

# LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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**DATE:** AUGUST 8, 2018   
**FROM:** SAMUEL MARTINEZ, Executive Officer  
MICHAEL TUERPE, Project Manager  
**TO:** LOCAL AGENCY FORMATION COMMISSION

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**SUBJECT:** Agenda Item #7: LAFCO 3190 - Countywide Service Review for  
Wastewater (Collection, Treatment, Disposal)

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## RECOMMENDATIONS:

Staff recommends that the Commission take the following actions related to LAFCO 3190:

1. For environmental review, certify that the service review is statutorily exempt from environmental review and direct the Executive Officer to file the Notice of Exemption within five (5) days.
2. Accept and file the Countywide Wastewater Service Review (Collection, Treatment, Disposal) which sets forth the written statements for the six determinations outlined in Government Code Section 56430 made by the Commission.
3. As outlined in the service review presented to the Commission, take the following actions for specific agencies/entities:
  - a) Initiate a sphere of influence amendment for the City of Adelanto to determine the appropriate sphere of influence for the City.
  - b) Direct LAFCO staff to continue to monitor the Victorville Water District and the City of Victorville, and direct staff to return to the Commission six months following the completion of this service review.
  - c) Direct LAFCO staff to continue to monitor the Victor Valley Wastewater Reclamation Authority, and direct staff to return to the Commission six months following the completion of this service review.
  - d) Identify the Twentynine Palms community as a "hot spot" and recognize that an opportunity exists for the community to develop a joint wastewater system with the nearby Marine Corps base.

e) For the Inland Empire Utilities Agency (“IEUA”):

- (1) Determine the following for IEUA service outside its boundary, as shown in Figure 3-3 to the service review in yellow color:
  - i. Parcels connected on or before January 1, 2001 are exempt from LAFCO review pursuant to Gov. Code §56133(e)(4).
  - ii. Parcels connected after January 1, 2001, including the currently developed parcels as listed by the City of Fontana per maps included in Attachment #1 to the staff report for LAFCO 3190 dated August 8, 2018, as a result of the 1995 settlement agreement between IEUA and the City of Fontana which outlines an agreement for services to be rendered by IEUA.
  - iii. Connecting the remaining unserved area will come under the provisions of Gov. Code §56133.5, which can be considered by the Commission through a blanket authorization for the entire area.
- (2) Reflect the following functions and services for IEUA in the LAFCO Policy and Procedure Manual, Section VI (Special Districts), Chapter 3 (Listing of Special Districts within San Bernardino County LAFCO Purview – Authorized Functions and Services), as these are the functions and services that IEUA has historically and actively provides:

<u>Water</u>	Wholesale, replenishment
<u>Sewer</u>	Collection, regional treatment, reclamation, disposal, recycled water, composting, non-reclaimable wastewater collection
<u>Energy</u>	Energy recovery and production
<u>Total Basin Management</u>	Planning for Chino hydrological basin

f) For the City of San Bernardino:

- (1) Determine that the parcels identified in Section III of the service review were provided service on or before January 1, 2001 and are exempt from LAFCO review pursuant to Gov. Code §56133(e)(4).
- (2) Request the City of San Bernardino submit an Out-of-Agency Service Application to LAFCO to encompass all of the parcels that were provided wastewater service after January 1, 2001, to date, as identified in Section III of this report.

g) For the City of Upland, determine that its 1982 agreement with the City of Claremont and Los Angeles County Sanitation District is exempt from LAFCO review as it is:

- (1) Service between two public agencies where the public service provided is an alternative to, or substitute for, public services already being provided by an existing public service provider (the City of Upland) and where the service provided is consistent with the level of service of the existing service provider (the City of Upland). (Gov. Code §56133(e)(1))
- (2) An extended service that was provided on or before January 1, 2001. (Gov. Code §56133(e)(4))

h) For the City of Rialto:

- (1) Determine that the three parcels identified in Section III of the service review provided service by the City of Rialto are exempt from LAFCO review as they are an extended service that was provided on or before January 1, 2001 pursuant to Gov. Code §56133(e)(4).
- (2) Determine that the 1991 Rialto/Fontana Extraterritorial Wastewater Service Agreement is exempt from LAFCO review as it is:
  - i. Service between two public agencies where the public service provided is an alternative to, or substitute for, public services already being provided by an existing public service provider (the City of Rialto) and where the service provided is consistent with the level of service of the existing service provider (the City of Rialto). (Gov. Code §56133(e)(1)).
  - ii. An extended service that was provided on or before January 1, 2001. (Gov. Code §56133(e)(4)).
- (3) Request the City of Rialto submit an Out-of-Agency Service application to LAFCO to encompass all of the City's other extraterritorial service agreements that have not been authorized by LAFCO to date.

4. Adopt LAFCO Resolution No. 3270 reflecting the Commission's determinations and directions as required by Government Code Section 56430 and Commission policy.

**BACKGROUND:**

This item was continued from the July 18, 2018 hearing, and staff provided notice of this item as a part of the August 15, 2018 hearing.

San Bernardino LAFCO conducted its initial round of service reviews on a community-by-community basis, consistent with its sphere of influence policies, addressing the full range of public services within those defined communities. In April 2016, in an effort to more efficiently conduct the mandatory service reviews as well as addressing changes to the statutes affecting them, the Commission modified the scope of the second round service

reviews to address individual services on a countywide basis. The Countywide Service Review for Wastewater is organized by San Bernardino County's four regions (Valley, Mountain, North Desert and South Desert). Each region and its wastewater systems are reviewed and considered in the service review as a distinct geographic area.

Each agency and stakeholder were provided a copy of the draft service review for review and comment, and a meeting with LAFCO staff and affected agency representatives was held in each of the four regions to review the draft staff report and receive input. LAFCO staff provided responses to comments received on the draft staff report (Appendix A to the service review).

The Executive Summary identifies: what was learned from this process, staff recommendations for Commission action, and opportunities for future consideration (no recommended Commission action). The Introduction (Section I) provides the purpose of the report, report objective, methodology, and report organization.

Each of the four regions is presented separately and includes an overview of the region, a listing of wastewater agencies within the region under review, and an identification of agency/area hot spots. A detailed analysis of each hot spot follows, along with staff recommendations to address the identified service concerns.

Appendices B through E contain service review updates of cities and districts, by region, including an update of staff's recommendations and identified challenges from the prior service review (with additional review where warranted). A detailed listing of community water systems, wholesale entities, and joint powers authorities is included as Appendix F.

Due to the size and scope, LAFCO published the service review on June 20, 2018 in advance of the staff report to allow for additional time for review.

### **COMMENTS RECEIVED SINCE THE JUNE 20, 2018 RELEASE**

Since the June 20, 2018 publication of the service review, four agencies have provided comments. The comments with LAFCO staff's response are included as Attachment #1 to this staff report and will be included in the finalized service review document. Below is a summary of the comments and LAFCO staff's responses.

#### **City of Ontario**

The City provided comments to its portion of the service review. LAFCO staff's response to the City agrees with the City's suggested corrections, and the final service review document will include a revised Table 3-2 (Section III), updated service area maps for the City and Cucamonga Valley Water District (which have overlapping jurisdictions), and non-substantive corrections to its profile sheet and narrative.

#### **County Department of Public Health**

The County Department of Public Health requests that an excerpt from the County's LAMP regarding replacement of cesspools be included in the service review. LAFCO staff's response complies with the request. The excerpt will be added under the "County of San

Bernardino LAMP” header of Section IV (Valley), Section VI (Mountain), Section VII (North Desert), and Section X (South Desert).

Inland Empire Utilities Agency

The draft service review has two recommendations for Commission actions related to the Inland Empire Utilities Agency (“IEUA”). The first recommendation from the draft service review relates to the Commission’s determination of the functions and services provided by IEUA as a part of the first round of service reviews in 2002. The discourse at that time between IEUA and LAFCO is not documented, and the functions and services identified in the 2002 service review did not accurately reflect IEUA’s historical services or its current services.

As a part of this service review, IEUA and LAFCO staffs recommend that the Commission reflect the following functions and services for IEUA in the LAFCO Policy and Procedure Manual, Section VI (Special Districts), Chapter 3 (Listing of Special Districts within San Bernardino County LAFCO Purview – Authorized Functions and Services), as these are the functions and services that IEUA has historically and actively provides:

<u>Water</u>	Wholesale, replenishment
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The second recommendation in the service review regards service outside of the IEUA boundary and sphere. A good number of the parcels were served before the grandfather year of 2001, some parcels were provided service after 2001, and the remaining area has not yet been connected. IEUA requests clarifying language to the second category – Service Provided After 2001 – in order to include all currently developed parcels. LAFCO staff has reviewed IEUA’s proposed language clarification and has revised the service review accordingly.

Santa Ana Regional Board

The Santa Ana Regional Water Quality Control Board has adopted discharge prohibitions for the Mill Creek Area. The draft service review includes this information in the Valley Region discussion, but the Regional Board identified in its comments that this information should be included in the Mountain Region as well. LAFCO staff will update the final service review in kind.

**INFORMATION RECEIVED SINCE THE JUNE 20, 2018 RELEASE**

Since the June 20, 2018 publication of the service review, the Victor Valley Wastewater Authority (“VWVRA”) has provided additional information. The service review identifies

VVWRA as a hot spot and substantiates the identification on three factors. One factor is shown below:

Pending determination by the Federal Emergency Management Agency (“FEMA”) to disallow \$32 million in grant awards as recommended in a draft report issued by the Department of Homeland Security’s Office of the Inspector General (“OIG”).

*The OIG found that VVWRA did not comply with federal regulations in the bidding and procurement of three contracts totaling \$31.7 million. FEMA awarded the funds to VVWRA after its pipeline ruptured due to severe flooding, mud, and debris flows in December and January 2010, sending 42 million gallons of wastewater into the Mojave River.*

In July 2018 VVWRA provided a copy of a Final Inspection Report prepared by the California Office of Emergency Services, dated June 28, 2018 (copy included as Attachment 2). That report includes the following recommendation:

“Cal OES has reviewed VVWRA's response to the OIG audit and back-up documentation and concurs with its explanation, claims, evidence, and documentation and finds that the OIG audit misstates law, does not accurately portray the events at issue and failed to acknowledge critical facts that invalidate the OIG's position. Therefore, Cal OES recommends FEMA refute the OIG's position that VVWRA did not properly manage \$33 million in FEMA grant funds.”

According to VVWRA management, the next step is for FEMA review.

After reviewing the Cal OES recommendation, LAFCO staff is not recommending a change in hot spot identification in the service review for VVWRA, since this is a recommendation from a state agency for FEMA review. Nonetheless, while circumstances have not changed, the recommendation from Cal OES on this matter may carry significant weight.

### **ENVIRONMENTAL CONSIDERATION:**

The Commission’s Environmental Consultant, Tom Dodson of Tom Dodson and Associates, has indicated his recommendation that LAFCO 3190 is statutorily exempt from California Environmental Quality Act (CEQA). This recommendation is based on the finding that the service review is not judged to pose any adverse changes to the physical environment; therefore, the service review is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061 (b)(3). A copy of Mr. Dodson’s analysis is included as Attachment #3 to this report.

### **ADDITIONAL DETERMINATIONS:**

1. A stakeholder group was convened within each region (Valley on June 4, 2018; Mountain on May 31, 2018; North Desert on June 5, 2018; and South Desert on May 31, 2018) to review the draft service review.
2. 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*, *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 State Law and Commission Policy, in-lieu of individual notice the notice of hearing publication was provided through an eighth page legal ad.

3. 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.
4. Due to the size and scope of the service review, the service review document was provided in advance of the staff report to allow for additional time for review. The service review document was published June 20, 2018 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 was also made accessible on the LAFCO website and at the LAFCO office.
5. This staff report was published August 8, 2018 and a copy was provided to affected and interested agencies and County departments, as well as those agencies and individuals requesting mailed notice. This staff report was also made accessible on the LAFCO website.
6. Comments from landowners/registered voters and any affected agency will be reviewed and considered by the Commission in making its determinations.

### **CONCLUSION:**

Staff recommends that the Commission take the action outlined on pages 1-3 to provide for the completion of the Countywide Service Review for Wastewater and other actions for continued monitoring.

SM/MT

Attachments:

1. [Comments Received Since the June 20, 2018 Publication](#)
  - a. [City of Ontario](#)
  - b. [County of San Bernardino Department of Public Health](#)
  - c. [Inland Empire Utilities Agency](#)
  - d. [Santa Ana Regional Board](#)
2. [Information Received Since the June 20, 2018 Publication](#)
  - a. [Victor Valley Wastewater Reclamation Authority](#)
3. [Environmental Recommendation from Tom Dodson](#)
4. [Countywide Service Review for Wastewater](#)
5. [Draft Resolution No. 3270](#)