

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE : JUNE 13, 2018

FROM:  **KATHLEEN ROLLINGS-McDONALD, Executive Officer**
SAMUEL MARTINEZ, Assistant Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #12A: LAFCO 3226 – Reorganization to include
Activation of the East Valley Water District Latent Services to include
Wastewater Treatment, Reclamation, Disposal, and Recharge of
Recycled Water

INITIATED BY:

Board of Directors for the East Valley Water District

RECOMMENDATION:

Staff recommends that the Commission:

1. With respect to the environmental review necessary for LAFCO 3226:
 - a. Certify that the Environmental Impact Report and other related environmental documents prepared by the San Bernardino Valley Municipal Water District (hereafter "Valley District") for the Sterling Natural Resource Center project have been independently reviewed and considered by the Commission, its staff and its Environmental Consultant;
 - b. Determine that the EIR for the project prepared by Valley District is adequate for the Commission's use as a California Environmental Quality Act (CEQA) Responsible Agency for its determinations related to LAFCO 3226;
 - c. Determine that the Commission does not intend to adopt alternatives or mitigation measure for the Sterling Natural Resource Center and that the mitigation measures identified for the project are currently the responsibility of Valley District and others, not the Commission;

- d. A condition of approval shall be included in the approval process for LAFCO 3226 requiring that upon issuance of the Certificate of Completion for the proposal the East Valley Water District and/or San Bernardino Valley Municipal Water District shall take appropriate action to assign the Mitigation Monitoring and Reporting Plan to East Valley Water District and that East Valley Water District shall assume responsibility for all mitigation measures identified in the Mitigation Monitoring and Reporting Plan adopted for the Sterling Natural Resource Center;
 - e. Adopt the Candidate Findings of Fact and Statement of Overriding Conditions, as presented by the Commission’s Environmental Consultant, which is attached to this staff report; and
 - f. Direct the Executive Officer to file the Notice of Determination within five days including the finding that no further Department of Fish and Wildlife filing fees are required by the Commission’s approval since Valley District, as lead agency, has paid said fees.
2. Approve LAFCO 3226 requesting activation of the latent sewer function and service for the East Valley Water District and amend the Commission’s Policy and Procedure Manual, Section VI – Special Districts, Chapter 3 – Listing of Special Districts within San Bernardino LAFCO Purview – Authorized Function and Services to read as follows:

East Valley <i>(amended June 20, 2018)</i>	Water	Retail, agricultural, domestic, replenishment
	Sewer	Collection, treatment, reclamation and/or disposal of sewage, wastewater, and recharge of recycled water
	Park and Recreation	Development, maintenance in conjunction with water facilities

The Commission approval shall also include the standard conditions of approval and the additional condition to read as follows:

- a. Within 90 days of the effective date of the Reorganization, San Bernardino Valley Municipal Water District (hereafter Valley District) and the East Valley Water District (hereafter EVWD) shall take all actions necessary to transfer all obligations arising under the Sterling Natural Resource Center 2016 EIR and the Mitigation Monitoring and Reporting Program for that project to be assigned to EVWD. This

condition complies with the March 2018 amendment to the “Framework Work Agreement” agreed to by Valley District and EVWD providing that the agreement will terminate upon LAFCO activation of EVWD’s latent wastewater treatment authorities.

3. Adopt LAFCO Resolution No. 3268 setting forth the Commission’s findings and determinations concerning this proposal.

BACKGROUND:

When Independent Special Districts were seated on LAFCO for San Bernardino County in 1976, the Commission was required to adopt “Rules and Regulations Affecting Special Districts” which established the “active” and “latent” power for each special district under its purview. Active powers were those defined as being actually provided by the special district through receipt of verification from the district; latent powers were those authorized by the district’s principal act but which were not being actively provided at the time. This listing was included in the Commission’s Policy and Procedure Manual and amended over the years under the prevailing statutory process contained in LAFCO law.

In October 2014, at a meeting to review the water conservation service review which was in progress, LAFCO staff became aware of the East Valley Water District’s (hereafter EVWD or District) planning for development of the Sterling Natural Resource Center (wastewater treatment and reclamation facility hereafter shown as SNRC) and EVWD staff became aware of the limitation on their authorized services under their sewer function – authorized as collection only. This meeting set in motion a three and half year odyssey that included a number of highly contentious issues. Those are summarized by LAFCO staff as follows:

1. In response to discussions with LAFCO staff regarding the activation of its latent powers for wastewater and concerns with the timing of such an application, EVWD and San Bernardino Valley Municipal Water District (hereafter Valley District) determined that the most expeditious method for continued planning for the SNRC was through a Joint Powers Agreement between them. This agreement entered into in September 2015 is identified as the “*Agreement for the Construction and Operation of Replenishment Facilities between East Valley Water District and San Bernardino Valley Municipal Water District*” commonly referred to as the “Framework Agreement”.
2. The Districts jointly pursued the planning for development of the facility and prepared the Environmental Impact Report analyzing the development of the facility with Valley District as the lead since it possessed the authorized service for wastewater treatment and reclamation and EVWD as a responsible agency with defined operational responsibilities.
3. Litigation challenging the Environmental Impact Report certified by Valley District for the SNRC was filed on April 14, 2016 by the Social Environmental Justice Alliance and the City of San Bernardino.

4. On June 1, 2016 the City of San Bernardino filed a lawsuit challenging EVWD actions in reference to the development of the SNRC alleging that such action violated LAFCO law regarding the establishment of the authorized functions and services for the District. EVWD and Valley District filed a cross-complaint in this matter.
5. On May 18, 2017 the Superior Court of the County of San Diego entered its judgement to deny the writ of mandate on the legal challenges to the EIR (copy is included as a part of the Attachment #2 to this report)
6. From June 2016 through November 2017 the parties to the various challenges, City of San Bernardino, EVWD and Valley District (with LAFCO in a peripheral capacity) were reviewing the options to address moving forward with the SNRC given the questions in litigation. These efforts culminated in a Settlement Agreement dated November 17, 2018 which resolved the complaint filed by the City of San Bernardino and cross complaint filed by EVWD and Valley District and provided for the means to move forward with the application for activation of EVWD's latent wastewater authorities related to the operation of a wastewater treatment plant and the disposal and/or reclamation of wastewater, sewage and/or recycled water.

LAFCO 3226, initiated by Resolution No. 2018.01 (copy included as a part of Attachment #2) of the Board of Directors of EVWD on February 14, 2018, proposes to fulfill the terms of the Settlement Agreement by requesting the activation of its wastewater authority to provide treatment of wastewater and sewage, reclamation, disposal and recharge of recycled water. This request proposes that EVWD be provided the full range of services authorized by County Water District Law related to the operation of a wastewater treatment plant as outlined in Water Code Section 31100 which reads as follows:

A district may acquire, construct, and operate facilities for the collection, treatment and disposal of sewage, waste and storm water of the district and its inhabitants and may contract with any public agency including but not limited to sanitation districts for sewer outfall facilities. A district also may acquire, construct, and operate facilities for the collection, treatment and disposal of sewage, waste and storm water of inhabitants outside its boundaries; provided that it shall not furnish any such service to the inhabitants of any other public agency without the consent of such other public agency expressed by resolution or ordinance. The term "public agency" as used in this section, shall include a city, county, city and county, public district, municipal or public corporation, state agency or other political subdivision of the state, but shall not include a public utility subject to the jurisdiction, control and regulation of the Public Utilities Commission under the provisions of Divisions 5 (commencing with Section 10001) and 6 (commencing with Section 11501) of the Public Utilities Code.

(Amended by Stats. 1969, Ch. 898.)

Attachment #1 to this report presents maps of the boundaries of the EVWD which overlays territory within the Cities of Highland and San Bernardino as well as unincorporated county territory. Attachment #2 provides a copy of the EVWD Plan for Service as required by Government Codes Section 56824.12 including, but not limited to, a copy of the Settlement

Agreement, the amended Framework Agreement, a Fiscal Impact Analysis, and an Updated Feasibility Study for the SNRC facility.

The proposal presented to the Commission is not about the ability to build the SNRC facility; the facility is currently being developed, approval of funding for its construction has been received from the State Department of Water Resources State Revolving Fund in an amount of \$126 million, and the Framework Agreement set forth the methods for its future operation. LAFCO 3226 is about the ability of the EVWD to manage and operate the SNRC facility for the future since its customers will fund the construction and receive the benefits of its operation. The proposal presented requires the Commission to evaluate the proposal for activation of these new functions and services against the criteria established in Government Code Section 56824.10 through 56824.14.

The activation or divestiture of a function or service is considered in LAFCO law as a change or organization carrying with it all the requirements typically associated with an annexation. Therefore, LAFCO 3226 is required to be reviewed against the standard criteria established by State Law and Commission policy. That criteria is outlined below:

BOUNDARIES: Do the boundaries presented for the activation represent a division which makes sense from a service delivery perspective for current and future growth? Are the boundaries definite, certain and easily recognizable? Do the boundaries promote efficient and effective service delivery for all services proposed to transition?

LAND USE: Will approval of the proposal affect the land use authority or the decisions upon land use options?

FINANCIAL AND SERVICE CONSIDERATIONS: Does the reorganization represent the best available service option for the affected community? Can the providing district continue to provide the level of service which existed prior to the change? Is the change financially sustainable? Would the approval of the activation impair the ability of any other agency to continue providing its range and level of services?

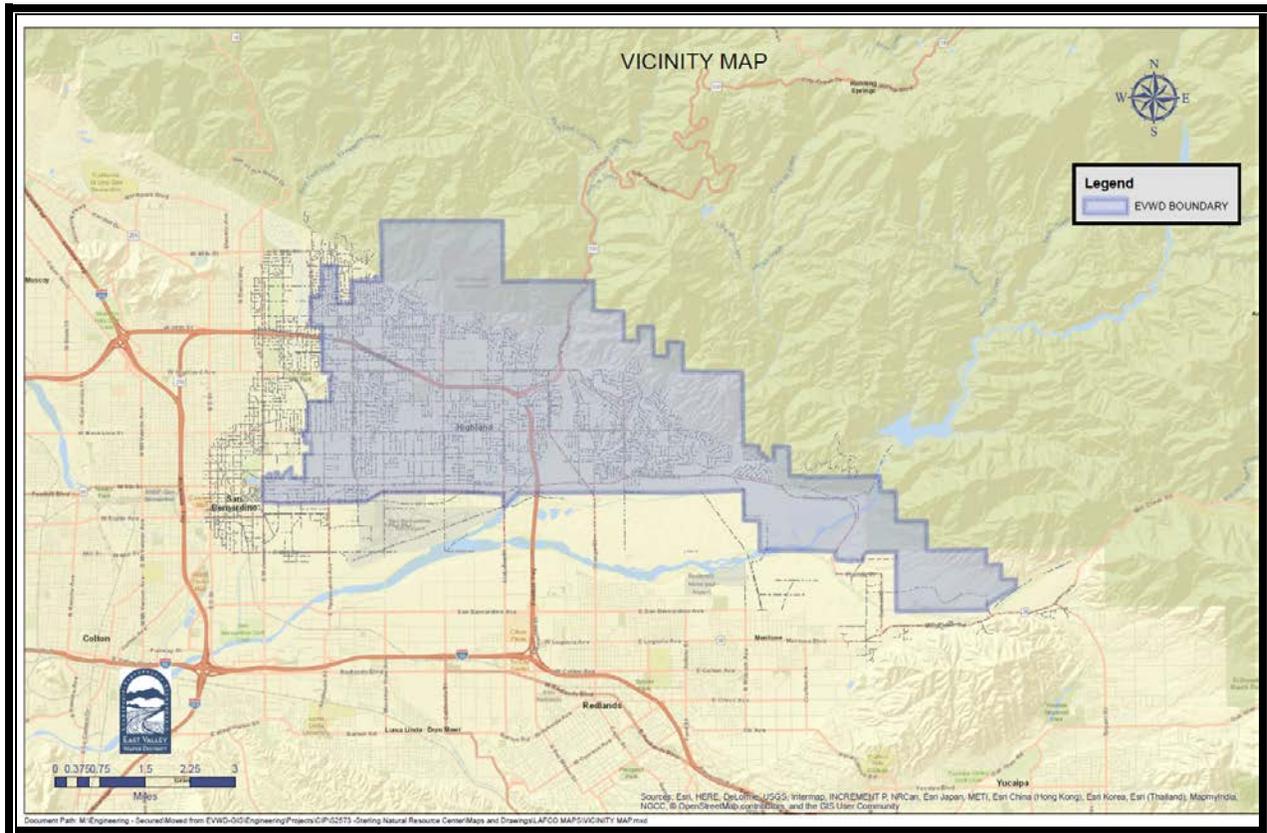
ENVIRONMENTAL: Will the proposed activation have an adverse environmental effect that cannot be mitigated to a level of non-significance? If it does, can those adverse effects be overridden by other benefits?

The analysis which follows will address each of these areas:

BOUNDARY DISCUSSION

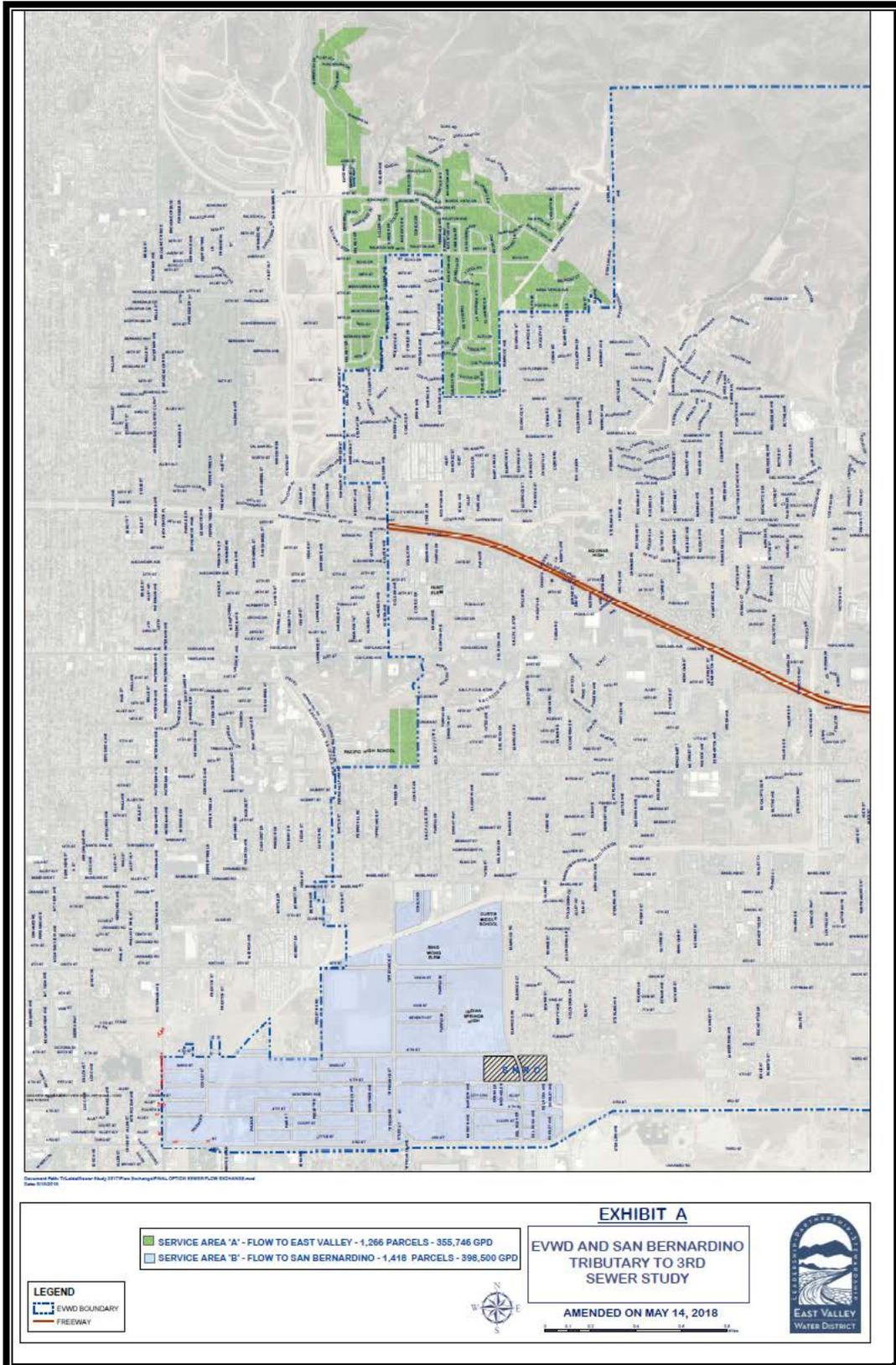
BOUNDARIES: Do the boundaries presented for the activation represent a division which makes sense from a service delivery perspective for current and future growth? Are the boundaries definite, certain and easily recognizable? Do the boundaries promote efficient and effective service delivery for all services proposed to transition?

LAFCO 3226 requests that the Commission authorize the EVWD to provide the function of wastewater treatment, reclamation and disposal and its related services within its existing boundaries. The map below outlines that boundary:



The application also makes reference to the agreement reached between EVWD and the City of San Bernardino related to the transfer of flows for efficient operation. LAFCO SC#423 (Item 12b on the agenda) is a request for exemption from the provisions of Government Code Section 56133 for this area, and those areas are outlined as follows:

AGENDA ITEM #12A – LAFCO 3226
ACTIVATION OF LATENT WASTE-
WATER SERVICE FOR EVWD
JUNE 13, 2018



Do the boundaries presented for the activation represent a division which makes sense from a service delivery perspective for current and future growth? Staff would respond in the affirmative as they address the entirety of the District and, with the exchange of flows, meet the criteria of the most effective and efficient provision for the future. Are the boundaries definite, certain and easily recognizable? They are definite and certain and are easily recognizable on the eastern service area; however, along the western area, it is a difficult determination since they overlap both the cities of Highland and San Bernardino and include unincorporated county areas. The boundaries are recognizable for the agencies providing the service which is the key determination for a function/service activation; however, they are not recognizable to the average citizen but have not been for decades.

LAND USE

LAND USE: Will approval of the proposal affect the land use authority or the decisions upon land use options?

The typical question to be answered in a change of organization is different than that posed for the activation of a service. There is no change in the land use authority by virtue of the consideration of LAFCO 3226. However, as the Plan for Service identifies the existing land use authorities, City of Highland, City of San Bernardino and the County have approved a number of projects which propose an additional 5,000 residential units. This level of development anticipates the need for major infrastructure improvements, including the development of additional treatment capacity. Approval of LAFCO 3226 will support the land use decisions made by the respective land use authorities.

SERVICE CONSIDERATIONS AND FINANCIAL EFFECTS

SERVICE AND FINANCIAL CONSIDERATIONS: Does the reorganization represent the best available service option for the affected community? Can the providing district continue to provide the level of service which existed prior to the change? Is the change financially sustainable? Would the approval of the activation impair the ability of any other agency to continue providing its range and level of services?

EVWD has provided a Plan for Service and Fiscal Impact Analysis as required by Commission policy and State law. This Plan responds to the factors outlined in Government Code Section 56824.12 for the activation of a latent power which are identified as:

...The plan for services for purposes of this article shall also include all of the following information:

- (1) *The total estimated cost to provide the new or different function or class of services within the special district's jurisdictional boundaries.*
- (2) *The estimated cost of the new or different function or class of services to customers within the special district's jurisdictional boundaries. The estimated costs may be identified by customer class.*
- (3) *An identification of existing providers, if any, of the new or different function or class of services proposed to be provided and the potential fiscal impact to the customers of those existing providers.*
- (4) *A written summary of whether the new or different function or class of services or divestiture of the power to provide particular functions or classes of services, within all or part of the jurisdictional boundaries of a special district, pursuant to subdivision (b) of Section 56654, will involve the activation or divestiture of the power to provide a particular service or services, service function or functions, or class of service or services.*
- (5) *A plan for financing the establishment of the new or different function or class of services within the special district's jurisdictional boundaries.*
- (6) *Alternatives for the establishment of the new or different functions or class of services within the special district's jurisdictional boundaries.*

Item #1 within this statute relates to the Fiscal Impact Analysis required for submission. The Plan for Service identifies that the capital costs for the development of the Sterling Natural Resource Center (hereafter SNRC) will be funded through a 1.7% loan through the State Revolving Fund administered by the State Water Resources Control Board; capacity increases will be addressed through Development Impact Fees to be paid by developers and/or new customers; operations and maintenance costs will be a part of the overall rate structure for wastewater; and the Fiscal Impact Analysis details these determinations. LAFCO staff has analyzed the amended Plan for Service/Fiscal Impact Analysis document (included as a part of Attachment #2) and determined that it accurately reflects the anticipated revenues and expenditures with three determinations which are outlined below. LAFCO staff has modified the spreadsheet submitted by EVWD which is shown below:

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ACTIVATION OF LATENT WASTE-
WATER SERVICE FOR EVWD
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	TEN YEAR PROJECTION							
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
WW Treatment								
REVENUE								
Rate Revenue*	8,466,830	8,551,498	8,637,013	8,723,383	8,810,617	8,898,723	8,987,711	9,077,588
LRP Revenue**	-	1,260,000	1,260,000	1,260,000	1,260,000	1,260,000	1,260,000	1,260,000
Investment Income (1%)	-	55,000	115,765	127,213	138,673	150,128	161,558	172,943
Recharge Water	-	-	450,000	450,000	450,000	450,000	450,000	450,000
Other Charges	-	-	70,000	70,000	70,000	70,000	70,000	70,000
Capacity Fees	-	-	-	-	-	-	-	-
TOTAL REVENUE	8,466,830	9,866,498	10,532,778	10,630,596	10,729,290	10,828,851	10,929,269	11,030,530
EXPENDITURES								
Labor & Benefits	-	1,200,000	1,236,000	1,273,080	1,311,272	1,350,611	1,391,129	1,432,863
Purchased Water								
Groundwater Recharge								
Power Costs	-	600,000	600,000	618,000	636,540	655,636	675,305	695,564
Contracted Wastewater Treatment	8,466,830	-	-	-	-	-	-	-
Contracted Solids Handling	-	700,000	707,000	714,070	721,211	728,423	735,707	743,064
Contract Services	-	600,000	600,000	618,000	636,540	655,636	675,305	695,564
Permits / Licenses	-	65,000	65,000	65,650	66,307	66,970	67,639	68,316
Insurance	-	150,000	150,000	151,500	153,015	154,545	156,091	157,652
Chemicals / Materials	-	475,000	475,000	489,250	503,928	519,045	534,617	550,655
Other Operating Expenses	-	-	-	-	-	-	-	-
TOTAL EXPENDITURES	8,466,830	3,790,000	3,833,000	3,929,550	4,028,812	4,130,866	4,235,793	4,343,678
NET REVENUE	-	6,076,498	6,699,778	6,701,046	6,700,478	6,697,986	6,693,475	6,686,852
Debt Service	-	-	(5,555,000)	(5,555,000)	(5,555,000)	(5,555,000)	(5,555,000)	(5,555,000)
DS Coverage - Target 1.2			1.21	1.21	1.21	1.21	1.20	1.20
Capital Expenditures								
BEGINNING FUND EQUITY***	5,500,000	5,500,000	11,576,498	12,721,277	13,867,323	15,012,801	16,155,787	17,294,262
ENDING FUND EQUITY	5,500,000	11,576,498	12,721,277	13,867,323	15,012,801	16,155,787	17,294,262	18,426,115
Fund Equity available for use maintaining restricted reserve of one year debt service			7,221,277	8,367,323	9,512,801	10,655,787	11,794,262	12,926,115
* Includes 1% escalator representing new connections - septic conversions, new development - and modest rate increases								
** 6,000 AF @ \$210 / AF								
*** Loan requires 1 years' debt service in restricted reserve on day one.								

In reviewing the presentation of the Fiscal Impact Analysis for the wastewater treatment operation, LAFCO staff had three concerns, summarized as follows:

1. The Revenue projections include funds shown as “LRP” which is the Local Resources Investment Program anticipated to commence through Valley District. LAFCO staff questioned this line item as this program has not been formally approved and LAFCO policy direction is that speculative revenues not be included when making a determination that a proposal is financially sustainable.

By letter dated May 16, 2018 from Douglas Headrick, General Manager of Valley District (included as Attachment #3), Valley District has requested retention of this funding source as the creation of incentives to develop new supplemental water supplies for the region is a priority of Valley District and was reflected in the application for the State Revolving Fund loan. He further indicates that the estimate of \$210 per acre foot is well within the current estimates for the incentive program as identified in the attachments to his letter which project a range of up to \$300 per acre foot.

2. The Fiscal Impact Analysis identifies that in Fiscal Year 2020-21 that there will be a beginning fund equity amount for the Wastewater Treatment operations of \$5,500,000. The State Revolving Fund loan for construction of the SNRC has a

requirement that on day one of operation one year's worth of debt service be included in a restricted reserve. However, there is no source identified for these revenues in the materials and the revenues and expenditures for that year in the Wastewater Fund yield no net revenue for allocation to fund equity. By email from the District it was identified that the source of these funds is the transfer of the \$8,000,000 fund balance for the East Trunk Sewer Line Replacement Fund from the City of San Bernardino to East Valley Water District as defined in the Settlement Agreement, Agreements Section, Item 3.

3. In the staff view it was unclear on the spreadsheet Fiscal Impact Analysis spreadsheet that there was a restricted reserve required to be maintained for the debt service. The LAFCO staff amended spreadsheet above shows a line item which identifies the fund equity available for use by the District in each fiscal year while maintaining a restricted reserve of \$5,500,000 for the duration of the State Revolving Fund loan.

With these three issues resolved, the materials submitted for the wastewater treatment operations show that there will be an increasing fund equity available for the future and this operation can be determined to be financially sustainable.

An additional component of the Fiscal Impact Analysis for LAFCO 3226 was the submission of a spreadsheet related to the wastewater collection operations. In reviewing this spreadsheet, LAFCO staff believes it is important to point out that for the same period of evaluation the wastewater collection operations, beginning in Fiscal Year 2024-25, shows a minor reduction in fund equity each year thereafter. Since these reductions are eight years in the future they can be easily addressed by EVWD.

AGENDA ITEM #12A – LAFCO 3226
ACTIVATION OF LATENT WASTE-
WATER SERVICE FOR EVWD
JUNE 13, 2018

WW Collections	TEN YEAR PROJECTION							
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
REVENUE								
Rate Revenue*	4,656,757	4,703,324	4,750,357	4,797,861	4,845,839	4,894,298	4,943,241	4,992,673
LRP Revenue	-	-	-	-	-	-	-	-
Investment Income (1%)	25,000	25,000	25,000	26,000	26,000	26,500	26,500	27,000
Recharge Water	-	-	-	-	-	-	-	-
Other Charges	110,000	110,000	40,000	40,000	40,000	40,000	40,000	40,000
Capacity Fees	-	-	-	-	-	-	-	-
TOTAL REVENUE	4,791,757	4,838,324	4,815,357	4,863,861	4,911,839	4,960,798	5,009,741	5,059,673
EXPENDITURES								
Labor & Benefits	2,280,958	2,349,387	2,419,869	2,492,465	2,567,239	2,644,256	2,723,584	2,805,291
Purchased Water	-	-	-	-	-	-	-	-
Groundwater Recharge	-	-	-	-	-	-	-	-
Power Costs	-	-	-	-	-	-	-	-
Contracted Wastewater Treatment	-	-	-	-	-	-	-	-
Contracted Solids Handling	-	-	-	-	-	-	-	-
Contract Services	1,000,000	1,005,000	1,010,000	1,040,300	1,071,509	1,103,654	1,136,764	1,170,867
Permits / Licenses	-	-	-	-	-	-	-	-
Insurance	-	-	-	-	-	-	-	-
Chemicals / Materials	135,000	140,000	145,000	150,000	155,000	160,000	165,000	170,000
Other Operating Expenses	357,000	360,000	363,000	366,000	369,000	372,000	375,000	378,000
TOTAL EXPENDITURES	3,772,958	3,854,387	3,937,869	4,048,765	4,162,748	4,279,910	4,400,347	4,524,158
NET REVENUE	1,018,798	983,937	877,489	815,096	749,092	680,888	609,393	535,515
Debt Service	(313,000)	(303,000)	(303,000)	(302,000)	(301,000)	(300,000)	(303,000)	(301,000)
DS Coverage - Target 1.2	3.25	3.25	2.90	2.70	2.49	2.27	2.01	1.78
Capital Expenditures	(400,000)	(450,000)	(500,000)	(500,000)	(500,000)	(500,000)	(500,000)	(500,000)
BEGINNING FUND EQUITY	28,580,868	28,886,667	29,117,603	29,192,092	29,205,188	29,153,280	29,034,168	28,840,561
ENDING FUND EQUITY	28,886,667	29,117,603	29,192,092	29,205,188	29,153,280	29,034,168	28,840,561	28,575,077
* Includes 1% escalator representing new connections - septic conversions, new development - and modest rate increases								

The crux of LAFCO staff's concerns throughout this process related to Section 3 of 56824.12 which defines the need to determine the fiscal impact, if any, to any existing providers of the service and their customers. This element directly applies to the transition of treatment service from the City of San Bernardino Municipal Water Department to EVWD. The settlement agreement provides the outline of actions required to, in essence, keep the Municipal Water Department fiscally sound so that it may continue to provide its services to its remaining customers. These actions are identified in the Plan for Service as the mitigation measures. They include, but are not limited to, the following:

1. Modification of the existing Joint Powers Agreement which provides for the regional treatment of EVWD effluent by the City of San Bernardino. The modification will allow for the continued treatment by the City of San Bernardino following activation until construction of the SNRC is complete.
2. Transfer of ownership of the East Trunk Sewer Line from the City of San Bernardino to EVWD following completion of LAFCO 3226.
3. EVWD and the City of San Bernardino will work cooperatively to adopt a contractual agreement for the City to continue treating solids originating within EVWD. The Plan for Service outlines the anticipated terms of this contractual relationship and if the parties are unable to successfully negotiate the contract a financial alternative is outlined as part of the Settlement. The City of San Bernardino, by letter dated May 23, 2018 (copy included as Attachment #4), submitted a letter of support for LAFCO

3226. This letter outlines that while the agreement has not been finalized the parties continue to negotiate and the settlement adequately addresses the issues ensuring the City's ability to adjust its operations to remain fiscally sound.

4. The Plan identifies that Valley District will support the City of San Bernardino's efforts to develop recycled water through its "best efforts" to develop a habitat conservation plan for the Upper Santa Ana River which will allow for the anticipated reduction in current discharge of treated wastewater into the Santa Ana River by approximately 5 million gallons a day. In addition, there are provisions that if this effort is unsuccessful Valley District will deliver replacement water at their sole expense.

Finally, staff raised questions regarding the Plan for Service materials related to the Feasibility Study and the use of the City of Redlands spreading ponds as an alternative recipient of treated effluent since there was no correspondence or materials included in the application supporting that position. On May 21, 2018 a letter was received from the City of Redlands (copy included as Attachment #5) outlining its participation in the EIR process, its continuing negotiations with the EVWD to establish the basis for use of its spreading basins, and its continuing support for the SNRC.

Based upon the information outlined above, and in the Plan for Service and its Appendices, it is the position of LAFCO staff that the Commission can make the determination that the approval of LAFCO 3226 will not impair the ability of the City of San Bernardino and its Municipal Water Department to continue to provide its range and level of services in regard to wastewater treatment, reclamation, and disposal. Therefore, LAFCO staff is recommending that the Commission approve LAFCO 3226.

Also supporting the approval of the project, LAFCO has received a number of letters of support from public agencies and legislators, copies of which are included as a part of Attachment #6.

ENVIRONMENTAL CONSIDERATIONS

ENVIRONMENTAL: Will the proposed activation have an adverse environmental impact effect that cannot be mitigated to a level of non-significance? If it does, can those adverse effects be overridden by other benefits?

Valley District's processing of the development of the SNRC included the preparation and certification of an Environmental Impact Report that was finalized by action of its Board of Directors and by action of the EVWD as a responsible agency. As mentioned previously, a lawsuit was brought challenging the certified EIR; however, that litigation has been resolved.

LAFCO's Environmental Consultant, Tom Dodson and Associates, has reviewed the Valley District's certified Final Environmental Impact Report (EIR) and indicated that it is adequate for the Commission's use as a responsible agency as outlined in his letter to the Commission included as Attachment #7. As a part of his analysis for this recommendation, due to the controversy during its original certification, an evaluation of the EIR content was conducted to verify that a new environmental document was not required. As a part of Attachment #7 a copy of this evaluation is provided which identifies that no additional environmental review is required. Copies of the complete EIR and related documents were provided to Commissioners on May 16, 2018. Mr. Dodson has identified the actions that are appropriation for the Commission's review of LAFCO 3226 as follows:

1. Indicate that the Commission, LAFCO staff and environmental consultant have independently reviewed the Valley District EIR, and found the certified EIR adequate for the Reorganization decision.
2. The Commission needs to indicate that it has considered the SNRC EIR and the environmental effects, as outlined in that EIR, and as referenced in the Candidate Findings of Fact and Statement, prior to reaching a decision on the project and finds the information substantiating the SNRC EIR findings adequate.
3. The Commission should indicate that it does not intend to adopt alternatives or mitigation measures for this project. All mitigation measures will be implemented under either Valley District's or EVWD's jurisdiction.
4. The Commission should include a condition, as a part of its approval of the activation of latent services, that EVWD and/or the Valley District take the necessary actions to assign the Mitigation Monitoring and Reporting Program to EVWD and that EVWD be required to implement all mitigation measures.
5. Prior to making its decision on LAFCO 3226, the Commission must adopt the attached Candidate Findings of Fact and Statement of Overriding Considerations as the Commission's conclusion regarding the environmental effects outlined in the SNRC EIR and the ultimate development under EVWD jurisdiction that would be allowed by approving LAFCO 3226.
6. File a new Notice of Determination as a Responsible Agency with the County Clerk of the Board of Supervisors.

Item #4 is a unique requirement for an environmental determination acknowledging that there will need to be a transition of the entity responsible for the Mitigation Monitoring and Reporting Plan from Valley District to the EVWD. LAFCO staff is proposing the inclusion of the following Condition of Approval for LAFCO 3226 to effectuate this change:

Within 90 days of the effective date of the Reorganization, San Bernardino Valley Municipal Water District (hereafter Valley District)

and the East Valley Water District (hereafter EVWD) shall take all actions necessary to transfer all obligations arising under the Sterling Natural Resource Center 2016 EIR and the Mitigation Monitoring and Reporting Program for that project to be assigned to EVWD. This condition complies with the March 2018 amendment to the “Framework Work Agreement” agreed to by Valley District and EVWD providing that the agreement will terminate upon LAFCO activation of EVWD’s latent wastewater treatment authorities.

DETERMINATIONS

The following determinations are required to be provided by Commission policy and Government Code Section 56668 for any proposal considered:

1. The County Registrar of Voters Office has determined that the activation area is legally inhabited with 44,791 registered voters as of March 8, 2018.
2. The activation area is included within the sphere of influence assigned the East Valley Water District.
3. The County Assessor’s Office has provided a determination that identifies that the total assessed valuation of the East Valley Water District area as shown on the last equalized assessment roll (December 2017) is \$5,647,419,954 broken down as follows:

Land	\$1,584,765,803
Improvements	\$4,062,654,151

4. Legal notice of the Commission’s consideration of the proposal has been provided through publication of a 1/8th page legal advertisement in the *The San Bernardino Sun*, a newspaper of general circulation in the area. In addition, individual notices were provided to all affected and interested agencies, County departments and those individuals and agencies requesting special notice. Comments from affected and interested agencies have been considered by the Commission in making its determination.
5. The Southern California Association of Governments (SCAG) has adopted a Regional Transportation Plan and Sustainable Community Strategy pursuant to the provisions of Government Code Section 65352.5. Approval of LAFCO 3226 has no direct impact on these determinations. The Sustainable Community Strategy includes as a determination the need to assure the ongoing availability of water and wastewater services which approval of LAFCO 3226 will support.

6. As a CEQA responsible agency, the Commission’s Environmental Consultant, Tom Dodson of Tom Dodson and Associates, has reviewed the San Bernardino Valley Municipal Water District’s environmental documents for the reorganization proposal and has indicated that the Valley District’s environmental assessment for the Sterling Natural Resource Center are adequate for the Commission’s use as CEQA responsible agency. Copies of Valley District’s Complete Final EIR and all associated documents were provided to Commission members on May 18, 2018. Mr. Dodson has prepared his recommended actions for LAFCO 3226, which are outlined in the narrative portion of the Environmental Considerations section (page _ of the staff report). Attachment #7 includes Mr. Dodson’s response including the determination that no significant changes or new significant impacts have occurred since the certification of the EIR pursuant to Section 15162 and the Candidate Statement of Facts and Findings and Statement of Overriding Considerations prepared for the Commission’s use in addressing this project.

7. The reorganization area is presently served by the following public agencies:

- County of San Bernardino
- City of Highland
- City of San Bernardino (portion)
- San Bernardino County Fire Protection District, its Valley Service Zone and Zone FP-5 (portion)
- San Bernardino Valley Municipal Water District
- San Bernardino Valley Water Conservation District
- Inland Empire Resource Conservation District
- County Service Areas 70 (unincorporated countywide) and SL-1 (streetlights)

The East Valley Water District is affected through the activation of its latent function/service for wastewater treatment. The City of San Bernardino Municipal Water Department, as current provider of the wastewater treatment is affected through the transition of service delivery. None of the other agencies are affected by this reorganization proposal as they are regional in nature.

8. Upon reorganization, the East Valley Water District shall be authorized the function/service for the provision of wastewater reclamation, treatment and disposal throughout the entirety of its boundary. The Plan for Service provides a general outline of the delivery of services as mandated by Government Code Section 56824.12. This Plan and Fiscal Impact Analysis indicate that the activation of the function/service will, at a minimum, maintain the level of service delivery currently received by the area. The Plan for Service, supplemental information to the Plan, and Fiscal Impact Analysis have been reviewed and compared with the standards established by the Commission and the factors contained within Government Code Section 56824.12. The Commission finds that such Plan for Service and the supplemental data submitted conform to those adopted standards and requirements.

9. The reorganization area and its present and future residents can benefit from the services authorized to be provided by the East Valley Water District as evidenced by the amended Plan for Service and Fiscal Impact Analysis.
10. The proposal complies with Commission policies that indicate the desire to provide for the establishment of appropriate, sustainable and logical municipal government structure for the distribution of an efficient and effective delivery of public services.
11. This proposal will not affect the fair share allocation of the regional housing needs assigned to the Cities of Highland and San Bernardino and/or the County of San Bernardino through the Southern California Association of Government's (SCAG) Regional Housing Needs Allocation (RHNA) process.
12. With respect to environmental justice, the reorganization provides for the continuation of existing wastewater treatment within the area and will not result in the unfair treatment of any person based upon race, culture or income.
13. The County Board of Supervisors (on behalf of the East Valley Water District) has successfully completed the process for the determination that there will be no transfer of ad valorem property tax revenues upon successful completion of this reorganization. This fulfills the requirements of Section 99 of the Revenue and Taxation Code.

CONCLUSION

LAFCO law, in Government Code Section 56001, states that the Legislature's expectation is that the Commission will assess and make determinations related to the proposals it considers that address specific parameters. An excerpt from that Code Section reads as follows:

"...community service priorities be established by weighing the total community service needs against the total financial resources available for securing the community service; and that the community service priorities are required to reflect local circumstances, conditions, and limited financial resources".

It is the position of LAFCO staff that the approval of LAFCO 3226 as presented to the Commission and considered in this staff report reflects these determinations. The settlement agreement reached during the court process balances the needs for reclamation of water to support the Bunker Hill basin with the financial needs to maintain the operations of the City's Municipal Water Department. In the staff view, the approval of this process reflects a joint understanding that the residents and ratepayers within the EVWD will utilize and financially support the SNRC; therefore, they should have a direct role in determining the governing Board which will oversee its operations and finances. Therefore, staff recommends approval of LAFCO 3226 as presented.

KRM

Attachments:

1. [Maps of East Valley Water District](#)
2. [Application Submitted by EVWD in February 2018, Amendments and Updates to that Application including Amended Framework Agreement of March 2018](#)
3. [Letter Dated May 16, 2018 from Douglas Headrick, General Manager, San Bernardino Valley Municipal Water District](#)
4. [Letter Dated May 23, 2018 from Andrea M. Miller, City Manager, City of San Bernardino](#)
5. [Letter Dated May 21, 2018 from the City of Redlands](#)
6. [Letters of Support from Other Individuals and Agencies](#)
7. [Letter Dated June 5, 2018 from Tom Dodson of Tom Dodson and Associates Environmental Consultant for the Commission providing:](#)
 - a. [Determination that no significant changes have occurred since the certification of the EIR](#)
 - b. [Draft Candidate Statement of Findings and Facts for the Commission](#)
8. [Draft LAFCO Resolution No. 3268](#)