District* (Riverside Superior Court Case No. 211504), CSA 70 W-4 has groundwater rights and a groundwater storage account in the Ames/Reche Basin. The volume of water in the storage account is maintained by the Mojave Water Agency, which tracks groundwater entitlements arising from each party's: Annual Baseline Amount; carryover credits; and any purchased/transferred credits. CSA 70 W-4 shall take all measures necessary to ensure that its storage account is never depleted or diminished to the extent that it would interfere with the intended purposes of this Agreement. Should supplies within the Ames/Reche Basin be depleted, Section 13 of this Agreement will be triggered.

10. Purchase of Supplemental Water Supplies: CSA 70 W-4 shall be responsible for purchasing, as required by Ames/Reche Agreement, all supplemental water required to allow HDWD to extract the exchanged water from the Ames/Reche Basin. Should supplies within the Ames/Reche Basin become exhausted or otherwise inaccessible by HDWD's Mainstream Well, HDWD may coordinate, at its discretion and at a cost borne by CSA 70 W-4, the purchase of supplemental water supplies from the Mojave Water Agency for the benefit of CSA 70 W-4. Such supplies would be recharged to the Warren Valley Subbasin and all costs associated with such transactions, including those required by HDWD to complete such a transaction, shall be borne by CSA 70 W-4 and promptly paid upon request by HDWD.
11. Environmental Review: CSA 70 W-4 is the lead agency for the Project's / Project / Interconnection facilities' current California Environmental Quality Act (CEQA) compliance document, which has already been released for public comment. CSA 70 W-4 prepared an initial study and CEQA checklist for the Project complete with all technical surveys and submitted it for public review through the State Clearinghouse along with mailed notices for the required notification area. Comments were received and addressed, including comments from the HDWD. On September 1, 2015 the County Board of Supervisors Adopted a Mitigated Negative Declaration for the Pioneertown Water System Improvements Project and a Notice of Determination has been filed along with the Mitigated Negative Declaration. CSA 70 W-4 shall be the lead agency for any further CEQA compliance that may be needed for the Project , the Project/Interconnection facilities or this Agreement.
12. Term of Agreement: This Agreement shall remain in effect for 20 years from the date of the last signature below, or until such shorter time as both Parties agree, in writing, to revise or repeal this Agreement. This Agreement shall automatically renew for an additional ten years unless any Party provides written notice of its intent to terminate the Agreement 180 days prior to expiration of the original 20-year term. This Agreement shall continue to renew in ten-year increments thereafter and on the terms described herein.
13. Termination: Either Party may terminate this Agreement for cause, including but not limited to, if the General Manager of HDWD determines that there is no longer available capacity to meet the terms of this Agreement within the HDWD system, the Warren Subbasin, the Ames/Reche Basin or HDWD's Mainstream Well, upon ninety (90) days written notice to the other Party. Should the non-terminating party wish to continue the terms of the Agreement or propose an alternative arrangement, the Parties agree to meet within 30 days of a written request for such meeting delivered to terminating party.
14. Cost of the Agreement: CSA 70 W-4 shall pay all costs associated with the preparation, review and approval of the Agreement by both Parties.
15. Assignment: No Party may assign or transfer its rights or obligations under this Agreement without the express written consent of the other Party, which shall not be unreasonably withheld except that this Agreement shall inure to the benefit of, and be binding upon, the lawful successors in interest of each Party.
16. Insurance: CSA 70 W-4 and HDWD are self-insured public entities for purposes of Automobile Liability, General Liability, and Workers' Compensation. CSA 70 W-4 and HDWD warrant that through their programs of self-insurance, they have adequate Automobile Liability, General Liability and Workers' Compensation to provide coverage for liabilities arising out of each Party's performance of this Agreement.
17. Indemnification: CSA 70 W-4 shall indemnify, defend, and hold HDWD, the Warren Valley Basin Watermaster, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts or omissions or willful misconduct of CSA 70 W-4, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with this Agreement, including without limitation the payment of all consequential damages and reasonable attorney's fees and other related costs and expenses.
18. Employers Responsibilities to Employee(s) and Others: Each Party agrees to maintain its required insurance(s), including but not limited to Worker's Compensation Insurance, to protect itself while each Parties' employee(s) are performing tasks related to the terms within this Agreement from any and all claims of any kind or nature for damage to property or personal injury, including death, that may arise from activities performed or facilitated by this Agreement, whether these activities are performed by its employees, agents, or anyone directly engaged or employed by that Party or its agents.
19. Entire Agreement: This writing constitutes the entire Agreement between the Parties with respect to the subject matter hereof, and supersedes all oral or written representations or written agreements, which may have been entered into between the Parties prior to the execution of this Agreement.

-J. Counterparts: This Agreement may be executed in counterparts, each of which shall be an original and all of which when taken together shall constitute one and the same instrument.

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COUNTY SERVICE AREA 70 W4 (Pioneertown)

► Robert A. Lovingood

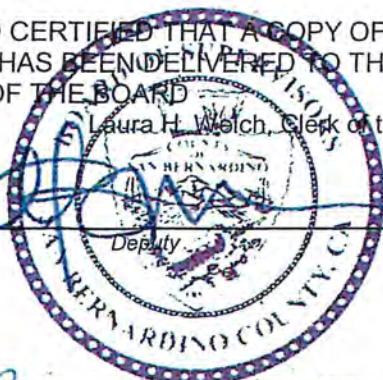
Robert A. Lovingood, Board Chairman

Dated: OCT 3 1 2017

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Laura H. Welch, Clerk of the Board

By _____



Approved as to Legal Form

Counsel - Dawn Martin

Date 10/23/15

Reviewed by Contract Compliance

Division Manager - Tim Millington,

Date _____

Presented to Board for Signature

► Director - Jeffrey O. Rigner

Date 10-23-17

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbccounty.gov
www.sbcclfco.org

DATE: MARCH 12, 2018



FROM: KATHLEEN ROLLINGS-MCDONALD, Executive Officer
MICHAEL TUERPE, Project Manager

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #6: Review and Consideration of Policy Related to
Retention of Electronic Communications (Continued from February
21, 2018)

RECOMMENDATION:

Staff recommends that the Commission:

1. Approve the proposed Electronic Communications Policy as included in Attachment #1;
2. Approve the proposed amendment to the Records Retention Policy as included in Attachment #2;
3. Authorize the Executive Officer to establish and remove Email addresses for Commissioners, when applicable, with the County Information Services Department utilizing the Microsoft 365 Platform and the existing County retention schedule; and,
4. Adopt LAFCO Resolution No. 3258 reflecting the changes to the Policy and Procedure Manual, and direct the Executive Officer to distribute to affected and interested parties and to update the Commission Website.

SUMMARY:

At the January 2018 hearing, LAFCO Legal Counsel was not present and the Commission continued review and consideration of adopting a policy related to retention of electronic communications. At the February hearing, the Commission directed that

the Policy include language that records regarding a LAFCO proposal be retained for six months following completion of the proposal. That language has been added to the proposed policy and is shown below:

7. *The LAFCO official shall retain all emails related to a proposal for six months following issuance of the certificate of completion, certificate of termination, or withdrawal notification by the applicant.*

CONCLUSION:

At this time, staff is requesting that the Commission provide any additional changes, corrections or amendments to the proposed policies. Finally, staff recommends that the Commission take the actions outlined on page one which are to:

- Adopt the Electronic Communications Policy as proposed.
- Amend the Records Retention Policy as proposed.
- Authorize the Executive Officer to establish and remove Email addresses for Commissioners, when applicable, with the County Information Services Department utilizing the Microsoft 365 Platform and the existing County retention schedule; and,
- Adopt the resolution reflecting these changes to the Policy and Procedure Manual.

KRM/MT

Attachments:

1. California Supreme Court Ruling in *City of San Jose v. Superior Court* Cal. 4th, 214 Cal.Rptr.3d 274, Decided March 2, 2017
2. Draft Electronic Communications Policy
3. Draft Records Retention Policy (with track changes)
4. Draft LAFCO Resolution No. 3258

**California Supreme Court
Ruling in City of San Jose v.
Superior Court Cal. 4th, 214
Cal.Rpt.3rd 274, Decided
March 2, 2017**

Attachment 1

IN THE SUPREME COURT OF CALIFORNIA

CITY OF SAN JOSE et al.,)	
)	
Petitioners,)	S218066
)	
v.)	Ct.App. 6 H039498
)	
THE SUPERIOR COURT OF SANTA,)	Santa Clara County
CLARA COUNTY,)	Super. Ct. No. 109CV150427
Respondent;)	
)	
TED SMITH,)	
)	
Real Party in Interest.)	
)	
)	

Here, we hold that when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act (CPRA or Act).¹ We overturn the contrary judgment of the Court of Appeal.

I. BACKGROUND

In June 2009, petitioner Ted Smith requested disclosure of 32 categories of public records from the City of San Jose, its redevelopment agency and the agency's executive director, along with certain other elected officials and their

¹ Government Code section 6250 et seq. All statutory references are to the Government Code unless otherwise specified.

staffs.² The targeted documents concerned redevelopment efforts in downtown San Jose and included emails and text messages “sent or received on private electronic devices used by” the mayor, two city council members, and their staffs. The City disclosed communications made using City telephone numbers and email accounts but did not disclose communications made using the individuals’ personal accounts.

Smith sued for declaratory relief, arguing CPRA’s definition of “public records” encompasses all communications about official business, regardless of how they are created, communicated, or stored. The City responded that messages communicated through personal accounts are not public records because they are not within the public entity’s custody or control. The trial court granted summary judgment for Smith and ordered disclosure, but the Court of Appeal issued a writ of mandate. At present, no documents from employees’ personal accounts have been collected or disclosed.

II. DISCUSSION

This case concerns how laws, originally designed to cover paper documents, apply to evolving methods of electronic communication. It requires recognition that, in today’s environment, not all employment-related activity occurs during a conventional workday, or in an employer-maintained workplace.

Enacted in 1968, CPRA declares that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” (§ 6250.) In 2004, voters made this principle part of our Constitution. A provision added by Proposition 59 states: “The people have the right of access to information concerning the conduct of the people’s business, and, therefore, . . . the writings of public officials and agencies shall be open to public scrutiny.” (Cal. Const., art. I, § 3, subd. (b)(1).) Public access laws serve a

² These parties, sued as defendants below and the petitioners here, are collectively referred to as the “City.”

crucial function. “Openness in government is essential to the functioning of a democracy. ‘Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process.’ ”

(*International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 328-329 (*International Federation*).)

However, public access to information must sometimes yield to personal privacy interests. When enacting CPRA, the Legislature was mindful of the right to privacy (§ 6250), and set out multiple exemptions designed to protect that right. (*Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 288 (*Commission on Peace Officer Standards*); see § 6254.)

Similarly, while the Constitution provides for public access, it does not supersede or modify existing privacy rights. (Cal. Const., art. I, § 3, subd. (b)(3).)

CPRA and the Constitution strike a careful balance between public access and personal privacy. This case concerns how that balance is served when documents concerning official business are created or stored outside the workplace. The issue is a narrow one: Are writings concerning the conduct of public business beyond CPRA’s reach merely because they were sent or received using a nongovernmental account? Considering the statute’s language and the important policy interests it serves, the answer is no. Employees’ communications about official agency business may be subject to CPRA regardless of the type of account used in their preparation or transmission.

A. *Statutory Language, Broadly Construed, Supports Public Access*

CPRA establishes a basic rule requiring disclosure of public records upon request. (§ 6253.)³ In general, it creates “a presumptive right of access to any record *created or maintained* by a public agency that relates in any way to the business of the public agency.” (*Sander v. State Bar of California* (2013) 58 Cal.4th 300, 323, italics added.) Every such record “must be disclosed unless a statutory exception is shown.” (*Ibid.*) Section 6254 sets out a variety of exemptions, “many of which are designed to protect individual privacy.” (*International Federation*, *supra*, 42 Cal.4th at p. 329.) The Act also includes a catchall provision exempting disclosure if “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure.” (§ 6255, subd. (a).)

“When we interpret a statute, ‘[o]ur fundamental task . . . is to determine the Legislature’s intent so as to effectuate the law’s purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute’s purpose, legislative history, and public policy.’ [Citation.] ‘Furthermore, we consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.’ ” (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 165-166.)

³ CPRA was modeled on the federal Freedom of Information Act (FOIA) (5 U.S.C. § 552). (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 772.)

In CPRA cases, this standard approach to statutory interpretation is augmented by a constitutional imperative. (See *Sierra Club v. Superior Court*, *supra*, 57 Cal.4th at p. 166.) Proposition 59 amended the Constitution to provide: “A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be *broadly* construed if it furthers the people’s right of access, and *narrowly* construed if it limits the right of access.” (Cal. Const., art. I, § 3, subd. (b)(2), italics added.) “Given the strong public policy of the people’s right to information concerning the people’s business (Gov. Code, § 6250), and the constitutional mandate to construe statutes limiting the right of access narrowly (Cal. Const., art. I, § 3, subd. (b)(2)), “all public records are subject to disclosure unless the Legislature has *expressly* provided to the contrary.”” (*Sierra Club*, at p. 166.)

We begin with the term “public record,” which CPRA defines to include “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” (§ 6252, subd. (e); hereafter “public records” definition.) Under this definition, a public record has four aspects. It is (1) a writing, (2) with content relating to the conduct of the public’s business, which is (3) prepared by, or (4) owned, used, or retained by any state or local agency.

1. Writing

CPRA defines a “writing” as “any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.” (§ 6252, subd. (g).) It is undisputed that the items at issue here constitute writings.

In 1968, creating a “writing” could be a fairly involved process. Typically, a person would use an implement to type, or record words longhand, or would

dictate to someone else who would write or type a document. Writings were generally made on paper or some other tangible medium. These writings were physically identifiable and could be retrieved by examining the physical repositories where they were stored. Writings exchanged with people outside the agency were generally sent, on paper, through the mail or by courier. In part because of the time required for their preparation, such writings were fairly formal and focused on the business at hand.

Today, these tangible, if laborious, writing methods have been enhanced by electronic communication. Email, text messaging, and other electronic platforms, permit writings to be prepared, exchanged, and stored more quickly and easily. However, the ease and immediacy of electronic communication has encouraged a commonplace tendency to share fleeting thoughts and random bits of information, with varying degrees of import, often to broad audiences. As a result, the line between an official communication and an electronic aside is now sometimes blurred. The second aspect of CPRA’s “public records” definition establishes a framework to distinguish between work-related and purely private communications.

2. *Relating to the Conduct of the Public’s Business*

The overall structure of CPRA, with its many exemptions, makes clear that not everything written by a public employee is subject to review and disclosure. To qualify as a public record, a writing must “contain[] information relating to the conduct of the public’s business.” (§ 6252, subd. (e).) Generally, any “record . . . kept by an officer because it is necessary or convenient to the discharge of his official duty . . . is a public record.” (*Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 340; see *People v. Purcell* (1937) 22 Cal.App.2d 126, 130.)

Whether a writing is sufficiently related to public business will not always be clear. For example, depending on the context, an email to a spouse complaining “my coworker is an idiot” would likely not be a public record. Conversely, an email to a superior reporting the coworker’s mismanagement of an

agency project might well be. Resolution of the question, particularly when writings are kept in personal accounts, will often involve an examination of several factors, including the content itself; the context in, or purpose for which, it was written; the audience to whom it was directed; and whether the writing was prepared by an employee acting or purporting to act within the scope of his or her employment. Here, the City claimed all communications in personal accounts are beyond the reach of CPRA. As a result, the content of specific records is not before us. Any disputes over this aspect of the “public records” definition await resolution in future proceedings.

We clarify, however, that to qualify as a public record under CPRA, at a minimum, a writing must relate in some substantive way to the conduct of the public’s business. This standard, though broad, is not so elastic as to include every piece of information the public may find interesting. Communications that are primarily personal, containing no more than incidental mentions of agency business, generally will not constitute public records. For example, the public might be titillated to learn that not all agency workers enjoy the company of their colleagues, or hold them in high regard. However, an employee’s electronic musings about a colleague’s personal shortcomings will often fall far short of being a “writing containing information relating to the conduct of the public’s business.” (§ 6252, subd. (e).)⁴

Coronado Police Officers Assn. v. Carroll (2003) 106 Cal.App.4th 1001 demonstrates the intricacy of determining whether a writing is related to public

⁴ We recognize that this test departs from the notion that “[o]nly purely personal” communications “totally void of reference to governmental activities” are excluded from CPRA’s definition of public records. (Assem. Statewide Information Policy Com., Final Rep. (Mar. 1970) 1 Assem. J. (1970 Reg. Sess.) appen. p. 9; see *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p. 774.) While this conception may yield correct results in some circumstances, it may sweep too broadly in others, particularly when applied to electronic communications sent through personal accounts.

business. There, police officers sought access to a database of impeachment material compiled by public defenders. The attorneys contributed to the database and used its contents in their work. (*Id.* at p. 1005.) However, their representation of individual clients, though paid for by a public entity, was considered under case law to be essentially a private function. (*Id.* at pp. 1007-1009; see *Polk County v. Dodson* (1981) 454 U.S. 312, 321-322.) Accordingly, the *Coronado* court concluded the database did not relate to public business and thus was not a public record. (*Id.* at pp. 1007-1009.) The court was careful to note that not all documents related to the database were private, however. Documents reflecting policy decisions about whether and how to maintain the database might well relate to public business, rather than the representation of individual clients. (*Id.* at p. 1009.) Content of that kind would constitute public records. (*Ibid.*)

3. *Prepared by Any State or Local Agency*

The City focuses its challenge on the final portion of the “public records” definition, which requires that writings be “prepared, owned, used, or retained by any state or local agency.” (§ 6252, section (e).) The City argues this language does not encompass communications agency employees make through their personal accounts. However, the broad construction mandated by the Constitution supports disclosure.

A writing is commonly understood to have been prepared by the person who wrote it. If an agency employee prepares a writing that substantively relates to the conduct of public business, that writing would appear to satisfy the Act’s definition of a public record. The City urges a contrary conclusion when the writing is transmitted through a personal account. In focusing its attention on the “owned, used, or retained by” aspect of the “public records” definition, however, it ignores the “prepared by” aspect. (§ 6252, subd. (e).) This approach fails to give “ ‘significance to every word, phrase, sentence, and part’ ” of the Act. (*Sierra Club v. Superior Court, supra*, 57 Cal.4th at p. 166.)

The City draws its conclusion by comparing the Act’s definitions of “local” and “state” agency. Under CPRA, “ ‘Local agency’ includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.” (§ 6252, subd. (a), italics added.) The City points out that this definition does not specifically include individual government officials or staff members, whereas individuals *are* specifically mentioned in CPRA’s definition of “state agency.” According to that definition, “ ‘State agency’ means every state office, *officer*, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.”⁵ (§ 6252, subd. (f)(1), italics added.) The City contends this difference shows the Legislature intended to exclude individuals from the local agency definition. If a local agency does not encompass individual officers and employees, it argues, only writings accessible to the agency as a whole are public records. This interpretation is flawed for a number of reasons.

The City’s narrow reading of CPRA’s local agency definition is inconsistent with the constitutional directive of broad interpretation. (Cal. Const., art. I, § 3, subd. (b)(2); see *Sierra Club v. Superior Court*, *supra*, 57 Cal.4th at p. 175.) Broadly construed, the term “local agency” logically includes not just the discrete governmental entities listed in section 6252, subdivision (a) but also the individual officials and staff members who conduct the agencies’ affairs. It is well established that a governmental entity, like a corporation, can act only through its

⁵ Article IV establishes the Legislature, and article VI establishes the state’s judiciary. (Cal. Const., arts. IV, VI.) These branches of government are thus generally exempt from CPRA. (See *Sander v. State Bar of California*, *supra*, 58 Cal.4th at p. 318; *Copley Press, Inc. v. Superior Court* (1992) 6 Cal.App.4th 106, 111.)

individual officers and employees. (*Suezaki v. Superior Court* (1962) 58 Cal.2d 166, 174; *Alvarez v. Felker Mfg. Co.* (1964) 230 Cal.App.2d 987, 998; see *United States v. Dotterweich* (1943) 320 U.S. 277, 281; *Reno v. Baird* (1998) 18 Cal.4th 640, 656.) A disembodied governmental agency cannot prepare, own, use, or retain any record. Only the human beings who serve in agencies can do these things. When employees are conducting agency business, they are working for the agency and on its behalf. (See, e.g., *Cal. Assn. of Health Facilities v. Dept. of Health Services* (1997) 16 Cal.4th 284, 296-297; cf. *Competitive Enterprise Institute v. Office of Science & Technology Policy* (D.C. Cir. 2016) 827 F.3d 145, 149 [reaching the same conclusion for federal FOIA requests].). We presume the Legislature was aware of these settled principles. (See *People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 199.) A writing prepared by a public employee conducting agency business has been “prepared by” the agency within the meaning of section 6252, subdivision (e), even if the writing is prepared using the employee’s personal account.

The City also fails to explain how its proposed requirement that a public record be “accessible to the agency as a whole” could be practically interpreted. Even when documents were stored in filing cabinets or ledgers, many writings would not have been considered accessible to all agency employees, regardless of their level of responsibility or involvement in a particular project.

Moreover, although employees are not specifically mentioned in the local agency definition, nothing in the statutory language indicates the Legislature meant to *exclude* these individuals from CPRA obligations. The City argues the omission of the word “officer” from the local agency definition reflects a legislative intent that CPRA apply to individuals who work in *state* agencies but *not* employees in local government. The City offers no reason why the Legislature would draw such an arbitrary distinction. If it intended to impose different disclosure obligations on state and local agencies, one would expect to find this difference highlighted throughout the statutory scheme, particularly when the

obligations relate to a “fundamental and necessary right of every person in this state.” (§ 6250.) Yet there is no mention of such an intent anywhere in the Act. Indeed, under the City’s logic, CPRA obligations would potentially extend only to state *officers*, not necessarily state *employees*. The distinction between tenured public officers and those who hold public employment has long been recognized. (See *In re M.M.* (2012) 54 Cal.4th 530, 542-544.) Considering CPRA’s goal of promoting public access, it would have been odd for the Legislature to establish different rules for different levels of state employment. Contrary to the City’s view, it seems more plausible that the reference to “every state . . . officer” in the state agency definition (§ 6252, subd. (f)) was meant to extend CPRA obligations to elected state officers, such as the Governor, Treasurer, or Secretary of State, who are not part of a collective governmental body nor generally considered *employees* of a state agency.⁶

The City’s position is further undermined by another CPRA provision, which indicates that public records can be held by individual officials and need not belong to an agency as a whole. When it is alleged that public records have been improperly withheld, section 6259, subdivision (a) directs that “the court shall order the officer or person charged with withholding the records” to disclose the records or show cause why they should not be produced. If the court concludes “the public official’s decision to refuse disclosure is not justified,” it can order “the public official to make the record public.” (§ 6259, subd. (b).) If the court

⁶ In one respect the local agency definition is worded more broadly than the state agency definition. Section 6252, subdivision (a) states that the term local agency “includes” a county, city, or one of several other listed entities. In statutory drafting, the term “includes” is ordinarily one “of enlargement rather than limitation.” (*Ornelas v. Randolph* (1993) 4 Cal.4th 1095, 1101.) “The ‘statutory definition of a thing as “including” certain things does not necessarily place thereon a meaning limited to the inclusions.’ ” (*Flanagan v. Flanagan* (2002) 27 Cal.4th 766, 774.) By contrast, the definition of “state agency” is couched in more restrictive language: “ ‘State agency’ means every state office, officer . . . ,” and other listed entities. (§ 6252, subd. (f), italics added.)

finds “that the public official was justified in refusing” disclosure, it must “return the item to the public official without disclosing its content.” (*Ibid.*) The Legislature’s repeated use of the singular word “official” in section 6259 indicates an awareness that an individual may possess materials that qualify as public records. Moreover, the broad term “public official” encompasses officials in state *and* local agencies, signifying that CPRA disclosure obligations apply to individuals working in both levels of government.

4. *Owned, Used, or Retained by Any State or Local Agency*

CPRA encompasses writings prepared *by* an agency but also writings it owns, uses, or retains, regardless of authorship. Obviously, an agency engaged in the conduct of public business will use and retain a variety of writings related to that business, including those prepared by people outside the agency. These final two factors of the “public records” definition, use and retention, thus reflect the variety of ways an agency can possess writings used to conduct public business.

As to retention, the City argues “public records” include only materials in an agency’s possession or directly accessible to the agency. Citing statutory arguments and cases limiting the duty to obtain and disclose documents possessed by others, the City contends writings held in an employee’s personal account are beyond an agency’s reach and fall outside CPRA. The argument fails.

Appellate courts have generally concluded records related to public business are subject to disclosure if they are in an agency’s actual *or constructive* possession. (See, e.g., *Board of Pilot Comrs. for the Bays of San Francisco, San Pablo and Suisun v. Superior Court* (2013) 218 Cal.App.4th 577, 598; *Consolidated Irrigation Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 710 (*Consolidated Irrigation*).) “[A]n agency has constructive possession of records if it has the right to control the records, either directly or through another person.” (*Consolidated Irrigation*, at p. 710.) For example, in *Consolidated Irrigation*, a city did not have constructive possession of documents in files maintained by subconsultants who prepared portions of an environmental impact report because

the city had no contractual right to control the subconsultants or their files. (*Id.* at pp. 703, 710-711.) By contrast, a city had a CPRA duty to disclose a consultant’s field survey records because the city had a contractual ownership interest and right to possess this material. (See *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1426, 1428-1429 (*Community Youth*).)

An agency’s actual or constructive possession of records is relevant in determining whether it has an obligation to search for, collect, and disclose the material requested. (See § 6253, subd. (c).) It is a separate and more fundamental question whether a document located outside an agency’s walls, or servers, is sufficiently “owned, used, or retained” by the agency so as to constitute a public record. (See § 6252, subd. (e).) In construing FOIA, federal courts have remarked that an agency’s public records “do not lose their agency character just because the official who possesses them takes them out the door.” (*Competitive Enterprise Institute v. Office of Science and Technology Policy, supra*, 827 F.3d at p. 149.) We likewise hold that documents otherwise meeting CPRA’s definition of “public records” do not lose this status because they are located in an employee’s personal account. A writing retained by a public employee conducting agency business has been “retained by” the agency within the meaning of section 6252, subdivision (e), even if the writing is retained in the employee’s personal account.

The City argues various CPRA provisions run counter to this conclusion. First, the City cites section 6270, which provides that a state or local agency may not transfer a public record to a private entity in a manner that prevents the agency “*from providing the record directly* pursuant to this chapter.” (Italics added.) Taking the italicized language out of context, the City argues that public records are only those an agency is able to access “directly.” But this strained interpretation sets legislative intent on its head. The statute’s clear purpose is to prevent an agency from evading its disclosure duty by transferring custody of a record to a private holder and then arguing the record falls outside CPRA because it is no longer in the agency’s possession. Furthermore, section 6270 does not

purport to excuse agencies from obtaining public records in the possession of *their own employees*. It simply prohibits agencies from attempting to evade CPRA by transferring public records to an intermediary not bound by the Act’s disclosure requirements.

Next, the City relies on section 6253.9, subdivision (a)(1), which states that an agency must make a public record available “in any electronic format in which *it holds* the information” (italics added), and on section 6253, subdivision (a), which requires that public records be available for inspection “during . . . office hours.” These provisions do not assist the City. They merely address the mechanics of how public records must be disclosed. They do not purport to define or limit what constitutes a public record in the first place. Moreover, to say that only public records “in the possession of the agency” (§ 6253, subd. (c)) must be disclosed begs the question of whether the term “agency” includes individual officers and employees. We have concluded it does.

Under the City’s interpretation of CPRA, a document concerning official business is only a public record if it is located on a government agency’s computer servers or in its offices. Indirect access, through the agency’s employees, is not sufficient in the City’s view. However, we have previously stressed that a document’s status as public or confidential does not turn on the arbitrary circumstance of where the document is located.

In *Commission on Peace Officer Standards*, *supra*, 42 Cal.4th at pages 289 to 290, a state agency argued certain employment information was exempt from disclosure under CPRA because it had been placed in confidential personnel files. In considering a Penal Code provision that deems peace officer personnel records confidential, we rejected an interpretation that made confidentiality turn on the type of file in which records are located, finding it “unlikely the Legislature intended to render documents confidential based on their location, rather than their content.” (*Commission*, at p. 291.) Although we made this observation in analyzing the scope of a CPRA exemption, the same logic applies to the Act’s

definition of what constitutes a public record in the first place. We found it unlikely “the Legislature intended that a public agency be able to shield information from public disclosure simply by placing it in” a certain type of file. (*Commission*, at p. 291.) Likewise, there is no indication the Legislature meant to allow public officials to shield communications about official business simply by directing them through personal accounts. Such an expedient would gut the public’s presumptive right of access (*Sander v. State Bar of California, supra*, 58 Cal.4th at p. 323), and the constitutional imperative to broadly construe this right (Cal. Const., art. I, § 3, subd. (b)(2)).

In light of these principles, and considering section 6252, subdivision (e) in the context of the Act as a whole (see *Smith v. Superior Court* (2006) 39 Cal.4th 77, 83), we conclude a city employee’s communications related to the conduct of public business do not cease to be public records just because they were sent or received using a personal account. Sound public policy supports this result.

B. *Policy Considerations*

Both sides cite policy considerations to support their interpretation of the “public records” definition. The City argues the definition reflects a legislative balance between the public’s right of access and individual employees’ privacy rights, and should be interpreted categorically. Smith counters that privacy concerns are properly addressed in the case-specific application of CPRA’s exemptions, not in defining the overall scope of a public record. Smith also contends any privacy intrusion resulting from a search for records in personal accounts can be minimized through procedural safeguards. Smith has the better of these arguments.

The City’s interpretation would allow evasion of CPRA simply by the use of a personal account. We are aware of no California law requiring that public officials or employees use only government accounts to conduct public business. If communications sent through personal accounts were categorically excluded from CPRA, government officials could hide their most sensitive, and potentially

damning, discussions in such accounts. The City’s interpretation “would not only put an increasing amount of information beyond the public’s grasp but also encourage government officials to conduct the public’s business in private.”

(Senat, *Whose Business Is It: Is Public Business Conducted on Officials’ Personal Electronic Devices Subject to State Open Records Laws?* (2014) 19 Comm. L. & Pol’y 293, 322.)

It is no answer to say, as did the Court of Appeal, that we must presume public officials conduct official business in the public’s best interest. The Constitution neither creates nor requires such an optimistic presumption. Indeed, the rationale behind the Act is that it is for the *public* to make that determination, based on information to which it is entitled under the law. Open access to government records is essential to *verify* that government officials are acting responsibly and held accountable to the public they serve. (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651.) “Such access permits checks against the arbitrary exercise of official power and secrecy in the political process.” (*Ibid.*) The whole purpose of CPRA is to ensure transparency in government activities. If public officials could evade the law simply by clicking into a different email account, or communicating through a personal device, sensitive information could routinely evade public scrutiny.

The City counters that the privacy interests of government employees weigh against interpreting “public records” to include material in personal accounts. Of course, public employees do not forfeit all rights to privacy by working for the government. (*Long Beach City Employees Assn. v. City of Long Beach* (1986) 41 Cal.3d 937, 951.) Even so, the City essentially argues that the contents of personal email and other messaging accounts should be categorically excluded from public review because these materials have traditionally been considered private. However, compliance with CPRA is not necessarily inconsistent with the privacy rights of public employees. Any personal information not related to the conduct of public business, or material falling under

a statutory exemption, can be redacted from public records that are produced or presented for review. (See § 6253, subd. (a).)

Furthermore, a crabbed and categorical interpretation of the “public records” definition is unnecessary to protect employee privacy. Privacy concerns can and should be addressed on a case-by-case basis. (See *International Federation*, *supra*, 42 Cal.4th at p. 329.) Beyond the definition of a public record, the Act itself limits or exempts disclosure of various kinds of information, including certain types of preliminary drafts, notes, or memoranda (§ 6254, subd. (a)), personal financial data (§ 6254, subd. (n)), personnel and medical files (§ 6254, subd. (c)), and material protected by evidentiary privileges (§ 6254, subd. (k)). Finally, a catchall exemption allows agencies to withhold any record if the public interest served by withholding it “clearly outweighs” the public interest in disclosure. (§ 6255, subd. (a).) This exemption permits a balance between the public’s interest in disclosure and the individual’s privacy interest. (*International Federation*, at pp. 329-330; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 755-756.) The analysis here, as with other exemptions, appropriately focuses on the *content* of specific records rather than their location or medium of communication. (See *Commission on Peace Officer Standards*, *supra*, 42 Cal.4th at p. 291.)⁷

⁷ While admitting it invoked no CPRA exemptions in the proceedings below, the City nevertheless asks us to decide that messages in employees’ personal accounts are universally exempt from disclosure under section 6255. This issue has not been preserved and is beyond the scope of our grant of review. It also appears impossible to decide on this record. Answering threshold questions about whether employees have a reasonable expectation of privacy (see *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35), or whether their messages are covered by the “deliberative process” privilege (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1339-1344) would require a fact-intensive review of the City’s policies and practices regarding electronic communications, if not the contents of the challenged documents themselves. The record here is insufficient.

The City also contends the search for public records in employees' accounts would itself raise privacy concerns. In order to search for responsive documents, the City claims agencies would have to demand the surrender of employees' electronic devices and passwords to their personal accounts. Such a search would be tantamount to invading employees' homes and rifling through their filing cabinets, the City argues. It urges no case has extended CPRA so far.

Arguments that privacy interests outweigh the need for disclosure in CPRA cases have typically focused on the sensitive content of the documents involved, rather than the intrusiveness involved in searching for them. (See, e.g., *International Federation*, *supra*, 42 Cal.4th 319; *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272.) Assuming the search for responsive documents can also constitute an unwarranted invasion of privacy, however, this concern alone does not tip the policy balance in the City's favor. Searches can be conducted in a manner that respects individual privacy.

C. *Guidance for Conducting Searches*

The City has not attempted to search for documents located in personal accounts, so the legality of a specific kind of search is not before us. However, the City and some amici curiae do highlight concerns about employee privacy. Some guidance about how to strike the balance between privacy and disclosure may be of assistance.

CPRA requests invariably impose some burden on public agencies. Unless a records request is overbroad or unduly burdensome, agencies are obliged to disclose all records they can locate "with reasonable effort." (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166.) Reasonable efforts do not require that agencies undertake extraordinarily extensive or intrusive searches, however. (See *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 453; *Bertoli v. City of Sebastopol* (2015) 233 Cal.App.4th 353, 371-372.) In general, the scope of an agency's search for public records "need only be reasonably calculated to locate responsive documents."

(*American Civil Liberties Union of Northern Cal. v. Superior Court* (2011) 202 Cal.App.4th 55, 85; see *Community Youth, supra*, 220 Cal.App.4th at p. 1420.)

CPRA does not prescribe specific methods of searching for those documents. Agencies may develop their own internal policies for conducting searches. Some general principles have emerged, however. Once an agency receives a CPRA request, it must “communicate the scope of the information requested to the custodians of its records,” although it need not use the precise language of the request. (*Community Youth, supra*, 220 Cal.App.4th at p. 1417.) As to requests seeking public records held in employees’ nongovernmental accounts, an agency’s first step should be to communicate the request to the employees in question. The agency may then reasonably rely on these employees to search *their own* personal files, accounts, and devices for responsive material.

Federal courts applying FOIA have approved of individual employees conducting their own searches and segregating public records from personal records, so long as the employees have been properly trained in how to distinguish between the two. (See *Ethyl Corp. v. U.S. Environmental Protection Agency* (4th Cir. 1994) 25 F.3d 1241, 1247.) A federal employee who withholds a document identified as potentially responsive may submit an affidavit providing the agency, and a reviewing court, “with a sufficient factual basis upon which to determine whether contested items were ‘agency records’ or personal materials.” (*Grand Cent. Partnership, Inc. v. Cuomo* (2d Cir. 1999) 166 F.3d 473, 481.) The Washington Supreme Court recently adopted this procedure under its state public records law, holding that employees who withhold personal records from their employer “must submit an affidavit with facts sufficient to show the information is not a ‘public record’ under the PRA. So long as the affidavits give the requester and the trial court a sufficient factual basis to determine that withheld material is indeed nonresponsive, the agency has performed an adequate search under the PRA.” (*Nissen v. Pierce County* (Wn. 2015) 183 Wn.2d 863 [357 P.3d 45, 57].) We agree with Washington’s high court that this procedure, when followed in

good faith, strikes an appropriate balance, allowing a public agency “to fulfill its responsibility to search for and disclose public records without unnecessarily treading on the constitutional rights of its employees.” (*Id.*, 357 P.3d at p. 58.)

Further, agencies can adopt policies that will reduce the likelihood of public records being held in employees’ private accounts. “Agencies are in the best position to implement policies that fulfill their obligations” under public records laws “yet also preserve the privacy rights of their employees.” (*Nissen v. Pierce County, supra*, 357 P.3d at p. 58.) For example, agencies might require that employees use or copy their government accounts for all communications touching on public business. Federal agency employees must follow such procedures to ensure compliance with analogous FOIA requests. (See 44 U.S.C. § 2911(a) [prohibiting use of personal electronic accounts for official business unless messages are copied or forwarded to an official account]; 36 C.F.R. § 1236.22(b) (2016) [requiring that agencies ensure official email messages in employees’ personal accounts are preserved in the agency’s recordkeeping system]; *Landmark Legal Foundation v. Environmental Protection Agency* (D.D.C. 2015) 82 F.Supp.3d 211, 225-226 [encouraging a policy that official emails be preserved in employees’ personal accounts as well].)

We do not hold that any particular search method is required or necessarily adequate. We mention these alternatives to offer guidance on remand and to explain why privacy concerns do not require categorical exclusion of documents in personal accounts from CPRA’s “public records” definition. If the City maintains the burden of obtaining records from personal accounts is too onerous, it will have an opportunity to so establish in future proceedings. (See *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 615-616; *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1188.)

D. Conclusion

Consistent with the Legislature’s purpose in enacting CPRA, and our constitutional mandate to interpret the Act broadly in favor of public access (Cal.

Const., art. I, § 3, subd. (b)(2)), we hold that a city employee's writings about public business are not excluded from CPRA simply because they have been sent, received, or stored in a personal account.

DISPOSITION

The judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

CORRIGAN, J.

WE CONCUR:

CANTIL-SAKAUYE, C. J.
WERDEGAR, J.
CHIN, J.
LIU, J.
CUÉLLAR, J.
KRUGER, J.

See last page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion City of San Jose v. Superior Court

Unpublished Opinion

Original Appeal

Original Proceeding

Review Granted XXX 225 Cal.App.4th 75

Rehearing Granted

Opinion No. S218066

Date Filed: March 2, 2017

Court: Superior

County: Santa Clara

Judge: James P. Kleinberg

Counsel:

Richard Doyle, City Attorney, Nora Frimann, Assistant City Attorney, and Margo Laskowska, Deputy City Attorney, for Petitioners.

Keith J. Bray, Joshua Rosen Daniels; Dannis Woliver Kelley, Sue Ann Salmon Evans and William B. Tunick for Education Legal Alliance of the California School Boards Association as Amicus Curiae on behalf of Petitioners.

Jennifer B. Henning for California State Association of Counties as Amicus Curiae on behalf of Petitioners.

Best, Best & Krieger, Shawn D. Hagerty and Hong Dao Nguyen for League of California Cities, California Association of Sanitation Agencies and California Special Districts Association Amici Curiae on behalf of Petitioners.

No appearance for Respondent.

McManis Faulkner, James McManis, Matthew Schechter, Christine Peek, Tyler Atkinson and Jennifer Murakami for Real Party in Interest.

Mastagni Holstedt, David E. Mastagni, Isaac S. Stevens and Jeffrey R.A. Edwards for Sacramento Police Officers' Association, Stockton Police Officers' Association, Sacramento County Deputy Sheriffs' Association, Sacramento County Law Enforcement Managers Association, San Bernardino County Public Attorneys Association, Deputy Sheriffs' Association of Alameda County, Statewide University Police Association, Sacramento Area Firefighters, International Association of Firefighters, Local 552, AFL-CIO, Palo Alto Firefighters, International Association of Firefighters, Local 1319, AFL-CIO, San Mateo County Deputy Sheriffs' Association, Rialto Professional Firefighters, International Association of Firefighters, Local 3688, AFL-CIO, Vallejo Police Officers' Association, Elk Grove Police Officers Association, Ontario Police Officers' Association, Placer County Deputy Sheriffs' Association, Federated University Police Officers' Association and Los Angeles Airport Peace Officers' Association as Amici Curiae on behalf of Real Party in Interest.

Page 2 – S208181 – counsel continued

Counsel:

Jack Cohen as Amicus Curiae on behalf of Real Party in Interest.

Ram, Olson, Cereghino & Kopczynski, Karl Olson; Juan F. Cornejo; Jeffrey D Glasser; and James W. Ewert for California Newspaper Publishers Association, Los Angeles Times Communications LLC, McClatchy Newspapers, Inc., Hearst Corporation, First Amendment Coalition, Society of Professional Journalists, Californians Aware and the Reporters Committee for Freedom of the Press as Amici Curiae on behalf of Real Party in Interest.

Michael T. Risher, Matthew T. Cagle, Christopher J. Conley; Peter Bibring, Peter Eliasberg; David Loy; and Jennifer Lynch for American Civil Liberties Union Foundation of Northern California, Inc., American Civil Liberties Union of Southern California, Inc., American Civil Liberties Union of San Diego & Imperial County, Inc., and Electronic Frontier Foundation as Amici Curiae on behalf of Real Party in Interest.

Counsel who argued in Supreme Court (not intended for publication with opinion):

Nora Frimann
Assistant City Attorney
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113-1905
(408) 535-1900

James McManis
McManis Faulkner
50 West San Fernando Street, 10th Floor
San Jose, CA 95113
(408) 279-8700

Karl Olson
Ram, Olson, Cereghino & Kopczynski
555 Montgomery Street, Suite 820
San Francisco, CA 94111
(415) 433-4949

Draft Electronic Communications Policy

Attachment 2

CHAPTER 4: ELECTRONIC COMMUNICATION, SECURITY, SAFETY, AND EQUIPMENT

2. ELECTRONIC COMMUNICATIONS POLICY (Adopted March 21, 2018)

Background and Purpose

The Commission as the legislative body of the Local Agency Formation Commission for San Bernardino County ("LAFCO") hereby adopts the following policy regarding the conduct of LAFCO business via electronic communications by commissioners and employees. Specifically, this policy is adopted in light of the *City of San Jose* case, which held that a city employee's communications related to the conduct of public business do not cease to be public records under sent or received using a personal account or personal device.

Existing and emerging electronic communications technologies have become an integral part of the ability of Commission officials and staff members to efficiently and effectively conduct Commission business. Such technology has the potential to enhance communications with the public and provide a higher level of service to the citizens of the Commission. However, with such technology in the work environment, the Commission must ensure it continues to meet its legal obligations with respect to transparency in the conduct of the people's business, including in the area of public records disclosure and retention requirements. To that end, the following policy and procedures will be followed.

Definitions

For purposes of this policy, the following definitions apply:

"LAFCO" means the Local Agency Formation Commission for San Bernardino County.

"LAFCO official" for this policy shall mean any commissioner, employee of LAFCO, or person assigned an LAFCO electronic messaging account.

"LAFCO business" shall be construed broadly to mean information relating to the conduct of the public's business or communications concerning matters within the subject matter of LAFCO's jurisdiction, including, but not limited to, pending or potential LAFCO projects, past or prospective LAFCO agenda items, or LAFCO budgets or expenditures involving LAFCO funds. Resolution of the question will involve an examination of several factors, including: (a) the content itself; (b) the context in, or purpose for which, it was written; (c) the audience to whom it was directed; (d) the purpose of the communication; and (e) whether the writing was

*San Bernardino LAFCO Policy and Procedure Manual
Section III – Human Resources Policies and Procedures*

prepared by an LAFCO official acting or purporting to act within the scope of his or her employment.

"Electronic communications" includes any and all electronic transmission, and every other means of recording upon any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. Without limiting the nature of the foregoing, "electronic communications" include e-mails, texts, voicemails, and also include communications on or within commercial applications (apps) such as Facebook Messenger, Twitter, WhatsApp, etc.

"Electronic messaging account" means any account that creates, sends, receives or stores electronic communications.

Policy

1. All LAFCO officials shall be assigned a LAFCO electronic messaging account.
2. LAFCO accounts shall be used to conduct LAFCO business. LAFCO officials shall not use personal accounts for the creation, transmission or storage of electronic communications regarding LAFCO business.
3. All LAFCO officials shall, within 30 days following the adoption of this policy, search all private, nongovernmental electronic messaging accounts to which they have user access and locate any electronic communications that might constitute a "public record", because it involved "LAFCO business", as set forth above. All such communications shall be forwarded to the LAFCO official's LAFCO-provided account. To the extent the LAFCO official believes that any part of such communications contain personal matter not related to the conduct of the public's business, the LAFCO official shall provide a declaration, as set forth in paragraphs 10 and 11, below.
4. The LAFCO account, along with the attendant access to LAFCO's account server, are solely for LAFCO and LAFCO official's use to conduct LAFCO business and shall not be used for personal business or political activities. Incidental use of LAFCO electronic messaging accounts for personal use by LAFCO officials is permissible, though not encouraged.
5. If an LAFCO official receives an electronic message regarding LAFCO business on his/her non-LAFCO electronic messaging account, or circumstances require such person to conduct LAFCO business on a non-LAFCO account, the LAFCO official shall either: (a) copy ("cc") any communication from a LAFCO official's personal electronic messaging account to his/her LAFCO electronic messaging account; or (b) forward the

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associated electronic communication to his/her LAFCO account no later than 10 days after the original creation or transmission of the electronic communication.

6. LAFCO officials shall endeavor to ask persons sending electronic communications regarding LAFCO business to a personal account to instead utilize the LAFCO official's account, and likewise shall endeavor to ask a person sending an electronic communication regarding non-LAFCO business to use the LAFCO official's personal or non-LAFCO electronic messaging account.
7. The LAFCO official shall retain all emails related to a proposal for six months following issuance of the certificate of completion, certificate of termination, or withdrawal notification by the applicant.
8. LAFCO officials understand they have no expectation of privacy in the content of any electronic communication sent or received on an LAFCO account or communication utilizing LAFCO servers. LAFCO provided electronic devices, including devices for which LAFCO pays a stipend or reimburses the LAFCO official, are subject to LAFCO review and disclosure of electronic communications regarding LAFCO business. LAFCO officials understand that electronic communications regarding LAFCO business that are created, sent, received or stored on an electronic messaging account, may be subject to the Public Records Act, even if created, sent, received, or stored on a personal account or personal device.
9. In the event a Public Records Act request is received by LAFCO seeking electronic communications of LAFCO officials, the LAFCO Clerk shall promptly transmit the request to the applicable LAFCO official(s) whose electronic communications are sought. The LAFCO Clerk shall communicate the scope of the information requested to the applicable LAFCO official, and an estimate of the time within which the LAFCO Clerk intends to provide any responsive electronic communications to the requesting party.
10. It shall be the duty of each LAFCO official receiving such a request from the LAFCO Clerk to promptly conduct a good faith and diligent search of his/her personal electronic messaging accounts and devices for responsive electronic communications. The LAFCO official shall then promptly transmit any responsive electronic communications to the LAFCO Clerk. Such transmission shall be provided in sufficient time to enable the LAFCO Clerk to adequately review and provide the disclosable electronic communications to the requesting party.
11. In the event a LAFCO official does not possess, or cannot with reasonable diligence recover, responsive electronic communications from the LAFCO official's electronic messaging account, the LAFCO official shall so notify the

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LAFCO Clerk, by way of a written declaration, signed under penalty of perjury. In addition, an LAFCO official who withholds any electronic communication identified as potentially responsive must submit a declaration under penalty of perjury with facts sufficient to show the information is "personal business" and not "public business" under the Public Records Act. The form of the declaration is attached hereto as Attachment A.

12. It shall be the duty of the LAFCO Clerk, in consultation with LAFCO's Legal Counsel, to determine whether a particular electronic communication, or any portion of that electronic communication, is exempt from disclosure. To that end, the responding LAFCO official shall provide the LAFCO Clerk with all responsive electronic communications, and, if in doubt, shall err on the side of caution and should "over produce". If an electronic communication involved both public business and a personal communication, the responding LAFCO official may redact the personal communication portion of the electronic communication prior to transmitting the electronic communication to the LAFCO Clerk. The responding LAFCO official shall provide facts sufficient to show that the information is "personal business" and not "public business" by declaration. In the event a question arises as to whether or not a particular communication, or any portion of it, is a public record or purely a personal communication, the LAFCO official should consult with the LAFCO Clerk or the Legal Counsel. The responding LAFCO official shall be required to sign a declaration, in a form acceptable to the Legal Counsel, attesting under penalty of perjury, that a good faith and diligent search was conducted and that any electronic communication, or portion thereof, not provided in response to the Public Records Act request is not LAFCO business.
13. AB 1234 (ethics) training should include a discussion of the impacts of the *City of San Jose* case and this policy. Such training should include information on how to distinguish between public records and personal records. LAFCO officials who receive AB 1234 training from other providers should actively solicit training from the alternative provider on the impacts of the *City of San Jose* case.
14. LAFCO officials understand that electronic communications regarding LAFCO business are subject to LAFCO's Records Retention Policy (Section II, Chapter 1, Policy 7), even if those electronic communications are or were created, sent, received or stored on an LAFCO official's personal electronic messaging account. It is a felony offense to destroy, alter or falsify a "public record". As such, unless the LAFCO official has cc'd/transmitted electronic communications in accordance with Paragraph 5 above, that LAFCO official must retain all electronic communications regarding LAFCO business, in accordance with LAFCO's adopted records retention policy, regardless of whether such electronic communication is originally sent or received on a personal electronic messaging account.

*San Bernardino LAFCO Policy and Procedure Manual
Section III – Human Resources Policies and Procedures*

15. Failure of an LAFCO official to abide by this policy, following its adoption, may result in one or more of the following:

- Disciplinary action, up to and including termination (for employees);
- Removal from office (for commissioners);
- Censure (for commissioners);
- Revocation of electronic device privileges (including revocation of stipend or reimbursement);
- Judicial enforcement against the LAFCO official directly, by the requesting party; and

16. This policy does not waive any exemption to disclosure that may apply under the California Public Records Act.

17. Upon leave of service from LAFCO, the Email administrator will request that County ISD close the LAFCO official's Email account and copy the contents from the Email account onto an electronic medium (CD, DVD, USB flash drive) and to be retained in accordance with the Commission's Record Retention Policy.

ATTACHMENT A

DECLARATION

(attached on following page)

...

California Public Records Act Request
Pursuant to Gov. Code § 6250 *et seq.*

Re: _____

Insert shorthand name of record request, including
request number, if applicable

Requester: _____
Print or type name of requester

Declaration of:

Print or type name of official

**Regarding Search of Personal Electronic
Messaging Account**

STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

I, _____ declare:
Print name

1. I received notice of a California Public Records Act (“CPRA”) request regarding a search of my personal electronic messaging account(s).
2. I understand that the CPRA request seeks:

Insert text of CPRA request.

3. I am the owner or authorized user of the following personal electronic messaging account and have the authority to certify the records:

Insert description of personal electronic messaging account(s).

4. I have made a good faith, diligent, thorough, and complete search of the above mentioned personal electronic messaging account(s) for all electronic communications potentially responsive to the above mentioned CPRA request.
5. Any responsive electronic communications discovered, and referenced below, were prepared or used by me in the ordinary course of business at or near the time of the act, condition or event.
6. Any responsive electronic communications discovered, and referenced below, are true copies of all records described in the above mentioned CPRA request.

Check the applicable box:

- I certify that I do not possess responsive electronic communications.
- I certify that I cannot reasonably recover responsive electronic communications.

Explain efforts to retrieve responsive electronic communications and why you were unable to recover responsive electronic communications.

- I certify that I discovered potentially responsive electronic communications from my personal electronic messaging account, but I am withholding that information because the information is “personal” business. This is for the following reasons:

Describe with sufficient facts why the contested information is personal business and not subject to the CPRA. Attach additional pages, if necessary.

- I certify that I discovered potentially responsive electronic communications from my personal electronic messaging account. I am providing all responsive information. However, some information is nonresponsive and I am withholding that information, because the information is personal business. This is for the following reasons:

Describe with sufficient facts why the contested information is personal business and not subject to the CPRA. Attach additional pages, if necessary.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I have personal knowledge of the facts set forth above.

Executed this ____ day of _____ 20____, in _____, California.

By: _____
Print Name: _____

Draft Records Retention Policy

Attachment 3

*San Bernardino LAFCO Policy and Procedure Manual
Section II – Accounting and Financial Policies*

7. RECORDS RETENTION POLICY (*Adopted October 21, 2009, Amended March 21, 2018*)

It is the policy of this Commission to retain San Bernardino LAFCO's records of proceedings, **electronic communications**, and financial documents and records in accordance with the Records Retention Schedule outlined below.

<u>TYPE OF RECORD</u>	<u>RETENTION PERIOD</u>
Records of Proceedings	Government Code § 56382
Electronic Communications	<u>Six months following issuance of the Certificate of Completion, Certificate of Termination, or withdrawal notification by the applicant.</u>
Financial:	
Expense Reports	7 years
Budgets	7 years
Billings/Accounting Reports	7 years
Budget Change Proposals	7 years
Budget Change Concepts	7 years
Audits	7 years
Invoices	7 years
Fees/Receipts	7 years
Checks/Ledgers/Registers	7 years
Cal Stars Reports	7 years
Cost Recovery – Federal	7 years
Cost Recovery – State	7 years
Grants	7 years
Resource: California Secretary of State. "Local Government Records Management Guidelines", Feb 2006.	
Under the authority established by Senate Bill 742 (1999), adding Section 12236 to the Government Code.	

The Commission has adopted the financial portion of the "Local Government Records Management Guidelines", issued by the California Secretary of State pursuant to Government Code Section 12236, as may be amended from time to time by the Secretary of State, as the Commission's official retention schedule **for financial documents and records**. This policy shall be reviewed, and when necessary updated, at least every five years pursuant to the Secretary of State Guidelines. To implement the retention and destruction of the **financial** records pursuant to the Schedule, the Commission designates the Executive Officer as the Records Management Coordinator who shall present a Commission agenda item once a year related to records to be destroyed.

**Draft LAFCO
Resolution No. 3258**

Attachment 4

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West 3rd Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
E-mail: lafco@lafco.sbccounty.gov
www.sbcclfco.org

RESOLUTION NO. 3258

A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY, STATE OF CALIFORNIA, AMENDING ITS POLICY AND PROCEDURE MANUAL

On Wednesday, March 21, 2018, on motion of Commissioner ____, duly seconded by Commissioner ____, and carried, the Local Agency Formation Commission adopts the following resolution:

SECTION 1. The Local Agency Formation Commission for San Bernardino County, State of California (hereafter shown as “LAFCO”), hereby finds and determines that it wishes to amend its Policy and Procedure Manual within the Human Resources section (new policy and renumbering of following sections) and Accounting and Financial section (amended policy) related to electronic communications.

SECTION 2. The Local Agency Formation Commission for San Bernardino County therefore determines, resolves and orders that:

1. The Policy and Procedure Manual is hereby amended as follows:
 2. Chapter 4 of Section III is amended as follows:
 - a. The title of Chapter 4 of Section III is amended to read “Electronic Communication, Safety, and Equipment” is adopted and approved;
 - b. The revision to add new Policy 2: Electronic Communications Policy of Chapter 4 of Section III attached to this resolution as Exhibit “A”, and incorporated herein by reference, is adopted and approved; and,
 - c. The revision to subsequent policies in Chapter 4 of Section III are renumbered pursuant to the addition of Item 2 above, is adopted and approved.
 3. The amended Policy 7: Records Retention Policy of Chapter 1 of Section II attached to this resolution as Exhibit “B” and incorporated herein by reference, is adopted and approved.

RESOLUTION NO. 3258

SECTION 3. The Executive Officer of LAFCO is ordered to certify the passage of this resolution and to cause a copy of the amended Policy and Procedure Manual to be posted on the LAFCO Website, and a certified copy of this resolution to be forwarded to the County Executive Officer, each City, Town, and Independent Special District in the County and to affected County Departments.

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 meeting of March 21, 2018.

DATED: March __, 2018

**KATHLEEN ROLLINGS-McDONALD
Executive Officer**

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbcclfco.org

DATE: MARCH 12, 2018



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

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item 7 – Workshop on Countywide Habitat Conservation/
Preservation Framework Study Update and Changes in State
Legislative Direction

RECOMMENDATION:

The staff recommends that the Commission take the following actions:

1. Close LAFCO 3157A - Service Review for Habitat Conservation and Open Space; and,
2. Direct staff to return to the Commission with a request to reinitiate the service review for habitat conservation and open space management services upon completion of the collaborative process that the County of San Bernardino, the San Bernardino County Transportation Authority, the Southern California Association of Governments, and the County's Environment Element Group have undertaken to address habitat preservation and conservation for the entire County.

BACKGROUND:

In September 2014, the Commission deferred its consideration of the habitat conservation and open space service review (LAFCO 3157A) until completion of the Countywide Habitat Preservation/ Conservation Framework Study (hereafter the "Framework Study"). The Framework Study was a program to develop a structured and more comprehensive approach to the preservation and conservation of habitat and open space throughout the County. It was being prepared through the collaborative efforts of the County of San Bernardino, the San Bernardino County Transportation Authority (SBCTA), the Southern California Association of Governments (SCAG), and the Countywide Vision Environment Element Group.

LAFCO staff indicated that the completion of the Framework Study would greatly benefit LAFCO's habitat conservation and open space service review since most of the information in the Framework Study would be the type of data/information that would be needed to evaluate the factors required in conducting the service review for the public (and private) entities that manage conservation lands/easements and open space lands within San Bernardino County.

Phase 1 of the Framework Study was completed in February 2015, which was a document guide that outlined conservation issues and concerns, existing conservation, conservation opportunities, and data gaps associated with current approaches to habitat conservation. The report identified, among others, policy and biological principles as well as recommendations to further develop a comprehensive approach to habitat preservation/conervation, and next steps.

Phase 2 was initiated in 2016 to develop key elements of what was referred to as an alternative conservation plan. The scope of work for Phase 2 was to address the most critical next steps identified in the Framework Study, which anticipated the creation of a conservation lands inventory and development of a habitat tracking system, conducting a more detailed conservation “gap analysis” and—based on the gap analysis—developing an initial reserve design or alternative designs that identify focus areas needing protection.

In March 2016, the Commission again deferred its consideration of LAFCO 3157A until after completion of Phase 2 (anticipated at that time to be another 12-18 months) since it was restated that much of information being generated for Phase 2 would, again, be what LAFCO staff would need for its data analysis. Deferral also meant that LAFCO would eliminate duplicating the efforts that the Countywide Vision Environment Element Group and its partners—the County, SBCTA, and SCAG—were working on.

New Direction

In September 2016, the State established a new conservation tool called a *Regional Conservation Investment Strategy*¹ (RCIS). This RCIS program provides guidance for nonbinding/voluntary regional conservation and mitigation actions that would advance the conservation of focal species, habitat, and other natural resources, and for the identification of wildlife and habitat conservation priorities, investments in ecological resource conservation, and/or the identification of locations for compensatory mitigation for impacts to species and natural resources. The Program consists of three primary components: regional conservation assessments (RCAs), regional conservation investment strategies (RCISs), and mitigation credit agreements (MCAs). The Program

¹ Established through Assembly Bill 2087 that was signed into law on September 2016, became effective January 1, 2017, and codified in Division 2. Department of Fish and Wildlife, Chapter 9, Section 1850 et seq of the California Fish and Game Code.

provides a mechanism that allows any person or entity to develop mitigation credits through MCAs under an approved RCIS.

The purpose of an RCIS is to provide regional planning that will identify important ecological resources and conservation or enhancement actions that, if implemented, will advance the conservation of focal species and their habitats. Since the RCIS is a new science-based conservation planning and mitigation strategy that would identify conservation priorities and deliver more flexible mitigation options for development impacts, the Countywide Vision Environment Element Group and its partners—the County, SBCTA, and SCAG—are now refocusing their efforts towards preparing an RCIS document. It is LAFCO staff's understanding that the group is currently working on the RCIS boundary(ies) as well as finalizing the focal species list.

LAFCO staff has invited Mr. Josh Lee, Chief of Planning for SBCTA, and Mr. Mike Howard, consultant from Dudek, to present the Commission with a background on Phase 1 and 2 of the Framework Study, the new RCIS, the efforts made to date, as well as next steps. A copy of the presentation is included as an attachment to this report. At the conclusion of their presentation, both Mr. Lee and Mr. Howard will be available to respond to questions of the Commission.

With no immediate end in sight, LAFCO staff is recommending that the service review for habitat conservation and open space be deferred indefinitely, and rather than continue processing LAFCO 3157A, it is recommended that the file be closed at this time. In addition, staff is recommending that the Commission direct staff to reinitiate the service review for habitat conservation and open space upon completion of the RCIS that the County, SBCTA, SCAG, and the Countywide Vision Environment Element Group are preparing to address habitat preservation and conservation for the entire County.

KRM/sm

Attachment: Copy of Slide Presentation

Update on Habitat Conservation Planning in San Bernardino County:

Regional Conservation Investment Strategy

Presentation to the
Local Agency Formation Commission for San Bernardino County
March 21, 2018



Background and Early Milestones

- As part of the San Bernardino Countywide Vision, the Environment Element Group aimed to **develop a more comprehensive approach to the preservation / conservation of habitat and open space throughout the county**
- Phase 1 involved the preparation of the **Countywide Habitat Preservation / Conservation Framework Development Study**, completed in 2015, which among other things identified **Policy** and **Biological Principles** and **Next Steps**



**San Bernardino Associated Governments
Countywide Habitat Preservation/Conservation Framework Development**

6 PRINCIPLES AND RECOMMENDATIONS

The following draft principles and recommendations have been developed for the San Bernardino Associated Governments Countywide Habitat Preservation/Conservation Framework. These principles and recommendations have been developed by the San Bernardino Associated Governments Countywide Habitat Preservation/Conservation Framework Technical Working Group and have been reviewed by the Planning Directors Technical Working Group. The Principles and Recommendations will be used to guide development of subsequent Frameworks. The Principles are grouped into Policy Principles and Principles are presented in a summary list, followed by further details.

Policy Principles

- Principle 1: Increase certainty while maintaining flexibility for the preservation/conservation of habitat as well as infrastructure permitting.
- Principle 2: Recognize that San Bernardino County needs to afford the acquisition and ongoing management efforts should complement other objectives such as development and housing affordability while also respecting habitat.
- Principle 3: Design institutional structures to promote habitat to leverage private funding, easements, public funding, maximize the protection of habitat and associated species property rights.
- Principle 4: Conservation planning efforts should be consistent with authority and accountability that can process moving in a transparent, productive and timely manner.
- Principle 5: Recognize that jurisdictional and other stakeholder comprehensive approach to conservation planning will be the more comprehensive approach will provide benefits for all.
- Principle 6: Leverage existing conservation efforts.
- Principle 7: Match potential tools for conservation with development needs within specific subwatersheds.
- Principle 8: Consider conservation planning strategies that cross County boundaries, if needed, while respecting the primary boundaries.

7 NEXT STEPS

To develop a countywide conservation plan as outlined in this conservation framework study, there needs to be a collaboration amongst the stakeholders and a willingness of all parties to seek the most benefit for those involved. The vision of the conservation framework is embodied in Principle 1, which is to provide certainty to the development and conservation processes in the county. The intent would be to approach habitat preservation/conservation in a more comprehensive manner such that the environmental benefits from more cohesive, functional habitats that will protect species while providing economic development opportunities through greater clarity and speed in the development process. This is consistent with the lead paragraph in the Environmental Element of the Countywide Vision, which states, in part:

"We shall strive to intelligently manage our resources for habitat preservation, recreation opportunities, resource extraction, alternative energy, future growth, water quality, and air quality all within a regulatory framework that does not impede the creation of a sustainable economy."

The intent of this section is to provide a pathway of the next steps that need to be taken, based on what has been completed to date by the efforts outlined in this report. This effort has not been exhaustive, nor was it intended to be; rather it is the first of multiple steps needed to implement a conservation plan for the county.

The following includes a discussion of the next steps and consumers necessary to continue the momentum proceeding to the next level or phases of a more comprehensive, countywide conservation strategy. A discussion of the next steps on a countywide and subarea level is provided where applicable. The entity responsible, the proposed implementation schedule, personnel, and financial resources needed for each of the next steps are also identified, where applicable.

Primary Priority: Timeline: 6 months

J. Identify an Interim Lead for Conservation Planning

Moving forward from a framework study to a comprehensive planning phase, one entity should be identified to keep the initiative moving and be accountable for achieving progress. As stated in Principle 4, a "champion" or Lead for conservation planning in the county should be established. Since this next step is the first of many, and the course of action and players may change once more information is compiled, the Lead that is identified initially may not be the same Lead throughout the whole process. For this reason, an Interim Lead should be chosen until a long-term Lead entity is identified.

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February 2018

Background and Early Milestones

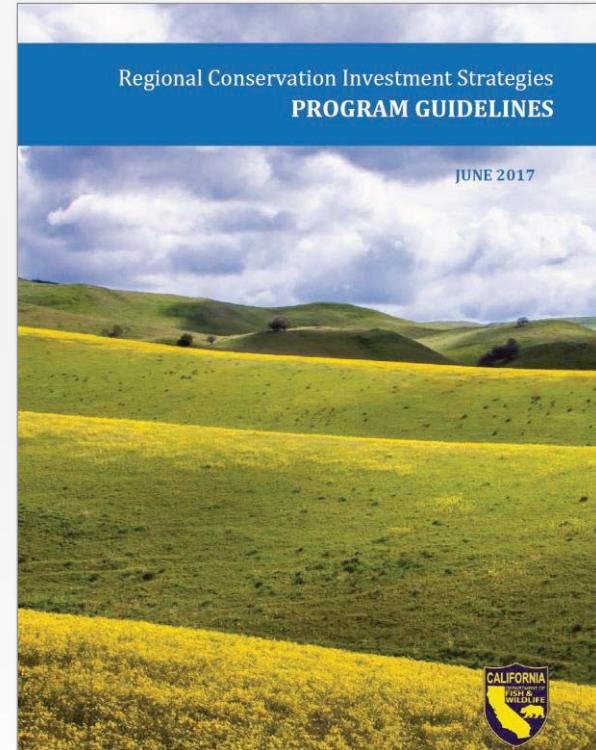
Building off the Phase 1 Framework Study, Phase 2 was initiated in 2016 to prepare key elements necessary to develop what was referred to as ***alternative conservation plan***

- To provide a comprehensive assessment of conservation priorities for focal species
- To identify where mitigation for development would be focused
- To streamline project permitting in conjunction with implementing a landscape-scale conservation strategy

Regional Conservation Investment Strategies

In fall 2016, a new planning tool became available, referred to as a ***Regional Conservation Investment Strategy (RCIS)***

- Established when Assembly Bill 2087 was signed into law September 2016, effective January 1, 2017
- Codified in California Fish and Game Code Chapter 9 Section 1850 et seq.
- Additional information available at:
<https://www.wildlife.ca.gov/Conservation/Planning/Regional-Conservation>



Regional Conservation Investment Strategies

- The RCIS Program is
 - **Voluntary** and **non-regulatory**; it **does not** regulate land use, create any new land use regulations, or restrict local land use authority.
- An RCIS is
 - A science-based conservation planning and mitigation strategy, developed by public agencies, to identify **conservation priorities** and deliver **more flexible mitigation options** for development impacts.
 - A guide for conservation and mitigation actions to be implemented by state and local governments, NGOs, and private entities

Regional Conservation Investment Strategies

The RCIS Program includes 3 tiers:

Regional
Conservation
Assessment (RCA)

- Optional, but can help shape RCIS scope by providing broad ecoregional context
- Not being pursued for San Bernardino Co.

Regional
Conservation
Investment
Strategy (RCIS)

- **Conservation goals and objectives for focal species and habitats**
- **Identifies conservation opportunities and actions**
- **Submitted to CDFW for review and approval**

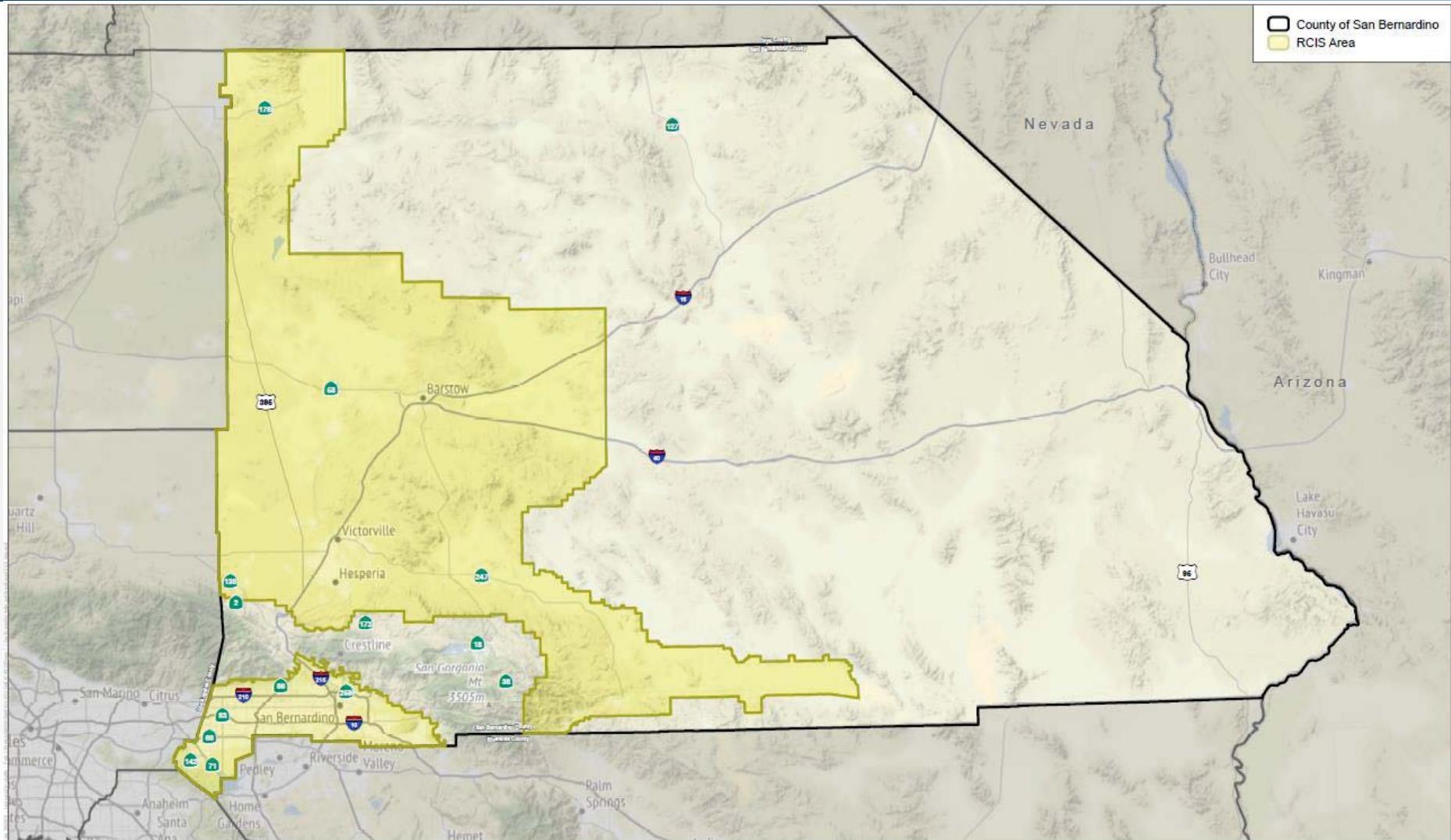
Mitigation Credit
Agreement (MCA)

- Creates the credits and accounting system
- May only be developed within an approved RCIS area

Environment Element Group Guidance

- **Sep-2016 EEG Mtg:** The EEG provided guidance to investigate the RCIS approach for San Bernardino County
- **Mar-2017 EEG Mtg:** Proposed approach to developing the RCIS was presented and *Planning Area* and *Focal Species* selection were introduced
- **Jul-2017 EEG Survey:** Outreach materials circulated and EEG survey conducted on *Planning Area* and *Focal Species*
- **Oct-2017 Boundary and Species Recommendations:** Memo distributed to the EEG
- **Nov-2017 EEG Mtg:** CDFW Sacramento staff RCIS presentation to the EEG. Input, discussion, and working consensus reached on *RCIS Planning Boundary* and *Focal Species List*

RCIS Planning Area



SOURCE: Bing Maps, 2017

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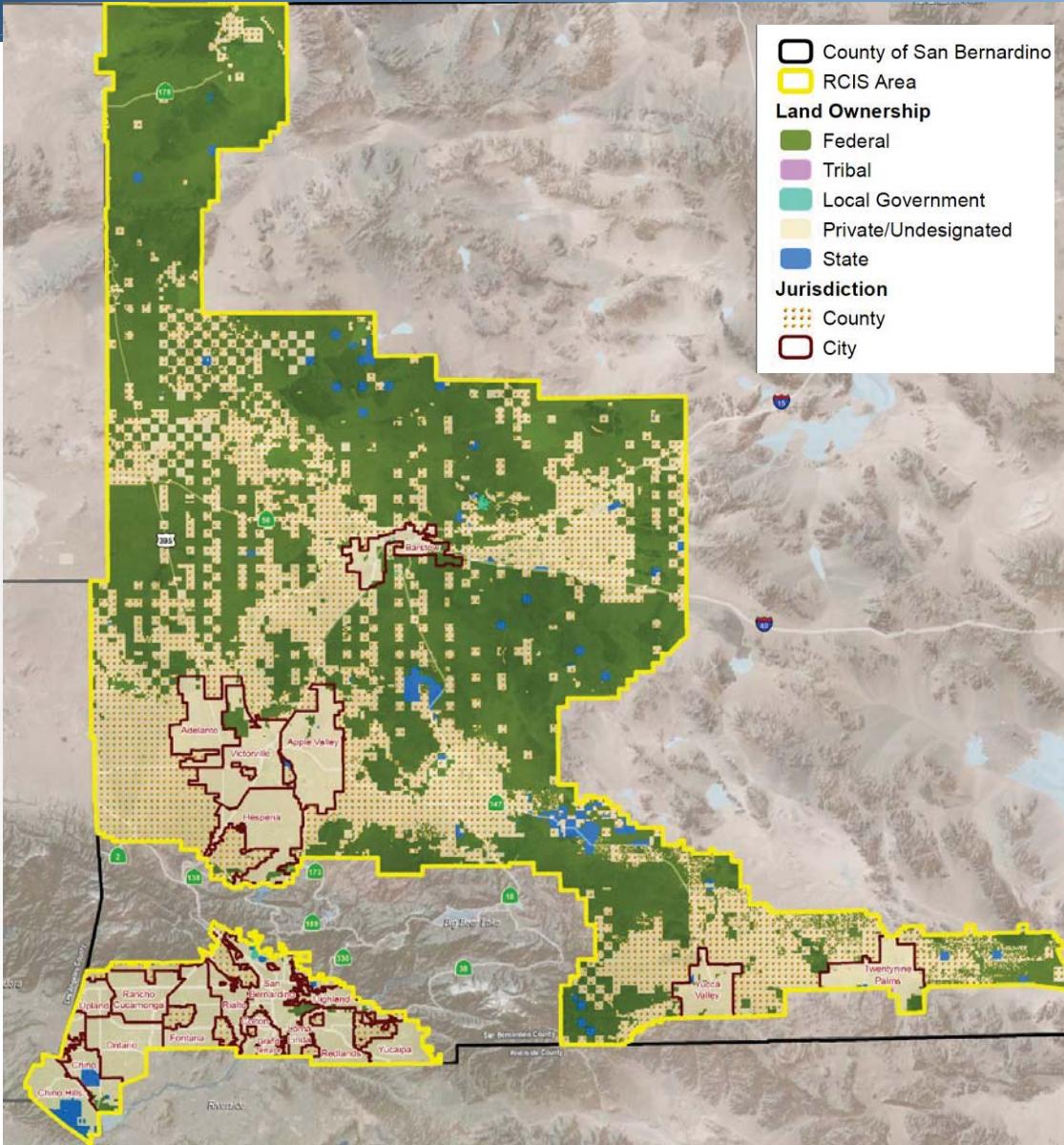
42,000
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Update on Habitat Conservation Planning in San Bernardino County – March 21, 2018

8

FIGURE 1-1
San Bernardino Valley and West Desert RCIS Area
San Bernardino County RCIS

RCIS Planning Area



Update on Habitat Conservation Planning in San Bernardino County – March 21, 2018

25 Focal Species selected for the Valley Subarea

(8 that are also Focal species in the West Desert subarea)

Focal Species List for the Valley Subarea

Common Name	Scientific Name	Status
<i>Amphibian and Reptile</i>		
coast horned lizard*	<i>Phrynosoma blainvillii</i>	BLM:S, CDFW:SSC
California red-legged frog	<i>Rana draytonii</i>	FT, CDFW:SSC
San Bernardino ringneck snake	<i>Diadophis punctatus modestus</i>	USFS:S
western pond turtle*	<i>Emys marmorata</i>	BLM:S, CDFW:SSC, USFS:S
western spadefoot	<i>Spea hammondii</i>	BLM:S, CDFW:SSC
<i>Bird</i>		
Bell's sparrow	<i>Artemisiospiza belli belli</i>	CDFW:WL, USFWS:BCC
burrowing owl*	<i>Athene cunicularia</i>	BLM:S, CDFW:SSC, USFWS:BCC
coastal California gnatcatcher	<i>Polioptila californica californica</i>	FT, CDFW:SSC
least Bell's vireo*	<i>Vireo bellii pusillus</i>	FE, SE
willow flycatcher*	<i>Empidonax traillii</i>	SE, USFS:S, USFWS:BCC
tricolored blackbird*	<i>Agelaius tricolor</i>	BLM:S, CDFW:SSC, USFWS:BCC
white-tailed kite	<i>Elanus leucurus</i>	BLM:S, CDFW:FP
western yellow-billed cuckoo*	<i>Coccyzus americanus occidentalis</i>	FT, SE, BLM:S, USFS:S, USFWS:BCC
<i>Mammal</i>		
San Bernardino kangaroo rat	<i>Dipodomys merriami parvus</i>	FE, CDFW:SSC
Los Angeles pocket mouse	<i>Perognathus longimembris brevinasus</i>	CDFW:SSC
mountain lion	<i>Puma concolor</i>	CDFW Specially Protected Species
<i>Fish</i>		
arroyo chub	<i>Gila orcuttii</i>	CDFW:SSC, USFS:S
Santa Ana sucker	<i>Catostomus santaanae</i>	FT
Santa Ana speckled dace	<i>Rhinichthys osculus ssp. 3</i>	CDFW:SSC, USFS:S
<i>Invertebrate</i>		
Delhi Sands flower-loving fly	<i>Rhaphiomidas terminatus abdominalis</i>	FE
<i>Plant</i>		
Gambel's water cress	<i>Nasturtium officinale</i>	FE, ST, CRPR 1B.1
marsh sandwort	<i>Arenaria paludicola</i>	FE, ST, CRPR 1B.1
San Bernardino aster*	<i>Sympetrum defoliatum</i>	BLM:S, CRPR 1B.2
Santa Ana River woolly-star	<i>Eriastrea densifolium ssp. sanctorum</i>	FE, SE, CRPR 1B.1
slender-horned spineflower	<i>Dodecahema leptoceras</i>	FE, SE, CRPR 1B.1

30 Focal Species selected for the West Desert Subarea

(8 that are also Focal species in the Valley subarea)

Focal Species List for the West Desert Subarea

Common Name	Scientific Name	Status
<i>Amphibian and Reptile</i>		
Agassiz's desert tortoise	<i>Gopherus agassizii</i>	FT, ST
arroyo toad	<i>Anaxyrus californicus</i>	FT, CDFW:SSC
coast horned lizard*	<i>Phrynosoma blainvillii</i>	BLM:S, CDFW:SSC
Mojave fringe-toed lizard	<i>Uma scoparia</i>	BLM:S, CDFW:SSC
western pond turtle*	<i>Emys marmorata</i>	BLM:S, CDFW:SSC, USFS:S
<i>Bird</i>		
burrowing owl*	<i>Athene cunicularia</i>	BLM:S, CDFW:SSC, USFWS:BCC
golden eagle	<i>Aquila chrysaetos</i>	BLM:S, CDFW:FP, CDFW:WL
Le Conte's thrasher	<i>Toxostoma lecontei</i>	USFWS:BCC
least Bell's vireo*	<i>Vireo bellii pusillus</i>	FE, SE
willow flycatcher*	<i>Empidonax traillii</i>	SE, USFS:S, USFWS:BCC
Swainson's hawk	<i>Buteo swainsoni</i>	ST, BLM:S, USFWS:BCC
tricolored blackbird*	<i>Agelaius tricolor</i>	BLM:S, CDFW:SSC, USFWS:BCC
western yellow-billed cuckoo*	<i>Coccyzus americanus occidentalis</i>	FT, SE, BLM:S, USFS:S, USFWS:BCC
<i>Mammal</i>		
American badger	<i>Taxidea taxus</i>	CDFW:SSC
desert bighorn sheep	<i>Ovis canadensis nelsoni</i>	BLM:S, CDFW:FP, USFS:S
desert kit fox	<i>Vulpes macrotis arsipus</i>	CDFW Non-game furbearer
Mohave ground squirrel	<i>Xerospermophilus mohavensis</i>	ST, BLM:S
Mojave River vole	<i>Microtus californicus mohavensis</i>	CDFW:SSC
pallid bat	<i>Antrozous pallidus</i>	BLM:S, CDFW:SSC, USFS:S
Townsend's big-eared bat	<i>Corynorhinus townsendii</i>	BLM:S, CDFW:SSC, USFS:S
<i>Fish</i>		
Mohave tui chub	<i>Siphateles bicolor mohavensis</i>	FE, SE, CDFW:FP
<i>Invertebrate</i>		
Victorville shoulderband	<i>Helminthoglypta mohaveana</i>	CDFW G1 S1
<i>Plant</i>		
alkali mariposa lily	<i>Calochortus striatus</i>	BLM:S, CRPR 1B.2
Barstow woolly sunflower	<i>Eriophyllum mohavense</i>	BLM:S, CRPR 1B.2
Joshua tree	<i>Yucca brevifolia</i>	CA Native Plant Act, local ord.
Lane Mountain milkvetch	<i>Astragalus jaegerianus</i>	FE, CRPR 1B.1
Mojave monkeyflower	<i>Diplacus mohavensis</i>	BLM:S, CRPR 1B.2
Parish's daisy	<i>Erigeron parishii</i>	FT, CRPR 1B.1
San Bernardino aster*	<i>Sympyotrichum defoliatum</i>	BLM:S, CRPR 1B.2
short-joint beavertail	<i>Opuntia basilaris</i> var. <i>brachyclada</i>	BLM:S, CRPR 1B.2

Current Efforts and Upcoming Activities





*Questions, comments, and other
input can be directed to:*

Josh Lee at jlee@gosbcta.com

Mike Howard at mhoward@dudek.com