

**LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO**

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DATE: AUGUST 9, 2005

FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #6: Consideration of LAFCO 2919 – Service Review and Sphere of Influence Update for San Bernardino Valley Water Conservation District

INITIATED BY:

Local Agency Formation Commission

RECOMMENDATION:

If the Commission supports the staff's position that the concept of a basin-wide water conservation entity should be pursued, it is recommended that it support the ultimate consolidation of the San Bernardino Valley Water Conservation District and the San Bernardino Valley Municipal Water District, by taking the following actions:

1. Determine that the designation of a zero sphere of influence for the San Bernardino Valley Water Conservation District is statutorily exempt from environmental review and direct the Clerk to file a Notice of Exemption within five days;
2. Designate a zero sphere of influence for the San Bernardino Valley Water Conservation District indicating that it is the position of the Commission that the District should ultimately consolidate with the San Bernardino Valley Municipal Water District;
3. Direct the Executive Officer to establish a committee to review the possible consolidation of the San Bernardino Valley Water Conservation District with the San Bernardino Valley Municipal Water District to be made up of the

LAFCO Executive Officer and the General Manager, or designee, of the San

Bernardino Valley Water Conservation District and the San Bernardino Valley Municipal Water District; and a representative from each of the major water stakeholders identified as: the City of Redlands, the City of San Bernardino Municipal Water Department, East Valley Water District, Bear Valley Mutual Water Company, and the City of Riverside to develop the parameters needed for consolidation. A report of the terms and conditions needed for such a consolidation, developed by the Committee, will be due back to the Commission no later than the January 18, 2006 hearing.

4. Adopt LAFCO Resolution #2893 setting forth the Commission’s findings and determinations related to this consideration.

However, if the Commission determines that the municipal service review shows affirmation of the District’s existing sphere of influence or a coterminous sphere of influence is appropriate, it may take the following actions to close this consideration:

1. Determine that the affirmation of the District’s existing sphere of influence or the amendment to a coterminous sphere of influence through LAFCO 2919 is statutorily exempt from environmental review and direct the Clerk to file a Notice of Exemption within five days;
2. Make the findings related to a service review required by Government Code Section 56430 and determine that the sphere of influence for the San Bernardino Valley Water Conservation District should be affirmed in its present configuration or amended to be coterminous with the District’s boundaries; and,
3. Defer adoption of the resolution making these determinations to the consent calendar for the September 21, 2005 Commission hearing.

BACKGROUND:

At the March 16th Commission hearing the consideration of the municipal service review and sphere of influence update required for the San Bernardino Valley Water Conservation District (hereinafter SBVWCD) was initially presented (a map of this district is included as Attachment #1 and the original staff report is included as Attachment #2). The basic questions presented in that staff report in response to the municipal service review factors were and remain today to be:

On the issue of agencies: “Why are there three overlapping agencies within this portion of the Bunker Hill Basin of the eastern San Bernardino Valley authorized to provide water conservation services? Is this division appropriate?”, and,

If the division of responsibility is appropriate then the question would be: “If the Bunker Hill Basin is to be addressed for water recharge and replenishment as a unit, why isn’t the SBVWCD sphere of influence drawn to

address the whole of the Basin, rather than being isolated to the eastern portion?”

The staff’s review of the factors related to a municipal service review as identified in Government Code Section 56430 and sphere of influence update as identified in Government Code Section 56425 have attempted to answer these questions. The Commission continued its consideration of LAFCO 2919 to the June hearing to allow staff additional time to gather information regarding the mandatory factors to be considered by Government Code Section 56430. In addition, the Commission directed LAFCO staff to review the options presented in the original staff report regarding a potential change in the future government structure for water conservation services to the water producers within the boundaries of the District and request their opinion and position on these options. An additional continuance was requested by LAFCO staff at the May 18, 2005 hearing, with support from the staff of SBVWCD, to the August hearing.

The staff views this service review/sphere of influence update as timely for two reasons. First, this service review discussion is timely due to changes that have occurred in the eastern portion of the San Bernardino Valley related to water recharge and replenishment activities. These changes occurred primarily through the completion of the Seven Oaks Dam as a part of the Santa Ana River Mainstem Project. The completion of the construction of the Seven Oaks Dam to fulfill its responsibility in controlling the flood waters has resulted in a number of applications to the State Water Resources Control Board related to the appropriation of the waters of the Santa Ana River. In addition, it has resulted in an auspicious agreement, known as the Seven Oaks Accord, signed by Bear Valley Mutual Water Company, the City of Redlands, the East Valley Water District, Lugonia Water Company, North Fork Water Company, Redlands Water Company, San Bernardino Valley Municipal Water District and Western Municipal Water District related to future water diversion from the Santa Ana River. A copy of this agreement is included in Attachment #5 to this report. Missing from this group was the San Bernardino Valley Water Conservation District, who has filed a separate application to the State Water Resources Control Board for diversion from the Santa Ana River.

Second, SB 2067 (Harmon) signed by the Governor on September 10, 2004 with an effective date of January 1, 2005 has altered the possibilities for reorganization/consolidation that the Commission is required to evaluate during its Service Review process. This change in statute allows for the consolidation of two special districts formed under different principal acts (the legislative act that defines a special district’s abilities and responsibilities). The signing of this legislation allows the Commission to consider the possibility of consolidating the San Bernardino Valley

Water Conservation District with the San Bernardino Valley Municipal Water District or the San Bernardino County Flood Control District.

Mandatory Service Factors:

The areas of the mandatory service review factors were originally reviewed and outlined in the materials provided in the original staff report (copy included as Attachment #2) and will not be reiterated here. However, areas where questions were identified included District Finance issues primarily related to achieving a better understanding of the District's groundwater charge, its mining revenues and any restrictions on their use, and the costs for the Board of Directors, and Government Structure Options primarily related to an understanding of the positions of the water producers within the District on the possible options for changes, as they are identified as the primary constituents of the District. Those areas are more fully discussed below.

Financial Issues:

On May 17th staff forwarded a letter to the District requesting additional financial information summarized as follows:

- a. An explanation of the District's expenditures for the current and past two fiscal years related to water spreading activities, including, but not limited to, purchase of state project water and the agreed upon repayment schedule, if any.
- b. An outline of existing District policies related to expenditures for the Board of Directors, including, but not limited to, payment for attendance at meetings, conferences, travel costs, etc. as well as the expenditures for the current and past two fiscal years related to payments to the Board of Directors.
- c. An explanation of the District's revenues for the current and past two fiscal years related to the groundwater assessment charge. It was requested that the information provided include a description of the restricted use of these revenues, if any, how the expenditures are separated by the District from its other activities, and the process by which the charge is established each year.
- d. An explanation of the District's revenues from mining leases or other mining-related income, including a description of any restrictions on the use of these revenues, how expenditures are separated by the District from its other activities, the lease rate policy for current and future mining leases on District lands including any annual inflationary factor, etc.
- e. An explanation of the \$5,000,000 pre-payment of mining leases, including, but not limited to, an identification of the source of the revenue, the terms of the payment, the adjustment for lease increases upon actual lease signing, etc.

On June 17th the District submitted its response to the LAFCO staff request and a copy of that response is included as Attachment #3 to this report.

As the financial materials in the response were reviewed, one item still resonated with the staff and that is the question of the cost for replenishment activities versus

administration. The information provided shows that for every dollar spent in replenishment it has an expenditures of more than 100% of that amount for administration. The following illustrates this point:

- In FY 2002-03 for every \$1.00 spent on replenishment there was an expenditure of \$1.42 for administrative costs (identified as General Fund).
- In FY 2003-04 for every \$1.00 spent on replenishment there was an expenditure of \$1.77 for administrative costs.
- In FY 2004-05 for every \$1.00 spent on replenishment there was an expenditure of \$1.26 for administrative costs.

During the District’s annual determination of the groundwater assessment charge, it identifies in its staff reports that “the groundwater charge should continue to help defray the increasing costs of operations and investigations that are necessary to conduct the recharge program” (taken from March 2, 2005 report to the Board of Directors on the required engineering investigation). So its intent is to supplement the other revenues of the District for the provision of this service. However the financial documents show that it almost funds the entirety of the replenishment activities.

The documents included in the materials identified as the “Profit and Loss by Class for July 2004-May 2005” show that the District has made efforts to control its expenditures. The staff’s question in the original report related to concerns that the expenditures of the District, on a yearly basis, exceeded its revenues. The Profit and Loss by Class documents for Fiscal Year 2002-03 identify this shortfall at \$604,602 and Fiscal Year 2003-04 at \$591,903. The material provided through the end of May 2005 appears to show that expenditures will be at least covered by revenues received during this Fiscal Year.

In response to the questions raised regarding the costs for the District’s Board of Directors, the District has provided supplemental materials for review. In these materials they note that the District’s policy allows for payment of up to a maximum of 10 meetings per month (as authorized by law), a stipend payment at the present time of \$162 per meeting with an allowance for an annual 5% increase dependent upon certain conditions, and the payment of specific expenses. In addition, the supplemental response materials provide a table identifying director expenses per

year. Based upon the information presented by the District, the estimated per Director cost by Fiscal Year has been calculated by LAFCO staff to be:

FY 02-03	\$11,445
FY 03-04	\$12,093
FY 04-05 (estimated yearly total \$90,154)	\$12,879

However, if the maximum number of meetings were paid for each member of the Board of Directors at the present stipend rate of \$162, the cost for stipend alone would be \$136,000 (\$19,440 per Director for seven Directors).

Issues related to Local Governance Options:

In its letter to the District, staff requested the official position of the Board of Directors of the SBVWCD as to the options presented for its future governance. Of no surprise, the District has responded through submission of Resolution No. 409 (copy included as a part of Attachment #3 – Appendix F) that it wishes to maintain its current sphere of influence and operations – not as a part of San Bernardino Valley Municipal Water District or the San Bernardino County Flood Control District or with an expanded sphere of influence.

SBVWCD indicates that it does not favor consolidation with the County Flood Control District since the fulfillment of the mission of SBVWCD and the County Flood Control District are at cross purposes – noting that effective flood control requires the movement of the waters safely through the watershed as quickly as possible; while the efforts of water conservation are to retain the waters within the facilities long enough to allow percolation to occur. The response by Mr. Patrick Mead, Director of the County Department of Public Works, on behalf of the County Flood Control District in general concurs with this position (copy included as Attachment #4).

SBVWCD has also indicated it does not favor consolidation with the San Bernardino Valley Municipal Water District (hereinafter “MWD”) since the purposes identified during the creation of the agencies, in their view, are different. Specifically noted in the SBVWCD response is its position that it was formed to conserve water in the Bunker Hill Basin. Staff would note, however, that the previous materials submitted by SBVWCD indicated that the District was formed to “protect against excessive export of the local surface water by downstream agencies” -- not necessarily the same purpose. The SBVWCD response continues that the purpose for creation of the MWD in 1954, in their opinion, was to serve as the agent for importation of State Project Water into the eastern portion of the San Bernardino Valley. Supporting statements for this position within the SBVWCD’s materials submitted are:

1. SBVWCD’s commitment to groundwater maintenance and enhancement of the Bunker Hill basin is its paramount mission.
2. SBVWCD has significantly more experience in groundwater recharge than does the MWD since its spreading activities began more than 70 years ago.
3. SBVWCD has “no potentially conflicting interests or responsibilities” which might result in a shift of water priorities.

Mr. Robert Reiter, General Manager of the MWD has provided a response to the LAFCO staff request for information and to the positions of SBVWCD as outlined in their materials on file with the Commission. A copy of this response is included as Attachment #5. This response indicates Mr. Reiter’s opinions that the consolidation is viable, especially in light of the signing of the Seven Oaks Accord, identifies the

position that should such a consolidation be supported for the two agencies the financing of the groundwater replenishment/ recharge functions would be funded by the existing revenue stream from property tax, mining revenues and interest income and the groundwater assessment would be abolished.

Integrated Water Management Plan:

At the March hearing, questions were raised regarding the status of an Integrated Groundwater Management Plan or Regional Water Management Plan for the Basin. The response submitted by the SBVWCD indicates that no such document exists at the present time but that a Regional Water Management Group has been formed to develop such a document. The MWD response to the question raised by the Commission and the response of the District notes concurrence that no such document currently exists, but indicates that a group made up of the Water Conservation District, San Bernardino Valley Municipal Water District, and other agencies are working to prepare a Planning Grant Application for filing with the State of California. This application, according to the document, is to be filed by the MWD, as the lead agency. If the grant application is successful, the MWD will work with SBVWCD and the other members of the water community to meet the requirements of the Seven Oaks Accord, as well as addressing the needs of other water producers not a party to the accord.

Water Spreading Activities:

In the staff’s view additional information was needed to clarify the water spreading, water recharge relationship of entities within the overall Bunker Hill Basin. In an effort to gather that information, staff requested that the County Flood Control District and MWD outline their efforts at recharge. Mr. Patrick Mead, on behalf of the San Bernardino County Flood Control District notes that the District’s facilities are used for recharge purposes during non-flood periods and they have a number of agreements with various water agencies in place to allow for water percolation and replenishment to occur. The District however does not track the amounts of water spread but does provide reports on storm water captured. His response indicates that within the western portion of the Valley stormwater captured during the period from 10/1/04 to 6/30/05 was 11,144 acre feet. Mr. Robert Reiter’s response, on behalf of the MWD, indicates that it has spread a total of 42,814 acre feet over the five-year period. Other water agencies within the basin also recharge water, such as the City of Redlands, Bear Valley Mutual Water Company, and East Valley Water District, but due to time constraints staff has not requested information on the amounts of water recharge by these agencies. A comparison of the known recharge within the Bunker Hill Basin is identified as follows:

Entity	Water Spread Fiscal Year 2000-01	Water Spread Fiscal Year 2001-02	Water Spread Fiscal Year 2002-03	Water Spread Fiscal Year 2003-04	Water spread Fiscal Year 2004-05
Water Conservation District (Santa Ana and	6,811	1,750	15,622	13,820	2,934

Mill Creek)					
San Bernardino Valley Municipal Water District (various areas)	4,705	10,772	16,805	8,147	2,385

An average of the water spreading accomplished by these agencies over the five (5)-year period shows that the SBVWCD spread an average of 8,187 acre feet and the MWD spread an average of 8,563 acre feet. The waters spread by the Conservation District include its native Santa Ana River waters and supplemental water purchased during the drought period. No information was provided as to the types of water spread by the MWD, but it is assumed to be State Project Water.

Review of Options with Water Producers:

Of particular importance during the discussion of local governance issues at the prior hearing, was the need to initiate discussions with the major water producers within the boundaries of SBVWCD and outline the governance options presented to the Commission for its consideration. In order to accomplish this, staff included in its letter to SBVWCD the request for a listing of the name and address of the water producers within the District’s boundaries. Staff’s purpose was to send a letter outlining the options being reviewed and seeking each entity’s position on those options identified as:

- a. Consolidation with the County Flood Control District,
- b. Consolidation with the San Bernardino Valley Municipal Water District,
- c. Expansion of the SBVWCD sphere of influence to include the area identified by engineers as the “Bunker Hill Basin” to address the regional water conservation efforts, or,
- d. Retention of the SBVWCD as it is presently configured – the status quo option.

In discussion between the LAFCO Executive Officer and SBVWCD General Manager, it was determined that rather than contact each producer, large and small, that

LAFCO staff should review the materials with the group identified as the “Upper Santa Ana Water Resources Association”, which, in the District’s opinion, provided a broad cross-section of the water stakeholders within the District. The Executive Officer met with this group on June 9th to review the service review/sphere of influence update for the SBVWCD currently being processed, outlined the options being discussed by the Commission, and requested that each agency within the boundaries of the SBVWCD provide a response to LAFCO staff by August 1st on their position on these options (copies included as Attachment #6). The following chart provides an outline of the responses received from the various water producers, the total amount of water they pump from within the District’s boundaries during the 2004 calendar year which includes agricultural and non-agricultural water, and the total cost of their groundwater assessment for that period:

Water Producer	Service Review Option Chosen	Amount of Water Pumped from January 1 2004 through December 31, 2004	Amount of Groundwater Assessment paid
East Valley Water District	Supports Status Quo	22,755.2	\$131,723.01
City of Riverside	Supports the receipt of additional information prior to position on consolidation, supports maintenance of sphere	19,973.1	\$115,917.15
Gage Canal Company (understood to be a part of the City of Riverside)	No separate position provided	10,717.6	\$40,320.41
City of Redlands	Supports Consolidation	17,320.1	\$95,403.48
City of San Bernardino	No position as yet identified	7,055	\$40,917.82
Meeks & Daley (primary owners are City of Riverside and Elsinore Valley Municipal Water District)	Supports Status Quo	2,037	\$9,336.63
SBVMWD	No position	776.2	\$4,667.80
Bear Valley Mutual Water Company	Supports Consolidation	0	\$0.00
Lugonia Water Company	Supports Consolidation	not identified on listing	
Redlands Water Company	Supports Consolidation	not identified on listing	

In addition, correspondence was received from water producers outside the boundaries of SBVWCD. These include the Riverside-Highland Mutual Water Company, the City of Rialto and the West Valley Water District who have indicated their support for maintenance of the status quo. A copy of each of these responses is included as Attachment #7 to this report.

In establishing its position of support for consolidation, the City of Redlands City Council included the requirement that a memorandum of understanding be signed by both the City of Redland and the MWD. A draft copy of this memorandum is included in the City of Redlands staff response included as Attachment #8 to the report. This memorandum outlines the City’s position that the employees of the District must be protected, that the operations of recharge are protected, that the revenue stream of the Water Conservation District be isolated and accounted for by the MWD to support solely these activities, and its position related to the return of certain facilities to the City of Redlands.

CONCLUSION:

Based upon the information outlined above, and in the original staff report, for the review of LAFCO 2919 and the policy directions of the State Legislature to LAFCO to develop the most efficient and effective service boundaries for agencies, LAFCO staff’s recommendation is that the Commission should amend the sphere of influence of the San Bernardino Valley Water Conservation District to a zero sphere indicating its position that a consolidation with the San Bernardino Valley Municipal Water District should be undertaken. The staff’s recommendation does not initiate the consolidation, it does not change the area in which the Water Conservation District currently provides its services, nor does it eliminate the groundwater charge. Its intent is to set forth a method for gathering the specific

detailed information that could be used by the SBVWCD and MWD to file a joint application for consolidation, much like that initiated by the Resource Conservation Districts, or for a future presentation to the Commission to initiate an application on its own volition to consolidate the districts pursuant to the provisions of Government Code Section 56375.

The staff's position is not taken on the basis that the District is mismanaged or derelict in the performance of its responsibilities, the District is well-managed and performs its responsibilities. The staff's recommendation is, however, based upon three elements:

1. During the hearings by the Commission on Local Governance for the 21st Century and adoption of Assembly Bill 2838 rewriting LAFCO law, the direction has been emphasized that the Commission is to provide for the most efficient and effective service boundaries for the agencies under its purview. The Municipal Service Review/Sphere of Influence update process requires that the Commission evaluate, as a part of its review local governance issues, hurdles to consolidations and reorganizations. The most efficient and effective boundary, in the staff's view, would be to address the whole of the Bunker Hill Basin. That would require either the expansion of the SBVWCD sphere of influence to encompass that territory or the consolidation of the District with the MWD.
2. Passage of AB 2067 which allows for the consolidation of special districts not formed under the same principal act. Absent this legislation, the only alternative available would be through dissolution of the Water Conservation District. Such an action would require the completion of the processes as specified by Water Conservation District Law which requires the submission of a petition to initiate dissolution and a vote which must exceed 60% in support.
3. The position that the Bunker Hill Basin should be considered as a single unit when evaluating agencies with recharge responsibilities or operations. In evaluating this economic community of interest, the changed circumstances in the Bunker Hill Basin through the completion of the Seven Oaks Dam and the subsequent signing of the Seven Oaks Accord should be considered. As staff understands it, 90% of the recharge of the basin occurs through natural recharge (snow melt, rainfall, river water through the area, etc.) and the remaining 10% is through artificial recharge efforts. To maximize those efforts they should, in the staff view, be coordinated at the regional level, or basin-level, and that would point toward either the expansion of the San Bernardino Valley Water Conservation District sphere of influence to include the whole of the Basin, or the consolidation with a regional entity.

In reviewing the option of a sphere of influence expansion to encompass the whole of the Bunker Hill Basin with the SBVWCD and its major water production stakeholders, no support for this option was received; therefore, staff has not evaluated this option further. In reviewing the option for consolidation with the San

Bernardino County Flood Control District, no support for this option was received; therefore, staff has not evaluated that option further. However, some support from the water producer stakeholders for further review of the option of consolidation with the MWD has been received.

In addition, staff supports the consideration of this option for the following reasons:

1. The San Bernardino Valley Municipal Water District has responsibilities for the maintenance of the safe yield of the Bunker Hill Basin as the watermaster for *The Orange County Judgment* and *The Western Judgment*.
2. A reduction in cost for the operation of the general fund administrative activities could be achieved through a reduction in the Board of Director and meeting expenses, legislative services, while maintaining the replenishment activities. A reduction in the expense to the water producers in the area could be achieved through the abolition of the groundwater assessment charge currently imposed while maintaining the groundwater replenishment/recharge activities with the balance of the SBVWCD revenue stream.
3. The Seven Oaks Accord specifies agreements between the water producers within the eastern end of the Bunker Hill Basin as to the diversion of waters within the Santa Ana River. In addition, the MWD is working with these stakeholders, the SBVWCD, and others to develop a grant application to the State of California, which if successful, will fund the development and implementation of an Integrated Groundwater Management Plan.
4. Numerous agencies currently spread water for recharge within the Bunker Hill Basin within and outside the boundaries of the Water Conservation District. Coordination and maximizing these efforts to secure the water supply for the 400,000 plus residents anticipated within the boundaries of the SBVWCD and the 500,000 plus residents within Riverside County that rely on this Basin for their domestic water supply should be the paramount consideration.

Therefore, in the staff's opinion, an evaluation of consolidation of the San Bernardino Valley Municipal Water District and the San Bernardino Valley Water Conservation District should be pursued.

In closing, it should be clear that the actions presented by staff do not mandate that this consolidation will occur. There are a number of reviews, stakeholder and Commission considerations, and a protest proceeding that would be required if such an application were to be submitted by joint application of the Districts or initiated by the Commission. The staff's recommendation includes the establishment of a committee to gather information to evaluate such a consolidation, with the specific direction that a report back to the Commission occur no later than January 18, 2006.

However, if after reviewing the materials and the presentations at the hearing, the

Commission does not support the staff's recommendation and believes that sufficient information has been presented to support retention of the district, it can:

1. Affirm the District's existing sphere which includes approximately 1,980 acres outside its existing boundaries within the Santa Ana River stretching from approximately Boulder Avenue on the east to the junction of the I-215 and I-10 freeways on the west; or,
2. It can establish a sphere of influence coterminous with the District's existing boundaries. This action would remove the ability of the District to expand its boundaries without a subsequent sphere of influence application and review.

The necessary actions to be taken by the Commission for this determination have also been included as part of the recommendation outlined at the start of this report.

KRM/

Attachments:

1. Maps of San Bernardino Valley Water Conservation District and related agencies
2. [Original Staff Report for March 16, 2005 hearing on LAFCO 2919 with Attachment #4 only](#) (a full copy of staff report with attachments is available on the Commission's website at www.sbclafco.org)
3. Supplemental Information on the Municipal Service Review/Sphere of Influence Update from the San Bernardino Valley Water Conservation District dated June 17, 2005
4. Memorandum from Patrick Mead, Director, County Department of Public Works on behalf of San Bernardino County Flood Control District
5. Letter from Robert Reiter, General Manager, San Bernardino Valley Municipal Water District with copy of Attachments #7 and #20 Included
6. Response on Four Options Presented in Service Review from Water Producers within the Boundaries of the San Bernardino Valley Water Conservation District
7. Response on Four Options Presented in Service Review from Water Producers outside the Boundaries of the San Bernardino Valley Water Conservation District
8. Letter from Douglas Headrick, Chief of Water Resources for the City of Redlands Dated August 2, 2005
9. Response from Commission Environmental Consultant, Tom Dodson of Tom Dodson and Associates Dated January 20, 2005 on Affirmation of the District's Sphere of Influence and August 8, 2005 on Reduction to a Zero Sphere of Influence
10. Draft LAFCO Resolution #2893