

LOCAL AGENCY FORMATION COMMISSION COUNTY OF SAN BERNARDINO

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DATE: SEPTEMBER 13, 2005
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #7: Consideration of LAFCO 2919 – Service Review and Sphere of Influence Update for San Bernardino Valley Water Conservation District

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 February 15, 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 October 19, 2005 Commission hearing.

BACKGROUND:

At the August 17th hearing, the Commission continued consideration of LAFCO 2919 to the September hearing at the request of the San Bernardino Valley Water Conservation District (hereinafter SBVWCD). Its request was to allow the District sufficient time to respond to the Staff Report presented. A copy of the Staff Report for the August Hearing including only its Attachment #1 maps, Attachment #9 LAFCO Environmental Consultant responses, and Attachment #10 the draft resolution is provided as Attachment #1. The entire report is available on the LAFCO website.

Included with this report, as Attachment #2, is the SBVWCD’s response to the August Staff Report which also provides additional information on its position related to the options presented by staff. The District’s response indicates that new information is available since the prior report related to a Settlement Agreement with San Bernardino Valley Municipal Water District (hereinafter Muni) and the Western Municipal Water District regarding their competing water interests and to eliminate protest to the various Water Rights Applications filed with the State Department of Water Resources. This is important new information for the Commission’s consideration. This Settlement Agreement (included as Exhibit A in the District’s response) and its Exhibit “A” provides that the protests to the Water Rights Applications for SBVWCD and Muni and Western Municipal

Water District will be rescinded. The terms of the Settlement Agreement also require that the Seven Oaks Accord will be modified to include SBVWCD.

The District identifies in its materials that the staff has omitted critical information related to the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan, also known as the “Wash Plan” under the first factor required by Government Code Section 56425. Staff’s response is that the Wash Plan was discussed, but not in the context of existing and planned land uses related to the District. The land use authorities for the territory of the District in its entirety are the Cities of Highland, Loma Linda, Redlands, San Bernardino and Yucaipa and the County of San Bernardino. The land use authorities within the Wash Plan are the Cities of Highland and Redlands and the County of San Bernardino. The District has no land use authority within this area known to staff; therefore, the response provided in the previous materials described the myriad of land use types available throughout the area of the District’s jurisdiction. It is the staff’s understanding that the District has spearheaded this effort to identify future recharge and mining areas given the sensitive environmental nature of the Santa Ana River Basin.

However, the response by the District still does not answer the basic question asked by staff since the inception of this review, which is:

“Why are there three overlapping agencies within the eastern portion of the Bunker Hill Basin authorized to provide the same service – water conservation – and is this division appropriate?”

While the District’s response indicates that “if it ain’t broke don’t fix it” is the appropriate position to take, staff believes that the answer is that such a duplication is not appropriate. The staff’s position remains that groundwater recharge/replenishment efforts for the entirety of the Bunker Hill Basin are the appropriate service area to be considered. Therefore, in its opinion, the options for the Commission remain:

1. Expand the sphere of influence of the SBVWCD to include the whole of this Basin; or,
2. Evaluate the possibilities of consolidating this agency with one of the other entities who have authority to perform groundwater recharge/replenishment activities throughout the Bunker Hill Basin.

In addition, two new questions were asked of staff at the August hearing:

1. Who are the members of the Upper Santa Ana Water Resources Association to which the question of support for the options was posed?
2. Is there a potential for double taxation as outlined in the City of Rialto response?

In response to Question #1, the members of the Upper Santa Ana Water Resources Association are identified in its “Articles of Association”, copy included as Attachment #3, as the water producers within the Upper Santa Ana River watershed. These agencies include:

East Valley Water District	City of Rialto
West Valley Water District	City of Riverside
Elsinore Valley Municipal Water District	Bear Valley Mutual Water Company
San Bernardino Valley MWD	Riverside-Highland Water Company
Western Municipal Water District	Fontana Water Company
San Bernardino Valley WCD	County Flood Control District (by the Public Works Department)
City of San Bernardino	Robertson’s Redi-Mix
Municipal Water Department	
City of Redlands	

Additional participants in the meetings of the Association include the State Department of Health Services, Santa Ana Watershed Project Authority, Consultants, the California State University San Bernardino’s Water Resources Institute, and others. The options presented to the Commission were reviewed with this Association in an effort to reach the water producers within the territory of SBVWCD and their individual positions on these options requested. However, since the publication of the Staff Report for the August hearing, the positions of some of these agencies have been modified. The City of Riverside has shifted its position to one of supporting the consolidation with Muni through discussions with Muni and Western Municipal Water District. A copy of its letter and the draft memorandum of understanding are included as Attachment #4 to this report. The following is a revised listing of the water producers’ positions on the options before the Commission:

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 consolidation with Muni	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 with Muni	17,320.1	\$95,403.48
City of San Bernardino	Supports consolidation with Muni	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 with Muni	0	\$0.00

Lugonia Water Company	Supports consolidation with Muni	not identified on listing	
Redlands Water Company	Supports consolidation with Muni	not identified on listing	

In response to Question #2, regarding the possibility of double taxation, the staff response is that the situation exists today within the boundaries of the SBVWCD and Muni. Municipal Water District law allows for the charging of an assessment or a special tax, through a separate review and protest process, which could be proposed within the area where the SBVWCD currently charges a groundwater assessment or outside it. In the response provided by the SBVWCD, Exhibit B illustrates that in 1980 a water production assessment was considered by Muni in order to finance needed capital facilities. No such tax was imposed; however, the possibility remains unchanged by the potential consolidation of the agencies. However, the question as outlined in the City of Rialto letter indicates its concern that if the SBVWCD was consolidated with Muni, it would allow Muni to charge a pump tax, in the same manner as the existing pump tax imposed by SBVWCD. Such a change would not occur as a result of this consolidation.

CONCLUSION:

In conclusion, the staff’s position remains unchanged by the additional materials submitted by SBVWCD. The staff applauds the efforts of the District in negotiating its Settlement Agreement related to the Seven Oaks Accord, but on the basis of the elements outlined in the August hearing staff report, outlined below, the position remains to support a further review of a potential consolidation. Those elements are:

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 Muni.
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 and the proposed amendment with SBVWCD 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.

Therefore, it remains the staff's opinion that an evaluation of consolidation of the San Bernardino Valley Municipal Water District and the San Bernardino Valley Water Conservation District should be pursued as outlined in the staff recommendation on pages 1 and 2 of this report. 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 February 15, 2006.

However, if after reviewing the original materials submitted, the supplemental materials in this report, 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. [Staff Report dated August 9, 2005 with only the Attachments #1 copy of maps, #9 response from LAFCO Environmental Consultant and #10 draft Resolution 2893](#)
2. Response dated September 7, 2005 from the San Bernardino Valley Water Conservation District
3. Articles of Association of the Upper Santa Ana Water Resources Association
4. Responses from other Agencies including Letter from the City of Riverside dated September 12, 2005 regarding its position