

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

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DATE: MARCH 7, 2005
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #6 – LAFCO 2919 -- Service Review and Sphere of Influence Update for the San Bernardino Valley Water Conservation District

INITIATED BY:

Local Agency Formation Commission for San Bernardino County

RECOMMENDATION:

Staff's recommendation is that the Commission continue consideration of LAFCO 2919 to the May 18, 2005 hearing with the direction to staff to review questions with San Bernardino Valley Water Conservation District staff to provide additional information on:

1. District expenditures for the past two fiscal years and the current fiscal year related to costs associated with the Water Rights Application, expenditures for Board of Directors, spreading of water, etc.
2. District revenues generated for the past two fiscal years and the current fiscal year related to receipts from mining interests and groundwater spreading charge.
3. The statutory provisions related to potential consolidation of districts formed under different principal acts including, but not limited to, the transfer of groundwater charges, succession to mining leases between the District and mining interests.

4. If consolidation is not considered, would the appropriate sphere of influence designation for this District be the limits of the Bunker Hill Basin rather than merely a portion of its eastern area.

However, if the Commission feels that adequate information has been provided by the District for the affirmation of its existing sphere of influence and that the questions surrounding the distinction of the Bunker Hill Basin are answered, it may take the following actions to close this consideration:

1. Determine that the affirmation of the District's existing 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; and,
3. Defer adoption of the resolution making these determinations to the consent calendar for the April 20, 2005 Commission hearing.

BACKGROUND INFORMATION:

This proposal was initiated by the Local Agency Formation Commission on January 15, 2003, in response to State mandates requiring service reviews and sphere of influence updates for all cities and special districts on a rotating five-year schedule. This is the final agency to be discussed within the East Valley agency reviews. Included in this report are the following attachments:

- #1 -- maps which identify the boundaries and sphere of influence for San Bernardino Valley Water Conservation District (hereafter SBVWCD) along with overlay maps showing the relationship of the District to the Cities and Water Districts within its jurisdiction.
- #2 -- outline of the purposes and structure of a Water Conservation District.
- #3 -- staff report for LAFCO 2751, consideration of an annexation to the San Bernardino Valley Water Conservation District.
- #4 -- District Summary Profile Sheet and the response provided by the District to the LAFCO survey of the factors required by Government Code Section 56430 for a service review.

WATER CONSERVATION DISTRICTS:

Attachment #2 to this report includes a general outline of a Water Conservation District and the services it can perform under its principal act, prepared by LAFCO staff. As noted, Water Conservation District Law has been in existence since 1931 as a means to address locally the conservation of water and water rights within an area which is defined as the “watershed providing the water supply to its inhabitants”. The services that can be offered by a Water Conservation District include:

1. Appropriate, acquire and conserve water and water rights for any useful purpose;
2. Make surveys and investigations of the water supply and resources of the district;
3. Acquire and construct dams, reservoirs, canals, conduits, spreading basins and sinking basins in order to conserve, store, spread and sink water;
4. Provide for the construction, operation, and maintenance of such works, facilities and operations within or outside the district's boundaries to protect the land or property in the district from damage by flood or overflow;
5. Drill, construct, install and operate wells, pumps, pipelines, conduits, valves, etc. and may pump water from these facilities for sale, delivery, distribution or other disposition;
6. Sell, deliver, distribute or otherwise dispose of any water that may be stored or appropriated, owned or controlled by the district;
7. Acquire, construct, maintain, and operate recreational facilities in connection with any dams, reservoirs or other works owned or controlled by the District.

As this outline notes, the functions and purposes of these types of districts are limited to the preservation of the water supply within a given area. In San Bernardino County there are two water conservation districts, both serving within the Valley portion of the County (their service areas are outlined on the vicinity maps within Attachment #1). In each case they are located and serve within managed water basins – Chino Basin Water Conservation District serving the west-

end area of the Valley associated with the Inland Empire Utilities Agency service area, and the SBVWCD serving the east-end of the Valley associated with the San Bernardino Valley Municipal Water District service area. Due to the regional nature of these agencies and their minimal annexation activity, they have had little official contact with LAFCO during the past 40 years.

In 1993, the Commission reviewed and approved an annexation proposal involving the SBVWCD expanding its boundaries by approximately 2,929 acres (LAFCO 2751). LAFCO 2751 was highly controversial due to the District's recent imposition of a groundwater charge and ultimately resulted in a modification to the boundaries to exclude the area of the District's sphere of influence within the Santa Ana River comprising 1,980 acres. This exclusion was based upon agreements reached between the District and the major water producers within the area which included the City of Riverside, the Western Municipal Water District of Riverside County, the Aqua Mansa Water Company, Meeks and Daley Water Company and the Riverside Highland Water Company. This 1,980 acre area remains the District's sphere of influence area outside its boundaries. A copy of the LAFCO staff report related to this proposal is included as Attachment #3.

SERVICE REVIEW:

The SBVWCD was formed in 1931, immediately following the implementation of Water Conservation District law as a means "to protect against excessive export of the local surface water by downstream agencies". The District operates recharge facilities in two areas – the Santa Ana River and Mill Creek. The SBVWCD is an independent special district formed under the provisions of Water Conservation District law (Water Code Sections 74000 through 76501).

In reference to the factors and findings required for a service review, the District provided a response in 2003 for Commission consideration along with numerous appendices, a copy of which is available for review in the LAFCO office. The report prepared by the SBVWCD is comprehensive in its review of the factors required by Government Code Section 56430. During the interim period, staff has met with the District on two occasions to discuss the service review/sphere update and to request updated materials due to the time delay in processing. The District has provided additional materials to assist staff in its review. The survey response contained in the District's response will not be reiterated in this report and is included as an attachment to this report along with some of the appendix documents (Attachment #4).

Appendix materials included as a part of Attachment #4 are:

1. The District's Draft "Program for Effective Recharge Coordination" or PERC dated June 2004, which defines the methods it will use in performing its functions, and a spreadsheet listing of the water spread for conservation purposes in Mill Creek and the Santa Ana river;
2. A copy of the letter received from the District in regard to the Seven Oaks Dam Borrow Site Restoration Project;
3. The Proposed Land Management and Habitat Conservation Plan for the Upper Santa Ana River Wash; and,
4. A spreadsheet outlining the amount of water spread historically in the Santa Ana River and Mill Creek by the District.

The District's materials include the identification of its mission statement as follows:

"The mission of the San Bernardino Valley Water Conservation District is to ensure recharge of the Bunker Hill Groundwater Basin in an environmentally and economically responsible way, using local native surface water to the maximum extent practicable.

We strive to improve the supply and quality of groundwater, balancing such demands with those of land, mineral and biological resources."

A summary of the major points of consideration within the response provided by SBVWCD and those areas which have prompted additional staff questions are outlined as follows:

1. Infrastructure Needs and Deficiencies:

The District materials have indicated that most of the District's canals and percolation basins were constructed in the 1930's and remain in good condition at the present time. Their purpose has been to divert water from the Santa Ana River and Mill Creek for spreading and percolation within District facilities for recharge of the Bunker Hill Basin for better than 90 years. The materials indicated that the District plans to reconstruct its percolation basin in the "Borrow Site" for the Seven Oaks Dam which has been non-operational during that facility's construction period. The total acreage owned by the District for percolation purposes includes approximately 185 acres in the Santa Ana River area and 65.5 acres in Mill Creek.

The materials identify that the highest level of recharge during the District's history was 52,172 acre feet in the Santa Ana River in 1978 and 19,800 acre feet in 1993 in Mill Creek. The District's ability to perform its function is directly related to the amount of surface water within the Santa Ana River and Mill Creek tributary available for spreading. The District anticipates that, under the auspices of the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan, additional percolation basins and ancillary facilities could be constructed for a total of 45 acres for percolation within the Santa Ana River, depending upon determinations of that study.

The District has indicated that it is one of many entities that have been working together to manage the groundwater in the Bunker Hill Basin (PERC, page 15). The District has indicated that due to the number of agencies involved in the Bunker Hill Basin and the number of uses of the water of the Santa Ana River, a coordinated, inter-agency approach is required.

According to the District's Audit Report for 2003-04, one of its unanticipated, one-time expenses relates to its Water Rights application before the State Water Resources Control Board. This application is one of a series related to changes to the Santa Ana River since the construction of the Seven Oaks Dam. The Water Conservation District, the San Bernardino Valley and Western Municipal Water Districts, and the Orange County Water District all have or had applications on file with the State Water Resources Control Board for permits to divert water from the Santa Ana River.

2. Financial Constraints and Opportunities:

The District is currently in sound financial condition with limited debt and significant reserves.

The 2004 Audit Report (included as part of Attachment #5) for the District identified a shortfall between revenues received and actual expenditures of \$686,497 for the period. The report identifies that this situation was predicated upon a number of one-time expenses for the District, including costs associated with its Water Rights Application identified as \$361,585 and a \$414,000 purchase of State Project water which were partially offset by additional revenues. The District anticipates a full reimbursement of the costs for State Project water over time through payments of the water purveyors in the area. This report also identifies that the budgets for ensuing years will recognize the need to bring costs into balance against the

revenues received in each fiscal year.

The Audit Report identifies that the District has pooled investments of \$8,257,618 with the State of California State Treasurer's Local Agency Investment Fund. However, \$5,000,000 of this amount is deferred revenue received as an advance from mining interest for pre-paid mining royalties. The notes within the Audit Report indicated that this amount may be required to be repaid, however, "the District does not expect such conditions to arise and through its participation in the Wash Plan is helping to ensure this is the case".

Pursuant to the District's PERC, it maintains a policy of "pay as you go" which requires that facilities maintenance, enhancement or new construction are identified during the District's annual budget process and funding of activities through current resources or reserves identified.

Questions of staff related to the financial information presented to the Commission by the District include the following:

- a. For 2003-2004 the audited actual expenditures for the District were \$2,359,693. Subtracting the one-time expenses identified in the report of \$686,497 leaves operating expenditures of \$1,673,196 to administer and spread a total of 6,025 acre feet of water within both the Santa Ana River and Mill Creek areas in pursuit of the District's legislative charge. However, the revenues associated with Groundwater Replenishment are listed as \$501,300 and include the groundwater assessments, but do not include the Mining Income from lands the District owns for future use as water conservation areas.
- b. The annual costs identified in the 2003-04 budgets and the 2004-05 budgets for Director expenses are \$55,000, which is approximately \$7,857 per director for the year. Meeting costs in 2003-04 were estimated at \$32,000. However, in 2004-05 the budget accounts were renumbered and retitled so that LAFCO staff, at the present time, can only assume that the meeting expenses would be a compilation of Account # 6063 Meeting support expense (\$2,500), a portion of Conference/Seminar Registrations Account #6081 (\$18,000), a portion of lodging expense Account #6078 (\$22,900), and meals Account #6075 (\$7,900).
- c. No mention is made of an Appropriation limit for this District.

3. Cost Avoidance Opportunities and Shared Facilities Opportunities:

Much of the District's activities outlined in its survey response have historically been projects with other agencies. The report identifies the following joint efforts by the District:

- a. Upper Santa Ana River Wash Land Management and Habitat Conservation Plan – This is a joint effort with the Cities of Highland and Redlands, the County, SBVWCD, and the U.S. Bureau of Land Management as landowners and/or agencies with responsibility within the area (information included as a part of Attachment #4). One outcome anticipated through this effort has been the designation of areas for future mining activities to be consolidated as well as defining future locations for water conservation activities. This is of special importance to the District as lands it owns are leased for sand and gravel extraction and the leases and royalties for these activities represents approximately 50% of the District's revenues as well as their identified need for restoration and/or expansion of percolation basins in the easterly portion of this project. One concern of staff regarding this effort is the lack of designation of the on-going maintenance and operation entity for the Habitat lands.
- b. Santa Ana River-Mill Creek Cooperative Water Project (the Exchange) – This is an agreement between ten public and private water agencies to allow for transfer of water among the agencies. SBVWCD has been assigned the responsibility to monitor the transfers, account for the waters exchanged, and report these matters to the other members.
- c. High Groundwater Mitigation Project – The District is participating in a program which will address the issues of the high groundwater within the reaches of the Bunker Hill Basin with the water producers and retailers in the area.
- d. Drought Mitigation Project – District purchased State Water Project waters at a discounted cost to spread within the District's boundaries to alleviate low groundwater levels brought on by the drought. The costs of this water will be charged back to the entities using the water and the District's investment refunded.

4. Government Structure Options:

The District was originally established in 1931 by election and the assets of

its predecessor, the Water Conservation Association in the Santa Ana River, were transferred for use and operation by the District. In 1935, it acquired the assets of the East Lugonia Mutual Water Company to provide for water spreading and percolation within Mill Creek, a tributary to the Santa Ana River. Today, the District's boundaries include approximately 50,000 acres (78+ square miles) including territory within portions of the Cities of San Bernardino, Colton, Loma Linda, Highland, Redlands and Yucaipa, along with the unincorporated community of Mentone and various unincorporated areas. This area is served by a number of water retailers including the East Valley Water District, Yucaipa Valley Water District, and the Cities of San Bernardino, Loma Linda, Redlands, and Colton.

Also overlying the boundaries of the District, as outlined on maps within Attachment #1, are two other agencies authorized to provide water conservation services – the San Bernardino Valley Municipal Water District and the San Bernardino County Flood Control District:

- a. The San Bernardino Valley Municipal Water District operates under Municipal Water District Law (Water Code Section 71000 through 73000) and is authorized the power to:

“Acquire, control, distribute, store, spread, sink, treat, purify, reclaim, recapture, and salvage any water, including sewage and storm waters, for the beneficial use or uses of the District, its inhabitants or the owners of rights to water in the district...” as well as “...Acquire waterworks or a waterworks system, waters, water rights, lands, rights, and privileges; construct, maintain, and operate conduits, pipelines, reservoirs, works, machinery, and other property useful or necessary to store, convey, supply or otherwise make use of water for a waterworks plant or system for the benefit of the district...”

In addition, this agency along with its Riverside counterpart, is the Water Master for the 1969 judgment determining the amount of water allowed for withdrawal to maintain the waterflow received by Orange County. The flows of the Santa Ana River are directly affected by the Bunker Hill Basin and the San Bernardino Valley Municipal Water District overlays the majority of this basin.

- b. The San Bernardino County Flood Control District operates under provision of the Water Code Appendix 43-1 and was formed in 1939. It is authorized under Section 43-2(6) the powers of “water conservation; water rights; litigation”, outlined in part as follows:

“To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district; to conserve and reclaim water for present and future use within the district...”

This entity as well overlays the whole of the Bunker Hills Basin, while its flood zones divide the area of the District.

SBVWCD has indicated its opinion that a future consolidation of the District would require an election of the people, as well as its opinion that its customers, the Cities, retail water providers and entities extracting water from the basin, would not support such a consolidation. Staff’s response to these positions is that the provisions of AB 2067 (Harmon), effective January 1, 2005 and not initiated at the time the response was prepared, allows for the consolidation of districts not formed under the same principal act. In such a circumstance, the election requirements would depend upon levels of protest. This is a new circumstance since the survey response has been drafted by the District. In addition, the question of consolidation has not been addressed specifically to these customer entities and a part of the staff’s recommendation is intended to remedy that question through a continuance.

In addition, staff would indicate that if the SBVWCD is charged with the responsibility to recharge and assist in the maintenance of the Bunker Hill Basin, then absent a consolidation, its sphere of influence should encompass the whole of that Basin, not just the eastern end. The electorate charged with selecting the governing body should represent the whole of the Basin rather than the limited territory at its eastern extreme. This question has not been addressed by LAFCO staff with the SBVWCD, the other agencies overlaying the area with ability to provide this service, or with the customer entities of the water retailers, cities, and water producers within the area. In regard to that circumstance, staff is recommending that the Commission continue this matter to the May 18th hearing, with the direction to staff to seek the response from these agencies regarding: (a) their position on a possible consolidation with either the County Flood Control District or San Bernardino Valley Municipal Water District, and (b) what would their position be to the expansion of the District’s sphere of influence to include the area identified by engineers as the “Bunker Hill Basin”.

5. Local Accountability and Governance:

The District is governed by a seven (7) member Board elected from within Divisions. The District conducts its business at regularly scheduled monthly

meetings of the Board of Directors at its administrative facilities open to the public. In addition, the District conducts monthly meetings of its three standing committees, Resources, Administration, and Outreach, composed of three members of the Board of Directors. Since the District does not provide a service, per se, to a specific customer, it has limited feedback or participation with its electorate. However, the materials provided indicate that the District does have feedback with the water purveyors or those extracting water from within its boundaries regarding its operations through its mandatory annual Engineering Assessment required for imposition of its groundwater charge, currently set at \$6.05 per acre foot for non-agricultural water and \$1.65 per acre foot for agricultural water, and through its participation on various committees and task forces.

The seven members of the Board of Directors are elected to four-year fixed terms and must be a registered voter within the boundaries of their respective divisions. While there is a requirement for an election in odd-numbered years, the following provides an outline of the elections actually conducted by the District during the last twenty years:

Division #1 (Redlands)	1983 and 1999
Division #5 (Mentone)	1989
Division #6 (North San Bernardino)	1993, 1997, 2001

No election has been held for Divisions 2, 3, 4, and 7 in the past twenty years according to the records of the Registrar of Voters. These divisions would have been appointed in-lieu of election with application papers filed by a single candidate.

6. When Special Districts were seated on the San Bernardino LAFCO in 1976, a listing of services and functions was prepared, as required by law, acknowledging the services actively provided by the special districts at that time. This document is identified in the Commission’s Policy and Procedure Manual, Section V – Special Districts as “Exhibit A – Listing of Special Districts Functions and Services”. According to this document, the SBVWCD is currently authorized the active function and service as follows:

FUNCTION	SERVICE
Water Conservation	Water Conservation

Latent powers are those powers authorized to a special district through its principal act, but which are not being actively provided. According to the SBVWCD’s principal act, the Water Conservation District Law (Water Code

Sections 74000 to 76501), the latent powers of the District on the basis of the definition above would be:

FUNCTION	SERVICE
Surveys of Water Supply and Resources	Make surveys and investigations of the water supply and resources of the Water Conservation District
Flood or Overflow Control	Provide for the construction, operation, and maintenance of such works, facilities and operations within or outside the District's boundaries to protect the land or property in the District from damage by flood or overflow
Water	May sell, deliver, distribute or otherwise dispose of any water that may be stored or appropriated, owned or controlled by the District
Park and Recreation	Acquire, construct, maintain and operate recreational facilities in connection with any dams, reservoirs, or other works owned or controlled by the District

It is unclear what was intended by the definition of the function and service as "water conservation" as the definition in Water Conservation Law provides specific language in this regard. It will be staff's recommendation that the Commission update this designation to more clearly outline the function and service authorized the District. Staff would suggest, based upon the materials provided, that the District's function and services be updated as follows:

FUNCTION	SERVICE
Water Conservation	Appropriation, acquisition, and conservation of water and water rights for any useful purpose. Acquisition and construction of dams, reservoirs, canals, conduits, spreading basins and sinking basins in order to conserve, store, spread and sink water
Surveys of Water Supply and Resources	Make surveys and investigations of the water supply and resources of the Water Conservation District

In summary, the District has indicated that it performs a much-needed service, working in conjunction with the water retailers and wholesaler within the area to assure a safe and sufficient water supply. It is noted that at the time the report was prepared, none of the adjacent or overlaying agencies had identified any

concerns with the existing sphere of influence for the SBVWCD; however, their notice of this consideration has been limited. To date, no concern has been expressed from the water producers associated with the District's sphere of influence who indicated their opposition to the District's annexation twelve years ago; however, they too have had limited information regarding this consideration.

SPHERE OF INFLUENCE UPDATE:

Pursuant to the requirements of Government Code Section 56425, every sphere of influence review is required to consider four factors of consideration. Due to the regional nature of this District and the limitations of the District's boundary and sphere within the defined Bunker Hill Basin, a response to these factors is difficult to provide. However, a summary response follows based upon the existing area of the District and its sphere of influence:

1. The present and planned land uses in the area, including agricultural and open-space lands:

The present and planned land uses in the area comprising the area of the SBVWCD represent varying levels and intensities of urban development within unincorporated County areas as well as portions of the Cities of Colton, San Bernardino, Highland, Loma Linda, Redlands, and Yucaipa. The SBVWCD comprises approximately 50,000 acres (78+ square miles) within San Bernardino County.

2. The present and probable need for public facilities and services in the area:

The present and probable need for the services provided by the District to sustain the Bunker Hill Basin will continue and expand as the population of this portion of the Valley grows. However, the relationship of this entity's boundaries to the Bunker Hill Basin it is charged with providing water conservation and recharge efforts is of concern to LAFCO staff. The entire area of this basin is experiencing drought conditions, water contamination, and growth of the use of the groundwater supply. Water conservation is a need within the entirety of the basin, not just the eastern portion as defined by the boundaries of the SBVWCD.

3. The present capacity of public facilities and adequacy of public services that the agency to be expanded provides or is authorized to provide:

Within its current boundaries, the District provides its services of water conservation through recharge of surface water and/or State Project water

during drought conditions in performance of its legislatively prescribed powers and responsibilities.

4. The existence of any social or economic communities of interest in the area.

Due to the regional nature of this agency, it is difficult to address this issue. However, as noted in the materials and the mission statement of the District, its efforts are to maintain an adequate water level in the Bunker Hill Basin. The Bunker Hill Basin is much larger than the boundaries and/or sphere of influence of the District and could be considered a single community of interest. If the District's recharge efforts support this Basin, then staff would question the definition of the sphere – either it should be expanded to include the whole of this Basin, or the possibility of consolidation with a district with responsibility for this larger area should be considered.

CONCLUSION:

At this time, the primary staff recommendation is that the Commission continues this consideration to the May 18, 2005 hearing and direct staff to compile responses to the questions regarding the District's expenditures, revenues, agency positions on consolidations and agency positions on the possibility of expanding the District's sphere of influence to include the whole of the Bunker Hill Basin. As outlined in the staff report, this is based on a number of questions that the materials have raised but staff has not had sufficient time to address.

However, if the Commission believes that sufficient information has been provided by the District, it can take the actions to approve the service review/sphere of influence update for the District affirming its existing sphere of influence designation and direct staff to return at the April 20, 2005 hearing with the resolution of approval for adoption on the consent calendar.

Attachments:

1. Maps of the District's boundaries, its Regional Location, and its Relationship to Cities, San Bernardino Valley Municipal Water District, and County Water Districts
2. Outline of a Water Conservation District Prepared by LAFCO Staff
3. Staff Report for LAFCO 2751, dated December 3, 1993
4. Survey Response Provided by the District Including the Appendix Materials Identified in the Staff Report
5. District Budget for 2004-2005, Budget for 2003-04 and Audit Report for 2003-2004

6. Response from Tom Dodson, Tom Dodson and Associates, LAFCO
Environmental Consultant, Identifying Determination for Maintaining
Existing Sphere of Influence Boundaries