LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO

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DATE: **JULY 8, 2009**

FROM: **KATHLEEN ROLLINGS-McDONALD, Executive Officer**
SAMUEL MARTINEZ, Senior LAFCO Analyst

TO: **LOCAL AGENCY FORMATION COMMISSION**

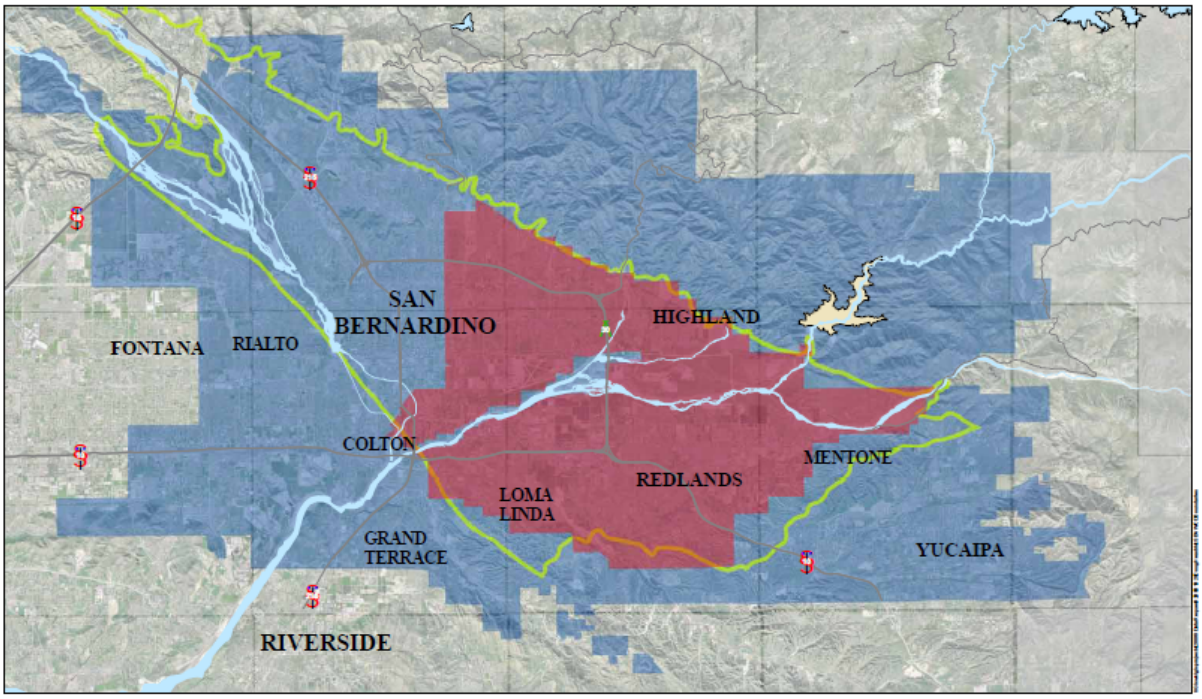
SUBJECT: **AGENDA ITEM #8 – LAFCO 3076 – CONSOLIDATION OF SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT AND SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

INITIATED BY:

District Resolution adopted by the Board of Directors of the San Bernardino Valley Municipal Water District

INTRODUCTION

At the conclusion of its two year municipal service review (hereafter shown as MSR) for the San Bernardino Valley Water Conservation District (hereafter "SBVWCD"), the Commission adopted LAFCO Resolution No. 2893. The Commission's position, articulated in that resolution, was that the Bunker Hill basin was a single community of interest for the provision of water conservation services and mechanisms and a single water conservation entity should address those service needs. Based upon that position, the Commission determined that the SBVWCD would be assigned a zero sphere of influence indicating that a consolidation should take place. The map below identifies the relationship of the Bunker Hill Basin to the boundaries of SBVWCD and San Bernardino Valley Municipal Water District (hereafter "Valley District") and a complete copy is provided as a part of Attachment #1 to the staff report:



San Bernardino Valley Water Conservation District Boundary
relative to the San Bernardino Valley Municipal Water District Boundary and the San Bernardino Basin Area

Feet
0 7,500 15,000 22,500 30,000
San Bernardino Valley Municipal Water District
R Peterson October 27, 2006

San Bernardino Valley Water Conservation District Boundary (from SBCntyGIMS)
San Bernardino Basin Area
San Bernardino Valley Municipal Water District Boundary

Figure 1

The following provides a description of the Bunker Hill Basin taken from the Independent Financial Report prepared under contract to LAFCO by the Rosenow Spevacek Group:

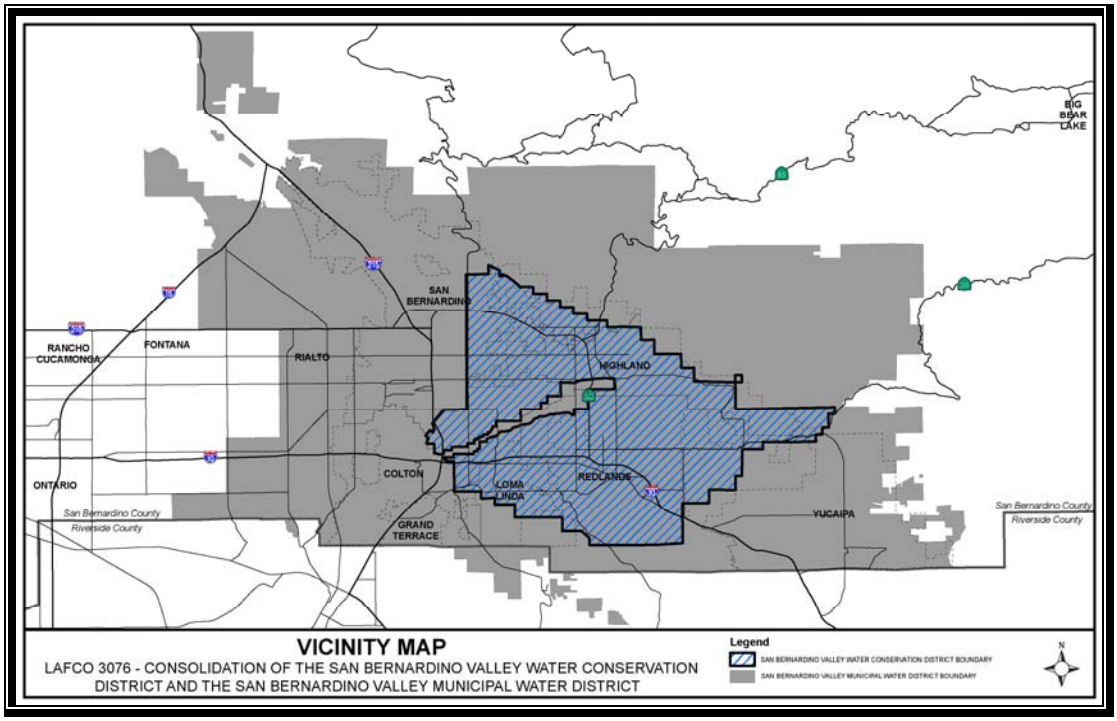
> Bunker Hill Basin
> The Bunker Hill Basin is one of many adjudicated groundwater basins in California for which landowners or other parties have turned to the courts to settle disputes over how much groundwater can rightfully be extracted. The courts determine an equitable distribution of water that will be available for extraction each year and appoint a Watermaster to monitor groundwater levels and administer the court judgment. The judgment in *Western Municipal Water District v. East San Bernardino County Water District*, Case No. 78426 (April 17, 1969) ("*Western* Judgment") appointed Valley District and Western Municipal Water District ("WMWD") as Watermasters for the Bunker Hill Basin Area. Valley District is required to monitor and replenish the basin when surface diversions and groundwater extractions exceed the determined safe yield[1]. As its primary mission, SBVWCD is also responsible for replenishment of the Bunker Hill Basin which it accomplishes through a network of canals, diversion structures, and percolation basins. Groundwater extraction and replenishment activities must be carefully balanced in the Bunker Hill Basin due to the unique hydrogeology of the basin. The western portion of the basin in and around the downtown area of the City of San Bernardino can be characterized as an artesian aquifer and has been designated a "Pressure Zone" by the U.S. Geological Survey. Uniquely high groundwater levels in this western part of the basin have created structural problems in the past from water damage to subterranean structures.[2] Liquefaction is an ongoing risk in the event of an earthquake in the area.

[1] MUNI and WMWD, *Community Report: Santa Ana River Water Right Applications for Supplemental Water Supply* (January 2007), p. 5.
[2] SBVWCD, *Municipal Service Review* (2003), p. 3.

The determination in the MSR for the SBVWCD was made in part due to the passage of AB 2067 (Harmon), effective January 1, 2005, which provided the ability to consolidate districts formed under different principal acts. Until that time, such an effort would require the dissolution of one agency and the assumption of service and territory by another as LAFCO law allowed only for the consolidation of agencies formed under the same principal act. The original legislation had a sunset of July 1, 2008, but SB 819 (Hollingsworth and Kehoe), adopted in 2007, eliminated the sunset making this process a permanent part of LAFCO law. In order to utilize this statute, the Commission must make specific determinations as defined by Government Code Section 56826.5 which are:

> *(1) The Commission must be able to designate a successor…to deliver all of the services provided by the consolidating districts at the time of consolidation.*
>
> *(2) The public service costs of the proposal that the commission is authorizing are likely to be less than or substantially similar to the costs of alternative meaning of providing the service; and,*
>
> *(3) The proposal that the commission is approving promotes public access and accountability for community services needs and financial resources.*

At this hearing, the Commission has before it an application for consideration to consolidate the SBVWCD with Valley District identified as LAFCO 3076. LAFCO 3076 was initiated by Valley District and submitted to LAFCO on November 21, 2006, a copy of the application is included as Attachment #2 to this report. The map shown below illustrates the relationship of the two agencies proposed for consolidation; a copy is included as a part of Attachment #1 to this report.



LAFCO staff circulated the application for review and comment to affected and interested agencies and individuals by mailing of the Notice of Filing on December 14, 2006. On December 16, 2006, LAFCO staff received from the SBVWCD a request for determination of non-district status in the processing of LAFCO 3076. This request was agendized and presented to the Commission at its January 17, 2007 hearing. Based upon the provision of Government Code Section 56128, staff recommended that the Commission determine that SBVWCD was not a district or special district for purposes of Sections 57000 and 57300 which relate to the protest proceedings and completion actions for the consolidation. The effect of this determination was to require that the District's principal act would apply to protest and completion proceedings. But as this staff report identified, a copy of which is included as Attachment #3 to this report, the process would return to LAFCO. The following is a synopsis of that determination:

1. Water Conservation District Law of 1931 within Chapter 4 – Consolidation, Section 76020 states, "A district may be consolidated in the same manner as is provided for the consolidation of county water districts in Chapter 3 (commencing with Section 32650) of Part 8 of Division 12 of this Code."

2. However, the County Water District Law sections identified were repealed in 1965 by the enactment of the "District Reorganization Act", Government Code Section 56000 et seq.

3. Therefore, you are guided to look to the District Reorganization Act for direction. However, in 1985, AB 115 and AB 558, among other bills, enacted the Cortese-Knox Government Reorganization Act which consolidated the District Reorganization Act, the Municipal Organization Act of 1977 (city annexation law) and the Knox-Nesbit Act (LAFCO enabling statute) into a single set of statutes governing the operations of LAFCOs statewide. This statute was contained within Government Code Section 56000

et seq.

4. In 2000, AB 2838 rewrote LAFCO law as the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. This statute is contained within Government Code Section 56000 et seq. Therefore, by virtue of this chain of connecting statutes, the proceedings for protest and completion shall be conducted pursuant to the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act, Part 4 and Part 5 described above.

As the Commission is well aware this has been a litigious process without even having had the opportunity to review the merits of the proposal and it began following the January 2007 determination. Litigation related to the method for processing of the proposal as well as whether the proposal was a dissolution rather than a consolidation was filed in San Bernardino Superior Court, with a change of venue to the Ventura Superior Court. The trial court determined in favor of LAFCO on the issue that the process for protest would return to LAFCO as outlined in the staff report and that the application was a consolidation. The SBVWCD appealed this decision and that appeal was decided in April 2009 indicating that should the Commission determine to approve this proposal, the protest proceedings would be conducted under the procedures prescribed in the Cortese-Knox-Hertzberg Local Government Reorganization Act as outlined by LAFCO staff and that the proposal was a consolidation.

All the while the litigation was being resolved, LAFCO staff continued to conduct its review of the proposal. LAFCO conducted a Departmental Review Committee (DRC) meeting on January 25, 2007 where technical aspects of the proposal were discussed with the affected agencies and other interested agencies and County Departments. At the DRC meeting, the Commission's environmental consultant, Tom Dodson of Tom Dodson and Associates, identified his recommendation that an environmental impact report (hereafter shown as EIR) be prepared for the proposal. Mr. Dodson indicated his recommendation was based upon consultation with LAFCO Legal Counsel, a review of questions posed by the SBVWCD in prior considerations, and a review of the controversy and litigious nature of considerations involving the SBVWCD.

From September 2007 through January 2009, the environmental assessment process was conducted. The Final EIR prepared for this project was reviewed and considered by the Commission at its January 21, 2009 hearing and was certified as complete through adoption of LAFCO Resolution 3046 (copies included as a part of Attachment #9). As a part of the Final EIR discussion at the January 21, 2009 hearing, the SBVWCD requested that an independent financial analysis of the Plan for Service be conducted. The Commission concurred that an independent review of the financial aspects of the Plan for Service should be prepared and directed staff to provide for such a report. At the February 18, 2009 hearing, the Commission contracted with the firm Rosenow Spevacek Group (RSG) to prepare the financial analysis and to provide the Commission with its report on the determinations required related to public service costs and financial accountability outlined in Government Code Section 56881. During the period from February 2009 through June 3, 2009, RSG worked with LAFCO staff and representatives of both districts to prepare the financial analysis of the Plan for Service,

which required acquiring current financial data to supplement that submitted in November 2006 as the Plan for Service document. On July 2, the final Independent Financial Report was delivered to LAFCO staff, a copy of which is provided as Attachment #4 to this report, which provides its response to the determinations required for the consolidation.

On April 6, 2009, the SBVWCD presented LAFCO staff with its Resolution No. 446 outlining its opposition to the consolidation (copy included as a part of Attachment #3 to this report). This resolution succinctly outlines the District's position of opposition. One element of the request cites Government Code Section 56668.3(b) requiring the Commission to "*give great weight"* to the resolution expressing opposition. While the Commission and staff have always given great weight to the position of affected agencies in consideration of changes of organization, the reference provided in this resolution is inaccurate. This section relates to annexations to Districts only.

With the documents submitted to the Commission for its review of LAFCO 3076 now approaching twelve inches thick, the Commission will now need to turn its focus to the consideration of the specific areas of review that are to be considered for any proposal for change of organization: boundaries, land uses, services to be delivered and the impacts on service providers, which includes its financial implications, and environmental considerations. Staff's response to each of these areas of review are provided below with the understanding that further specific information on these and other issues are contained in the volumes of documentation provided as a part of the consideration, which includes, but is not limited to, the Plan for Service submitted by Valley District as a part of its application, the Final EIR for LAFCO 3076 provided to the Commission members on January 9, 2009 and certified as complete on January 21, 2009, and the Independent Financial Report prepared by RSG dated July 1, 2009 and presented as a part of this report.

DISCUSSION OF ISSUES

BOUNDARIES:

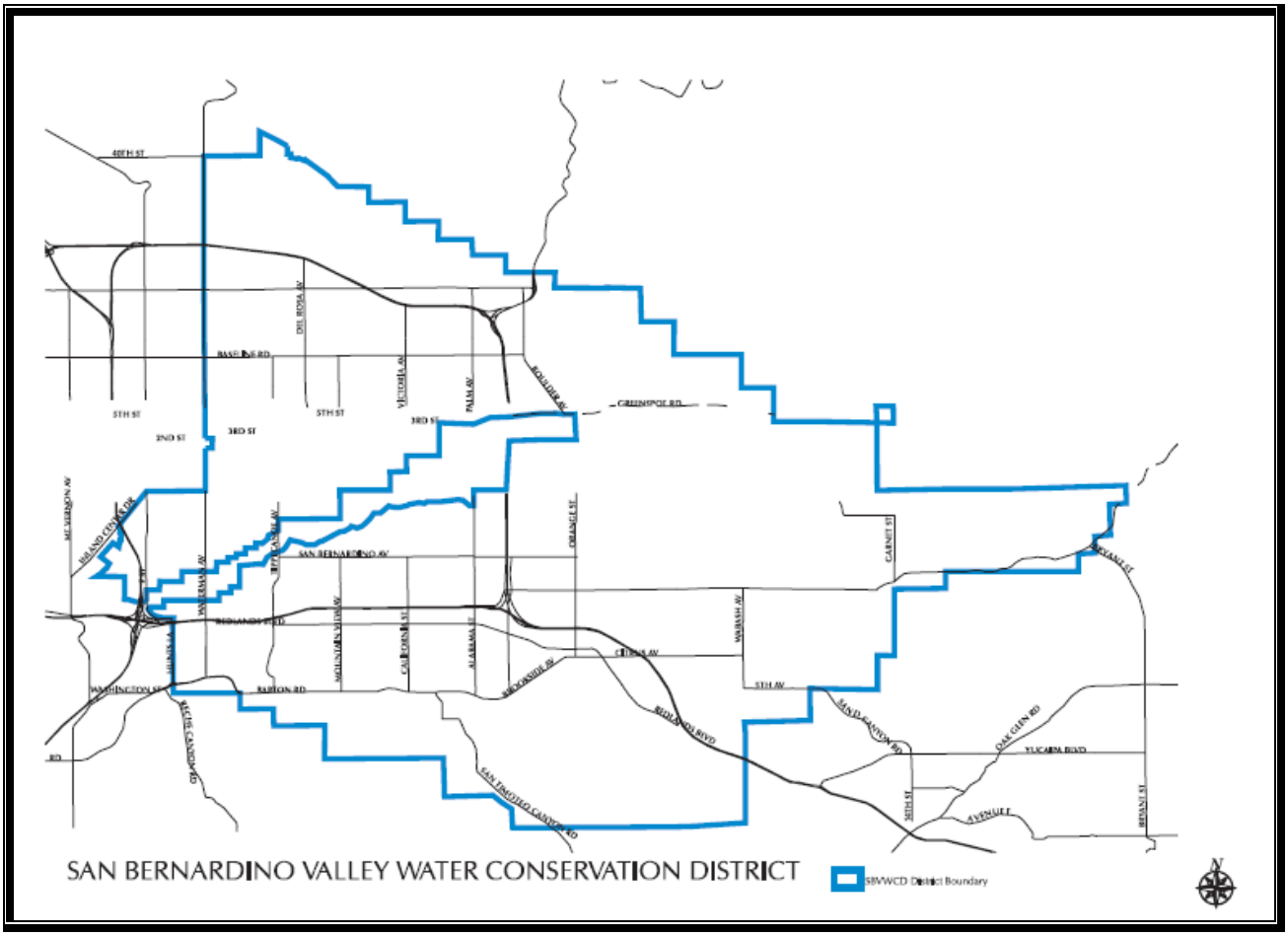
The boundaries of the successor agency as contemplated by the consolidation proposal would be those of Valley District. As the map above illustrates, the existing boundaries of SBVWCD are and have historically been wholly contained with the boundaries of Valley District. The following provides an historic outline of the agencies:

San Bernardino Valley Water Conservation District:

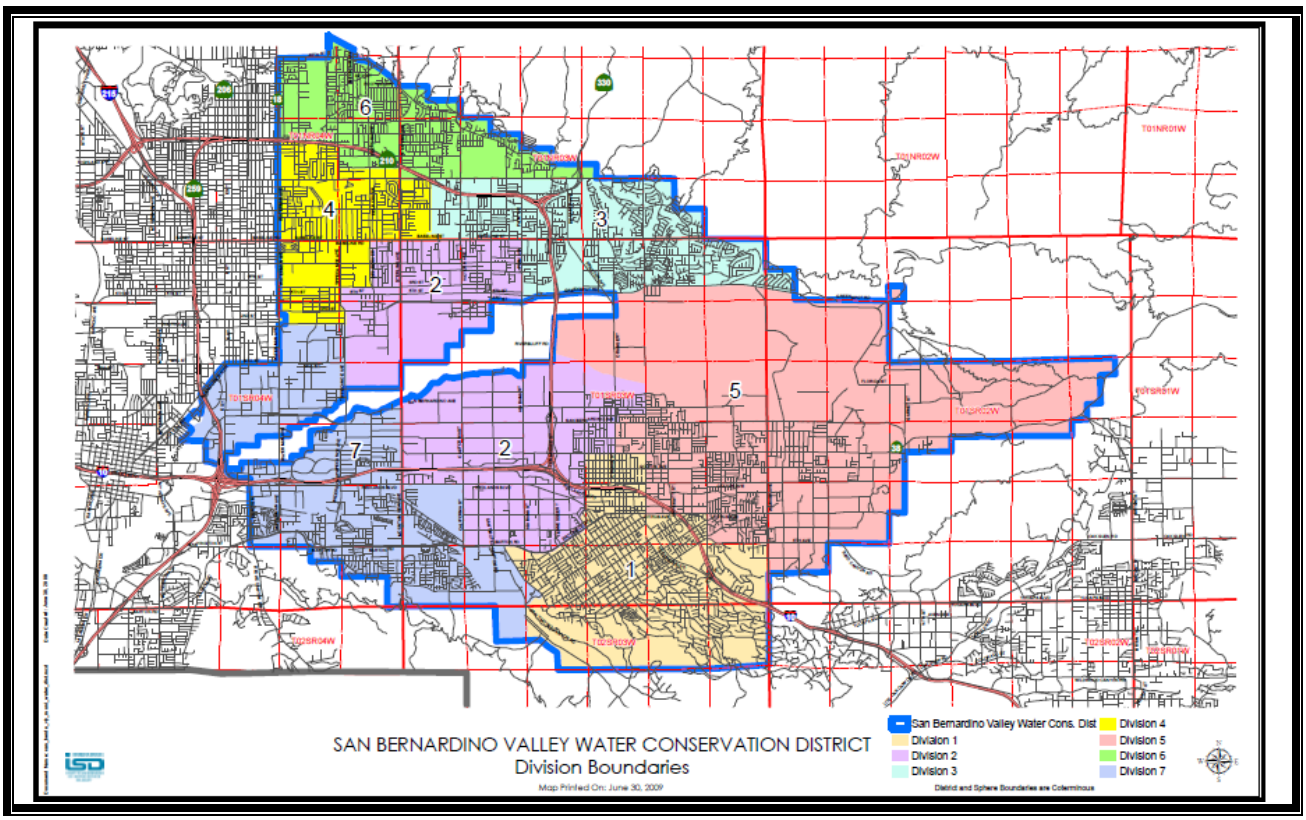
The SBVWCD was formed in 1932 by election of the registered voters within its boundaries. It assumed the operation and assets of the Water Conservation Association within the Santa Ana River under the provisions of the Water Conservation District Law of 1931 (Water Code Section 74000 et seq.). In 1935 it acquired the water rights of the East Lugonia Mutual Water Company to provide for spreading and percolation of water within Mill Creek, a tributary to the Santa Ana River.

Since the inception of Local Agency Formation Commissions in 1963, SBVWCD has annexed two separate areas: (1) the "powerhouse" area which was District-owned property, encompassing 40 acres along its northeastern boundary. These proceedings for annexation were conducted by the District following a determination by LAFCO of "non-district" status in 1977; and (2) in 1993 the annexation of the northwestern portion of the District encompassing 2,929 acres, processed as LAFCO 2751. This annexation included the majority of the lands within SBVWCD which are a part of the City of San Bernardino and in 1993 represented 12,308 registered voters. SBVWCD did not request designation of non-district status and the proposal was processed under LAFCO statutes.

The map below outlines the existing boundary of the district. The peninsula extending from its western boundary to about a mile past the 210 Freeway is the area of the Santa Ana River. The District's attempt to annex this territory during 1993 as a part of LAFCO 2751 was vehemently opposed by the water producers within the area and was ultimately removed from the annexation and remains outside the District's boundary. As determined by the Commission in 2006, SBVWCD has a zero sphere of influence.



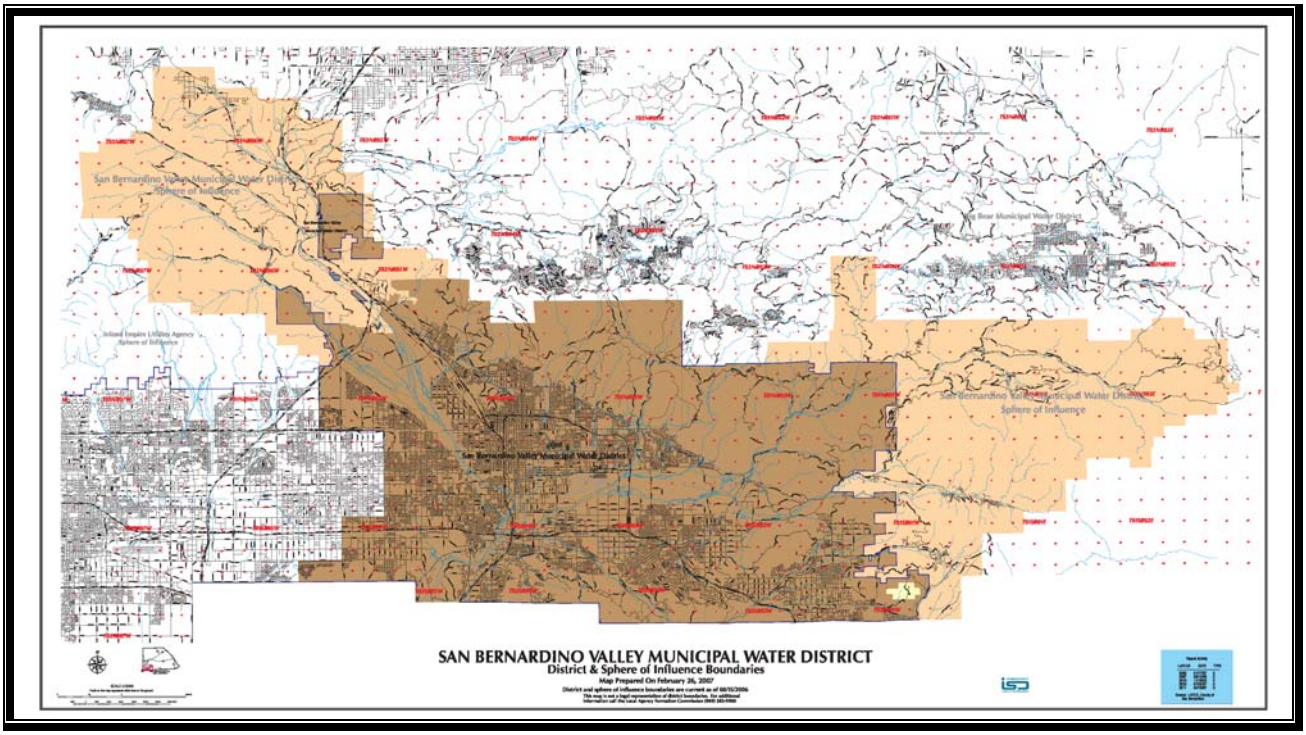
As authorized by Water Conservation District law, SBVWCD is governed by a 7-member Board of Directors elected from within specific divisions. The map which follows outlines the Director divisions within the District:



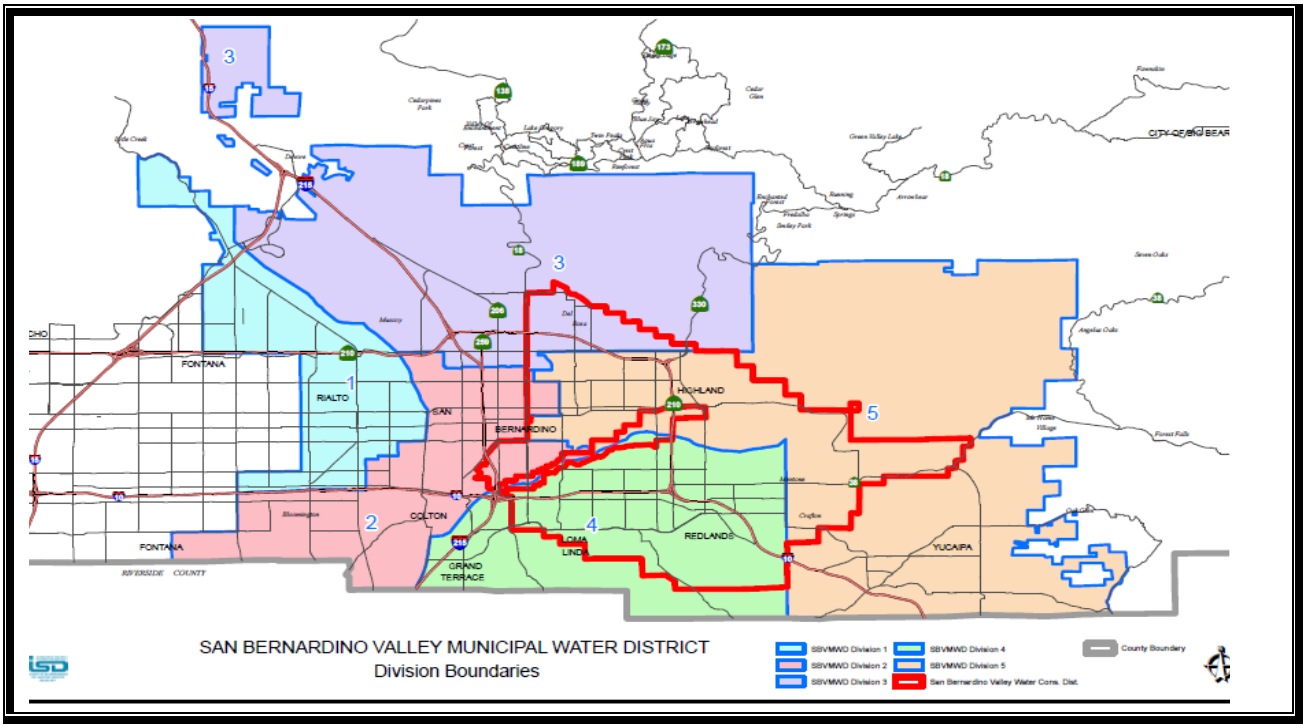
<u>San Bernardino Valley Municipal Water District:</u>

Valley District was formed in 1954 for the purpose of creating a regional agency to plan for the long-range water supplies for the San Bernardino Valley under the provisions of the Municipal Water District Law of 1911 (Water Code §§ 71000 et seq.). Valley District is one of the 29 State Contractors who are responsible for payment of the State Water Project which transports water through the Delta for use in Southern California. Its primary mission is the replenishment of the Bunker Hill, Lytle Creek and Rialto-Colton Basins, and in meeting this obligation it utilizes its State Water Project water allocation of 102,600 acre feet per year (this is the maximum available to Valley District which may be reduced due to delivery restrictions). However, its obligations have come to include the administration of groundwater management responsibilities due to the *Orange County* Judgment and the *Western Judgment,* litigations which were initiated to settle water allocation disputes.

Since the creation of LAFCOs in 1963, the Commission has considered 49 applications for boundary change, which included 81 separate areas of consideration. The map below outlines the existing boundary of Valley District and its sphere of influence which is drawn to include those areas tributary to the Bunker Hill, Lytle Creek and Rialto basins which are under its jurisdiction.

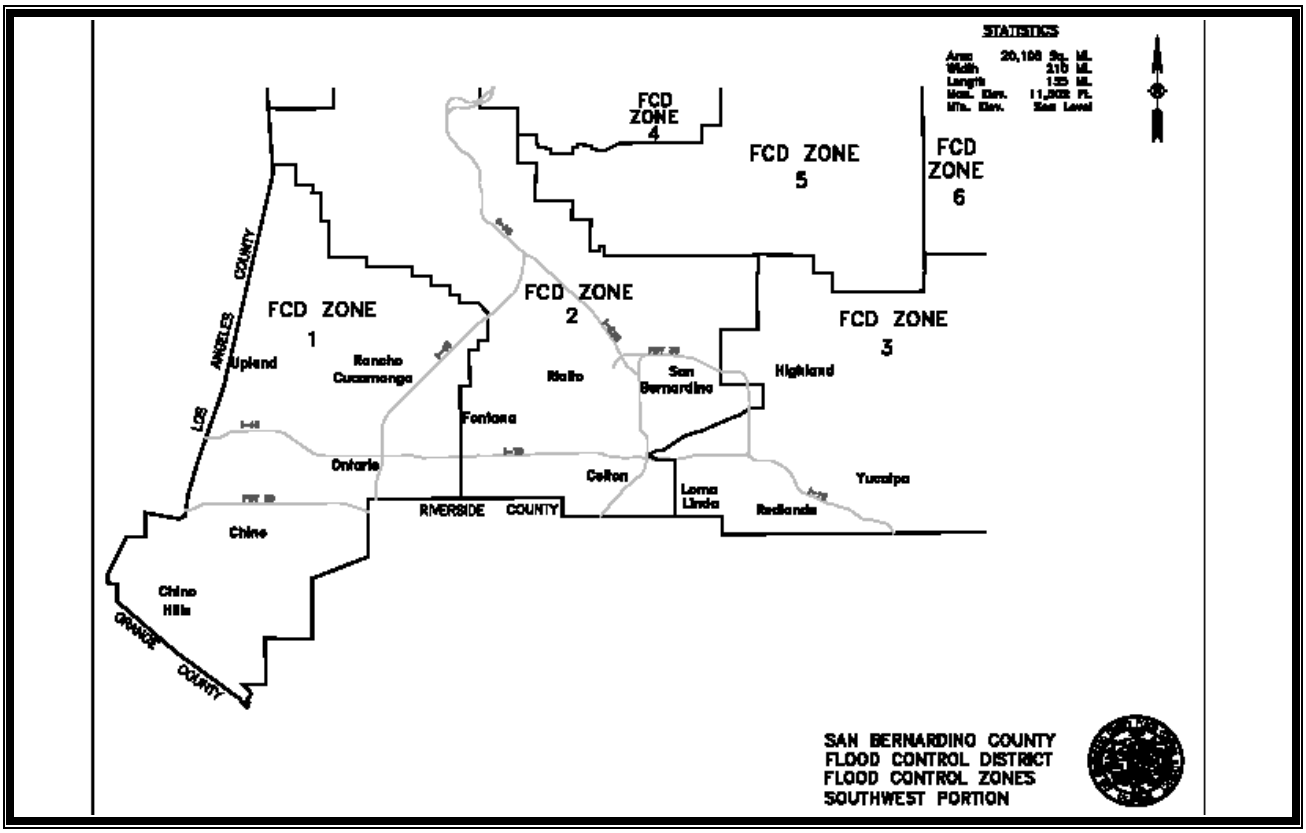


The territory of SBVWCD has been a part of the Valley District since its inception. The voters of SBVWCD currently vote for four of the five members of Valley District's Board of Directors. The map below outlines the Board of Director divisions for Valley District with an overlay of the SBVWCD.



<u>San Bernardino County Flood Control District:</u>

The other local agency with water conservation authority within this area is the San Bernardino County Flood Control District, created in 1939 by the San Bernardino County Flood Control Act (Water Code Appendix, Chapter 43, Section 43-1 et seq.). This agency includes the entirety of the County, and its Zones 2 and 3 overlay the territory within LAFCO 3076. A map of the Flood Zones is shown on the map below.



In the introduction of the Act, it identifies that its purpose is "…*to provide for the control and conservation of flood and storm waters and for the protection of water courses, watersheds, public highways, life and property in said district from damage or destruction from such waters; to prevent the waste of water or the diminution of the water supply in or the exportation of water from said district and to import water into said district and to obtain, retain and reclaim drainage, storm, flood and other waters and to save and conserve all or any of such waters for beneficial use in said district….*" As the Commission will recall, staff consulted with the San Bernardino County Flood Control District during its MSR review and the position of the District's administrator was that their purpose was to move water through their facilities as quickly and safely as possible and they did not pursue directly water conservation efforts.

Based upon the information as outlined above and in the materials submitted for this review, it is the position of LAFCO staff that the consolidation of SBVWCD and Valley District with Valley District determined to be the successor provides for a logical and efficient boundary for the delivery of water conservation services.

LAND USES:

Within the 49,885 acres which are within both the SBVWCD and Valley District are land use designations assigned by the County of San Bernardino and the Cities of San Bernardino, Highland, Colton, Loma Linda, Redlands and Yucaipa. The General Plans of these agencies have the full range of land uses within the territory from densely developed residential uses, industrial, San Bernardino International Airport and its airport land use plan, and open space uses within the floodway of the Santa Ana River and the San Bernardino National Forest. LAFCO 3076 will have no effect on the land uses assigned in these documents.

One element that has been of primary concern during the processing of the MSR for the SBVWCD and LAFCO 3076 is the work done on the "Upper Santa Ana River Wash Management Plan" identified in the materials presented to the Commission on numerous occasion as the "Wash Plan". A copy of the document as presented in November 2008 and adopted by Resolution of the participating agencies is included as Attachment #6 to this report. The following description is taken from November 2008 Wash Plan adopted by SBVWCD through adoption of Resolution No. 444:

2.2 PROJECT GOALS AND OBJECTIVES

The purpose of the proposed project is to allow the continued use of land and mineral resources while maintaining the biological and hydrological resources of the Planning Area in an environmentally sensitive manner. The Wash Plan is intended to coordinate and manage the present and future activities in the Wash, which are part of multiple jurisdictions, each with different needs. The goal of the proposed project is to balance the ground-disturbing activities of aggregate mining, recreational activities, water conservation, and other public services with quality, natural habitat for endangered, threatened, and sensitive species. Objectives of the Wash Plan are:

- Ensure the continued ability of the District to replenish the Bunker Hill Groundwater Basin with native Santa Ana River water using existing and potential future water recharge facilities in the Planning Area;

- Ensure the continued ability of the SBCFCD [San Bernardino County Flood Control District] to protect land and property by managing the floodwaters of the Santa Ana River and its local tributaries (Mill Creek, Plunge Creek, and City Creek);

- Set aside and maintain habitat for sensitive, threatened, or endangered species populations on the project site, and prevent colonization by non-native plants and animals, as mitigation for impacts from other aspects of the project, such as mining, designation of areas for future roadways or water spreading facilities;

- Accommodate the relocation and expansion of aggregate mining quarries, to help ensure long term availability of high quality aggregate reserves located within the Planning Area for local and regional use, consistent with the MRZ-2 designation for reserves in this area, and do so on land adjacent to existing quarries, that have mostly been disturbed;

- Accommodate arterial roads and highways to provide safe modes of travel; and

- Provide trails for public enjoyment of the existing environment.

The proposed project is a multifaceted, multi-agency, and multi-property owner project. The proposed project is the adoption of the Wash Plan. Full implementation of the proposed project will require subsequent preparation of a Habitat Conservation Plan (HCP) pursuant to the Federal Endangered Species Act (FESA) and the California Endangered Species Act (CESA) as well as exchanges of land between various participating entities.

2.2.1 Project-Specific Components

To achieve the above-stated objectives, there are nine components of the Wash Plan:

I. Continued water conservation operations and maintenance activities of the District within the Planning Area, and designation of area for, and environmental mitigation for, potential future groundwater recharge facilities within the area designated for "Water Conservation" and accepted as a joint use by BLM in a portion of the Habitat Conservation area under the Wash Plan.

2. Continued SBCFCD operations and maintenance activities within the Planning Area, and streams adjacent to or leading into the Planning Area (Mill Creek, Plunge Creek, and City Creek).

3. Continued water production operations and maintenance activities of the EVWD [East Valley Water District] and RMUD [Redlands Municipal Utilities Department], within the Planning Area.

4. Aggregate mining activities of Robertson's Ready Mix (Robertson's) and Cemex, on the areas designated in the Land Management Plan for mining, including construction of aggregate vehicle haul roads, an access road from the mining area to 5th Street in Highland, and reclamation of the mine pits at the end of mining operations.

5. Adoption of General Plan Amendments by the City of Highland for land use amendments and zone change and by the Cities of Highland and Redlands for trails plan and habitat conservation plans and grant of a recreational trails right-of-way easement from the District to the Cities of Highland and Redlands.

6. Designation of, and environmental mitigation for, expanded roadway rights-of-way on Alabama Street and Orange Street-Boulder Avenue: widening, straightening, and realignment of Greenspot Road, and designation of right-of-way for a new Greenspot Road Bridge.

7. Designation of rights-of-way for and management of recreational trails in the Planning Area.

8. A land exchange between the District and the BLM. This land exchange is the subject of an Environmental Impact Statement (EIS) being prepared under separate cover. The District's participation in such land exchange is covered by this EIR.

9. A land exchange between the SBCFCD and Robertson's, which is also the subject of this EIR.

While this is anticipated to be a land management plan with elements which provide for transfers of ownership and types of use, the transfer of responsibility for completion of its elements by the SBVWCD as Project Manager through LAFCO 3076 will not have a direct effect on land use designations. The Wash Plan does anticipate actions by the Cities of Highland and Redlands to address the elements of the Wash Plan through General Plan Amendments, but that is not within the purview of SBVWCD, nor Valley District through successful completion of the consolidation.

Therefore based upon the information as outlined above and in the materials submitted for this review, it is the position of LAFCO staff that approval of LAFCO 3076 will have no effect on the land use designations within the area or those anticipated through completion of the multi-layered Wash Plan approvals.

SERVICE CONSIDERATIONS:

The standard review of any application for jurisdictional change requires the Commission to review the service implications and the question of revenues to sustain that service. In addition, consolidation of special districts not formed under the same principal act requires the Commission to determine that there is a successor agency to provide for all the services of the consolidating agencies. This section of the report will provide LAFCO staff's analysis of the delivery of the services.

Each of the agencies included in this consolidation have defined a mission statement which are listed as follows:

> ***SBVWCD*** *(taken from its website): "Our mission 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."*
>
> ***Valley District*** *(taken from page 5 of Plan for Service): "Develop regional facilities to allow coordinated management of available water resources to meet the ultimate requirements of all water purveyors and increase the reliability of supplies, by maximizing the use of local water resources and optimizing the use of imported water. The regional facilities should be cost effective and developed in a systematic phased program with the cooperation of water purveyors."*

As identified in the introduction to this report, LAFCO staff maintains the position that a single agency charged with water recharge will provide the most cost effective and efficient coordination of this service for the benefit of the basin and those who use the water resources therein. The two questions asked during the consideration of the MSR for SBVWCD remain at the base of this review and direct the staff's consideration:

"Why are there three overlapping agencies within the eastern portion of the Bunker Hill Basin authorized to provide water conservation services? Is this division appropriate?

If the Bunker Hill Basin is to be addressed for water recharge and replenishment as a unit, why isn't that responsibility assigned to a single entity which reflects the whole of the Basin?

It is the position of staff that the answer to these questions remains the same that a single government agency should be charged with the management for recharge and replenishment of the Bunker Hill Basin. This position would provide for the management and administration of the basin in the most efficient manner given the changes which have occurred since the completion of the Seven Oaks Dam and the implementation of the Seven Oaks Accord. Therefore, staff supports the consolidation to provide for a single agency charged with water recharge throughout the Bunker Hill Basin, not divided between agencies; to provide for a single agency to be able to balance the Bunker Hill Basin to account for elevated water levels at the southern end as well as the water needs of the northern and eastern portions, and provide for broader public participation in the efforts for water recharge and conservation within the Bunker Hill Basin area.

The section which follows provides the analysis of specific service and financial considerations related to LAFCO 3076:

Services:

The range of services currently authorized as active by LAFCO are defined in its Policy and Procedure Manual, Section 5 Special Districts, Exhibit A as follows:

San Bernardino Valley Municipal Water District	Water	Wholesale, retail, agricultural, domestic, replenishment, conservation
	Sewer	Collection, transportation, treatment, reclamation, disposal
	Power	Generation, distribution
	Park and Recreation	Development, operation, recreation
	Electrical Production	
	Electrical Transmission	

San Bernardino Valley Water Conservation District (amended 3/15/06)	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 basin in order to conserve, store, spread and sink water.
	Surveys of Water Supply and Resources	Make surveys and investigation of the water supply and resources of the Water Conservation District. (added 3/15/06)

Pursuant to the requirements of Government Code Section 56826.5(1) the Commission must designate a successor to all the services provided by the consolidating agencies. The Plan for Service submitted by Valley District in November 2006 outlined its position that it would be able to provide for the continuation of its existing services and the existing services provided by SBVWCD if consolidation is approved[3]. In each case, the District has identified its position on how it would continue the services and identified the related funding mechanism. The responses received from SBVWCD related to the Plan for Service have indicated that the cost savings identified through the consolidation are overstated; therefore, the Commission cannot make the determinations required by Government Code Section 56881. The SBVWCD has not disputed the ability of Valley District to provide these services as required by Government Code Section 56826.5.

LAFCO staff has reviewed the Plan for Service and it is the staff's position that it identifies the maintenance of the current level of services provided by the SBVWCD following consolidation, it provides for the transfer of employees and at a minimum the maintenance of existing levels of salary and benefits for these employees, and it outlines the mechanism for maintaining these services through the potential fluctuation of mining revenues. Therefore, it is the position of LAFCO staff that the Plan for Service complies with the provision of Government Code Section 56653.

However, in order to assure the implementation of the programs provided and the future financial resources identified, LAFCO staff provides the following determinations:

1. Surface Water Rights: SBVWCD has two water right licenses that allow for up to 10,400 acre feet of Santa Ana River water to be diverted for groundwater recharge during certain periods during the year. SBVWCD also claims to hold certain quantities of pre-1914 water rights on the Santa Ana River and Mill Creek. As a condition of LAFCO approval all water rights held by SBVWCD would be

[3] Plan for Service Pages 10 through 19

transferred to Valley District, with Valley District taking the steps necessary through the State Water Resources Control Board. The Plan for Service identifies that Valley District intends to utilize the Santa Ana water under the provision of the Integrated Regional Groundwater Management Plan to optimize recharge in the Bunker Hill Basin Area.

Information identified in the Plan for Service related to the SBVWCD Water Rights Application no longer applies. This determination is based on information provided that the SBVWCD, on April 13, 2007, officially withdrew its application.

In order to address the question of the transfer of the water rights, subject to review by the Water Stakeholders Group if LAFCO 3076 is approved, LAFCO staff would propose that a condition of approval be provided under the provisions of Government Code Section 56886(j) which reads: "*The fixing and establishment of priorities of use, or right of use, of water, or capacity rights in any public improvements or facilities or any other property, real or personal. However, none of the terms and conditions ordered pursuant to this subdivision shall modify priorities of use, or right of use, to water, or capacity rights in any public improvements or facilities that have been fixed and established by a court or an order of the State Water Resources Control Board."*

2. Mining Leases: SBVWCD currently has three land leases for mining activities currently in effect. As a contract related to lands owned by SBVWCD, these land leases would transfer to the successor district. In order to address the question of the transfer of the land leases, subject to review by the Water Stakeholders Group if LAFCO 3076 is approved, LAFCO staff would propose that a condition of approval as authorized by Government Code Section 56886(h) which reads *"…The acquisition, improvement, disposition, sale, transfer, or division of any property, real or personal*." This will allow for the transfer of all rights, duties, responsibilities, properties (both real and personal) that are identified in existing land leases for the purpose of aggregate or mineral extraction or to those which may be proposed through completion of the Mining and Reclamation Plan that is a part of the Land Management component of the "Wash Plan".

3. Wash Plan

On November 12, 2008, the SBVWCD approved the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan ("Wash Plan") document through adoption of its Resolution No. 444. In response to questions which arose during the environmental processing for LAFCO 3076, Valley District adopted its Resolution 945 on September 3, 2008, outlining its commitment to the continuation of the process necessary to bring the Wash Plan to fruition. Again, in response to questions raised by representatives of the mining interests at the January hearing on the EIR, the Valley District Board of Directors adopted Resolution No. 951, on February 18, 2009, which reiterated its ongoing commitment to completion of the Wash Plan should LAFCO 3076 be approved. Copies of these documents are included in Attachment #6 to this report.

In order to address the question of the requirement for continuation of the processing necessary to complete the Wash Plan, subject to review by the Water Stakeholders Group if LAFCO 3076 is approved, LAFCO staff would propose that a condition of approval as authorized by Government Code Section 56886(r) which reads *"…The continuation or provision of any service provided at that time, or previously authorized to be provided by an official act of the local agency*" be provided in the final approval action.

In addition, it is the staff position that discussions with the Wash Plan Task Force would need to take place in order to effectuate the assumption of Project Manager status through Valley District. This position is taken by LAFCO staff since pursuant to the terms of the "Agreement to form the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan Task Force", the Conservation District would serve as the Project Manager, at the pleasure of the Task Force. This arrangement carried forward the 1997 MOUs related to Task Force activities. A copy of this agreement is included as a part of Attachment #6. Should the Task Force determine that another member entity – the membership included as of 2000: Cemex Construction Materials LP, Robertson's Ready Mix Ltd., City of Highland, East Valley Water District, City of Redlands and its Utilities Department, County of San Bernardino and the San Bernardino County Flood Control District, San Bernardino Valley Water Conservation District and the United States Bureau of Land Management -- should be designated to carry forward the Wash Plan through the non-federal approval process, the agreement provides a mechanism for such a change. However, it is LAFCO staff's position that a condition of approval can be included to require continuation of the project through Valley District as the Project Manager.

4. Institutional Management Agreements: The Plan for Service identifies two specific management agreements which SBVWCD serves as manager and a determination on the continuation of services is needed– Santa Ana River – Mill Creek Cooperative Water Project (identified as CWP) Agreement and Big Bear Watermaster. Valley District as successor agency would be responsible for the continuation of the services outlined in the agreements. The terms of the CWP allow for another public agency to provide for the collection and reporting of flow data with the approval of Valley District. As outlined in the Plan for Service, Valley District proposes to have the current staff collecting and providing this data through SBVWCD to continue to provide it following their transition to Valley District. The SBVWCD role as a member of the Big Bear Watermaster following transition will require Valley District to petition the Court to substitute Valley District for SBVWCD. Since Valley District currently has another agreement with Big Bear to provide in-lieu water to Bear Valley to fulfill its obligations under the Watermaster agreement, it appears to LAFCO staff this is a logical course of action.

If LAFCO 3076 is approved, LAFCO staff would propose that a condition of

approval as authorized by Government Code Section 56886(r) which reads "*…The continuation or provision of any service provided at that time, or previously authorized to be provided by an official act of the local agency*" be provided in the final resolution of approval describing the continuation of these services.

5. Transfer of Facilities: Section 4.0 of the Plan for Service identifies that the existing infrastructure of SBVWCD consisting of unlined canals, berms, and dikes made of natural materials which transport water to the existing spreading basins comprise the water recharge facilities. These facilities were generally built in the 1930s and these operations have remained relatively unchanged for the past 70+ years. Within the Santa Ana River the SBVWCD has 14 percolation basins with a wetted area of approximately 131 acres. Within the Mill Creek recharge area the SBVWCD has 59 percolation basins with a total wetted area of approximately 66 acres. Taken together it has been identified by Valley District, the SBVWCD, the environmental consultants and the financial consultants, that the facilities are in good condition and no capital needs have been identified[4]. As identified under Item #2 above, Government Code Section 56886(h) allows for the transfer of real property, which would be utilized as a term and condition to transfer the infrastructure facilities to the Valley District as successor agency.

   In the discussion of Recharge Facilities and Operations, the Plan for Service discusses a Memorandum of Understanding (MOU) with the City of Redlands which proposed to transfer the Mill Creek facilities to the City of Redlands (a copy is included as Appendix C to the Plan for Service). The original MOU identified that the facility would be transferred to the City along with an annual payment from the "Basin Management Account" to fund its maintenance by the City of Redlands. The Memorandum of Understanding had a sunset date of July 1, 2008.

   During the month of December 2008, LAFCO staff contacted the City of Redlands to determine whether it was attempting to seek an extension of the MOU or pursuing a new effort through negotiation with Valley District so that its implementation could be evaluated in the Independent Financial Report and LAFCO staff analysis. Representatives of the City indicated that they were negotiating with Valley District; however, no action by the City Council of the City of Redlands or Valley District has been provided to LAFCO staff to date. While there is no current MOU for transfer of these facilities, it is the LAFCO staff position that the Mill Creek spreading basins are regional resources for recharge that should be retained by the regional agency. Therefore, LAFCO staff would oppose the transfer of these facilities as outlined in the MOU previously provided.

   This position is further supported by new information coming to light following the City of Redlands recent budget adoption. It has been identified that the City has formed a Joint Powers Authority (JPA) to lease the City water and wastewater systems, for a period of at least two years. It is LAFCO staff's understanding that

[4] Plan for Service Submitted by Valley District, page 21;

the JPA would provide a lease payment to the City of approximately $2.5 million dollars during the period. LAFCO staff would be concerned if the Mill Creek facilities were to become a part of the JPA facilities to be leveraged for the benefit of the City of Redlands general fund operations.

6. Transfer of Employees: Government Code Section 56886(l) provides the Commission with the ability to transfer the employment, benefits and rights of the employees of SBVWCD to the successor agency, Valley District. Pursuant to that authority, a condition of approval transferring the employees will be included in the final resolution. The Plan for Service identifies that it will include an "employment offer" to the transitioning employees from SBVWCD; however, LAFCO staff will request that the District provide a detailed transition plan for each SBVWCD employee with title, general job description, salary rate, benefits and other conditions to be included as an attachment to the resolution of approval. Such a plan would exclude the General Manager and Assistant General Manager who have been retained by the SBVWCD through specific contracts. Valley District will be required to assume the contracts in effect at the time of Commission approval of the consolidation.

7. Board of Directors: The Plan for Service submitted by Valley District indicates its position that no change be made to the existing Board of Directors of Valley District through the consolidation. The Plan identifies that the existing members of the SBVWCD Board of Directors become an advisory board to Valley District on matters related to groundwater recharge for a period of four years following consolidation.

   Municipal Water District Law (Water Code Section 71250.1) allows a Local Agency Formation Commission when considering a consolidation to increase the number of directors to serve on the Board of Directors. Such a reorganized board can consist of 7, 9, or 11 for a defined period of time. Section 71250.1(b) specifies the method for reduction of the expanded board of directors to regain the five (5) member board of directors authorized by Municipal Water District Law.

   As a condition of approval the Commission will determine the method for selection of the Board of Directors of the consolidated district. The Commission has the option of:

   a. Accepting the position of Valley District to leave the existing board of directors intact with the seven members of the SBVWCD Board of Directors becoming the advisory board; or,

   b. The Commission may determine to place up to 6 members of the existing SBVWCD Board of Directors with those of the existing Valley District Board of Directors (maximum allowed is a 11-member Board of Directors).

In order to address the question of the future make-up of the Board of Directors, subject to review with the Water Stakeholders Group if LAFCO 3076 is approved, a condition of approval will be required to determine the Board of Directors for the consolidated district pursuant to Water Code Section 71250.1.

Financial Issues:

At the February 2009 hearing, the Commission contracted with the firm of Rosenow Spevacek Group (hereafter shown as RSG) to prepare an Independent Financial Report on the Plan for Service that was submitted for LAFCO 3076. The request for preparation of this document was made by the SBVWCD as a part of the discussion of the Final Environmental Impact Report hearing in January 2009. The action of the Commission, as identified in the minutes of that hearing was to:

> *"… include direction to staff as an overall review of the merits of the consolidation that an independent financial audit by a private auditor outside of LAFCO staff, the cost of which is to be shared by the San Bernardino Valley Municipal Water District and the San Bernardino Valley Water Conservation District, be a part of the staff report to be presented…"*

At the February 2009 hearing, LAFCO staff provided its recommendation to hire the firm of RSG to perform the financial analysis identified by the Commission. Even the consideration of the contract held a level of controversy, since RSG had previously worked with David Cosgrove of Rutan and Tucker, SBVWCD General Legal Counsel. However, as identified in the staff report the Commission resolved that RSG was capable of providing the ethical wall necessary to complete the study.

The Independent Financial Report (hereafter shown as IFR), included Attachment #4 to this report, provides the Commission with detailed information related to the ability of the successor agency to continue the services of SBVWCD. This report provides RSG's position on the financial factors the Commission is required to address under Government Code Section 56881 as well as the factors required to be reviewed by the Commission as identified by statute. It is important to remember that none of the individual factors or determinations requires specific action; however, they must be weighed in relation to all of the factors required by LAFCO law, which includes the financial data, policy determinations, and direction of state law. LAFCO staff will provide additional information related to the determinations and assumptions used in the IFR, such as operational efficiencies gained by consolidation through economies of scale and some questions regarding implementation of existing contracts for providing service.

In its report, RSG also indicated an important fact, specifically the limitations of the IFR. It was identified that based on the scope of work, the IFR is premised on a trends analysis that did not factor in certain economic variables affecting mining royalties and interest income. A much more in-depth economic study of the mining industry would have been required, including market analyses, supply and demand forecasts, and a full assessment of the trickle-down effect of the 2009 American Recovery and Reinvestment Act (Federal Stimulus package) on local infrastructure projects and

aggregate demand. A more thorough review of the performance of the Local Agency Investment Fund and California Asset Management Program would also have been required. RSG stated in its report that "*It is also important to re-emphasize that the analysis involved the historic trending of expenditure data that was frequently reported differently from year to year, making it challenging to create an accurate accounting of costs for specific activities over time (e.g., Wash Plan). To assemble data sets with complete accuracy, a forensic analysis of SBVWCD's records and accounting systems, with participation of an independent auditor, would have been required to assemble the data with complete accuracy".*[5] The Commission will need to weigh the limitations of the IFR when utilizing it to evaluate its ultimate position on factors of consideration. The factors and determinations made by RSG are outlined on pages 21 and 22 of the IFR as follows:

1. **SUFFICIENCY OF REVENUES**:

   "The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change" (Government Code Section 56668(j))

   The IFR evaluated the sufficiency and reliability of anticipated revenues that MUNI proposes to use to fund SBVWCD water conservation activities which MUNI would assume upon consolidation. The IFR's baseline budget projection indicated that, if MUNI maintains all reoccurring expenditures at the same levels, a modest deficit of $128,398 could result in Year 1. Small surpluses are thereafter projected in Years 2 to 5. The deficit in Year 1 is due to one-time transition costs of $150,000 for the consolidation. While the trends analysis projects sufficient revenues beginning in Year 2, LAFCO will need to consider the reliability of these revenues.

   The elimination of the groundwater charge would be a major shift in funding for SBVWCD services. On average, the groundwater charge has historically comprised 29% of all reoccurring SBVWCD revenues. While the elimination of the groundwater charge will offer water producers and the general public significant cost savings, it will also require MUNI to rely on less consistent revenue sources which are sensitive to economic variables that are outside MUNI's control, based on the mining lease agreements. The annual amount of mining royalties and interest income that would be received by MUNI would continue to be highly sensitive to the state of the economy and fluctuations in the real estate and financial markets. From FY 95-96 to FY 07-08, mining income ranged from $89,856 to $1,310,502. Interest income ranged from $155,898 to $531,661. In its consideration of LAFCO 3076, the Commission and the Water Agencies Stakeholder Group may wish to consider terms and conditions that are authorized by Government Code Section 56886 that could mitigate some of these concerns.

[5] Independent Financial Report, RSG dated July 1, 2009, page 21

The SBVWCD has stated that the elimination of the groundwater charge will not create "***significant cost savings"*** to the general public and will shift the costs for Riverside County rate payers to San Bernardino County taxpayers. There will be a cost savings since the water producers do pass along these costs to their ratepayers. The flaw in the analysis is that since the City of Riverside and other out of County agencies own land for purpose of water extraction in San Bernardino County, they have always paid property taxes in San Bernardino County and as such have participated in the funding of the operation sof SBVWCD and Valley District.

LAFCO staff would also propose that as a term and condition, the final approval shall require the segregation of the revenues from the SBVWCD (property taxes, funds on account, cash on hand, and any funds due but uncollected) into a separate Basin Management Account. This account will be impressed with a public trust for support of the water recharge and replenishment activities within the Bunker Hill Basin only. While the Commission has no ability to reach into the affairs of an agency after completion of a proposal, it does retain review authority through its ongoing Municipal Service Review program requiring re-evaluation every five years. The current draft schedule would have the East Valley reviews undertaken in Fiscal Year 2011-12.

2. PUBLIC SERVICE COSTS.

"Public service costs of a proposal that the commission is authorizing are likely to be less than or substantially similar to the costs of alternative means of providing the service" (Government Code Section 56881(b)(1)).

The IFR evaluated whether public service costs are likely to be less than or substantially similar to SBVWCD's current costs for providing services. One of the basic assumptions of the IFR was that Valley District would continue all existing services, programs, and contracts of SBVWCD upon consolidation. The IFR also assumed that all existing SBVWCD employees would become Valley District employees and continue to implement SBVWCD services and programs following consolidation. Valley District has not proposed any new or different services, programs, and contracts or changes in service or employment levels. With the exception of the sale of SBVWCD's properties, no substantive operational changes are anticipated that would increase public service costs. In the short-term, public service costs are likely to be substantially similar to SBVWCD's current costs of operation.

In the long-term, public service costs are likely to be less than SBVWCD's current costs of operation. The two largest reoccurring expenditures in the baseline budget projections were Salaries and Benefits and Professional Services. In the short-term, all current SBVWCD employees are proposed to become Valley District employees upon consolidation at the same levels of compensation. Valley District is also proposing to continue all existing contracts

for professional services. It can be assumed that, over time, consolidation will result in management and operational efficiencies that will reduce redundancies and create significant cost savings to the public through reduced Salaries and Benefits and more cost-effective contracts for Professional Services that benefit the current water conservation activities of both SBVWCD and Valley District.

The IFR has provided a projection of recurring revenues and expenditures[6] which is reproduced below:

FIVE-YEAR TRENDS PROJECTION OF REOCCURRING REVENUES AND EXPENDITURES

	07-08	Year 1	Year 2	Year 3	Year 4	Year 5
REOCCURRING REVENUES						
Mining Income	$ 598,636	$ 1,103,102	$ 1,167,781	$ 1,232,460	$ 1,297,139	$ 1,361,818
Property Tax	$ 77,898	$ 73,224	$ 74,689	$ 76,182	$ 77,706	$ 79,260
Groundwater Charge	$ 610,391	$ -	$ -	$ -	$ -	$ -
Reimbursements for Exchange Plan	$ 18,317	$ 17,849	$ 16,786	$ 15,722	$ 14,658	$ 13,594
Interest Income Totals	$ 439,080	$ 229,061	$ 210,196	$ 191,330	$ 172,465	$ 153,599
Miscellaneous Income	$ 9,509	$ 17,835	$ 18,855	$ 19,875	$ 20,895	$ 21,916
Property Income	$ 118,000	$ -	$ -	$ -	$ -	$ -
TOTAL REOCCURRING REVENUES	$ 1,871,831	$ 1,441,072	$ 1,488,306	$ 1,535,570	$ 1,582,863	$ 1,630,187

	07-08	Year 1	Year 2	Year 3	Year 4	Year 5
REOCCURRING EXPENDITURES						
Salaries and Benefits	$ 771,329	$ 929,004	$ 965,638	$ 1,002,272	$ 1,038,906	$ 1,075,540
Board of Directors Fees	$ 67,973	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ -
Reoccurring Professional Services	$ 348,925	$ 248,767	$ 256,658	$ 264,548	$ 272,439	$ 280,329
Reoccurring Field Operations and Equipment	$ 53,271	$ 58,698	$ 57,557	$ 56,415	$ 55,273	$ 54,132
Reoccurring Services and Supplies	$ 175,677	$ 172,999	$ 180,366	$ 187,733	$ 195,101	$ 202,468
LAFCO Contribution	$ 9,666	$ -	$ -	$ -	$ -	$ -
One-Time Consolidation Costs	$ -	$ 150,000	$ -	$ -	$ -	$ -
TOTAL REOCCURRING EXPENDITURES	$ 1,426,842	$ 1,569,469	$ 1,470,219	$ 1,520,969	$ 1,571,719	$ 1,612,469
SURPLUS (DEFICIT)	$ 444,989	$ (128,398)	$ 18,087	$ 14,600	$ 11,144	$ 17,718

LAFCO staff has taken the material from the Plan for Service submitted by Valley District for operating the water conservation function, placed them in the same category types as those used by RSG, and taken the actual income data from the IFR as provided by SBVWCD to compare the projection of the Plan for Service with the first full year after consolidation (excluding transition cost):

	Plan For Service Fiscal Year 06-07	RSG IFR Year 2 (first full year)
REOCCURRING REVENUES		
Mining Income*	$658,296.00	$1,167,781.00
Property Tax*	$70,951.00	$74,689.00
Reimbursement for Exchange Plan/Wash Plan	$20,000.00	$16,786.00
Interest Income Total*	$437,393.00	$210,196.00
Miscellaneous Income*	$322,628.00	$18,855.00
TOTAL RECURRING REVENUES	$1,509,268.00	$1,488,307.00

[6] IFR page 18

REOCCURRING EXPENDITURES		
Salaries and Benefits	$893,259.00	$965,638.00
Board of Directors Fees	$10,000.00	$10,000.00
Reoccurring Professional Services	$126,000.00	$256,658.00
Reoccurring Field Operations and Equipment	$271,600.00	$57,557.00
Reoccurring Services and Supplies	$77,500.00	$180,366.00
LAFCO Contribution	$2,000.00	
TOTAL REOCCURRING EXPENDITURES	$1,380,359.00	$1,470,219.00

*Taken from SBVWCD Income Data in IFR Appendix C-1

The information provided by RSG in the IFR has indicated that they have been unable to provide an accurate accounting of the Wash Plan costs. The payment by the District to the separate fund to account for costs of the Wash Plan are not clearly discernible in the information provided. For this discussion, it is assumed that the information does not constitute in-kind service as a means of payment of the Wash Plan obligations. Exhibit B-1 of the Wash Plan agreement identifies the percentage allocation for payment of the cost for preparation of the Wash Plan (Appendix F of the Plan for Service). However, as indicated in Appendix B-9 of the IFR, the SBVWCD had costs of $1,566,954 which were not apportioned to the participants over the term of 7/99 through 4/09. The chart below identifies the revenues which would have been recovered had the allocation for payment of cost been applied:

WASH PLAN COST IDENTIFIED IN APPENDIX B-9	Percentage of Cost to be Paid	Cost
Cemex	0.23272	$364,661.53
Robertson Ready Mix	0.23272	$364,661.53
SBVWCD	0.23152	$362,781.19
East Valley Water District	0.0303	$47,478.71
Redlands Utilities Department	0.0303	$47,478.71
County of San Bernardino	0.06061	$94,973.08
San Bernardino County Flood Control District	0.06061	$94,973.08
City of Highland	0.06061	$94,973.08
City of Redlands	0.06061	$94,973.08
TOTAL	1	$1,566,954.00
Payment which would have been due to SBVWCD		$1,204,172.81

If you are to assume that the costs were evenly spread over the ten year period, it would reduce the annual professional services costs by $120,417 which would reduce the trended costs for continuing operations. The cost as shown for the Wash Plan in the 2008-09 Budget was a total of $240,550 ($115,000 under

Regional Programs and $125,550 under professional services). Under the existing apportionment process, SBVWCD should receive a repayment of $184,858.

In addition, the economies to be achieved through consolidation through a reduction of redundant expenditures for such items as auditing, legislative services, and special counsel costs through participation in the larger organization are not identified in the IFR. The Plan for Service does identify these costs in 2006 dollars for reduction, not elimination. The most significant reduction is identified as consultant costs in the Special Services category, for both agencies, of approximately $430,000. Staff would assume that these are the combined costs for processing and litigation related LAFCO 3076.

As noted in the service discussion above related to the transfer of employees, LAFCO staff is concerned that the information provided in the Plan for Service is now outdated due to the transition of the then existing employees of SBVWCD. Should the Commission approve the consolidation, Valley District should be required to provide a more detailed and updated transition plan for employees to be presented to the Commission at the September hearing at the time it considers the resolution of approval. It is the staff's recommendation that this transition plan be included as an attachment to the final resolution of approval.

3. FINANCIAL ACCOUNTABILITY

"A change of organization or reorganization that is authorized by the commission promotes public access and accountability for community services needs and financial resources" (Government Code Section 56881(b)(2)).

The IFR addressed how the consolidation affects public accountability for financial resources involving water conservation activities in the SBVWCD service area, including any relevant financial management or accounting policies that Valley District proposes to administer. Public access to groundwater was not addressed in the IFR or this Report. The IFR's historical trends analysis reveals that, from FY 95-96 to FY 07-08, SBVWCD's reserves averaged $9,027,897 without any substantial deviation. This is a healthy reserve fund that, if maintained, should be expected to cover future budgetary deficits in any given year for reoccurring expenditures. If for whatever reason it does not, Valley District has stated that it "will backfill any temporary deficit with any legal funding source it has available. This internal loan would then be paid back to the appropriate fund when mining revenues increase." If legally permissible, Valley District's ability to backfill temporary deficits would increase public accountability of financial resources within the segregated Basin Management Account.

While SBVWCD's reserve fund would be expected to cover reoccurring expenditures in deficit years, this might not be true if some form of a major non-reoccurring expenditure is required for facilities replacements, upgrades, or repairs in those same years. For purposes of the IFR, all existing SBVWCD

facilities were assumed to be in fair condition. However, LAFCO should consider whether a portion of the reserve fund, or a separate fund, should be created for capital outlay.

The historical trends analysis also revealed that SBVWCD's interest income during the study period ranged between 1.1% and 6.1% of investment totals that were reported at the end of those fiscal years. 1.1% is a fairly low investment return for public agency investment funds that are managed by the State Treasurer's Office. This may have been the result of the transfer of funds in and out of, or in between, investment funds during the fiscal year. If that is the case, the loss of interest income that may have occurred could be mitigated by Valley District by their ability to perform inter-fund transfers that do not involve reserve funds. Such a practice, as a result of consolidation, would increase public accountability of financial resources within the segregated Basin Management Account.

The response received from SBVWCD dated June 11, 2009 related to the IFR identified that the question of accountability was much greater than simply a review of financial matters, and LAFCO staff would agree. Accountability to the registered voters, the agencies' constituents, within the area served by both the SBVWCD and Valley District should be the primary concern of the Commission. The participation of the voters in the selection of their governing bodies has declined over the past years to where most special districts appoint their members in-lieu of election. This has been the case for both the SBVWCD and Valley District for most of its recent elections as the chart below identifies:

ELECTIONS	NUMBER OF DIVISION UP FOR ELECTION	DIVISIONS ON BALLOT
SBVWCD:		
November 1997	2,4,5,6	6
November 1999	1, 3, 7	1
November 2001	2, 4, 5, 6	6
November 2003	1, 3, 7	none
November 2005	2, 4, 5, 6	none
November 2007	1, 3, 7	none
November 2009	2, 4, 5, 6	unknown at this time
VALLEY DISTRICT		
November 1998	3, 4, 5	3, 4, 5
November 2000	1, 2	1, 2
November 2002	3, 4, 5	none
November 2004	1, 2	none
November 2006	3, 4, 5	none
November 2008	1, 2	1
November 2010	3, 4, 5	unknown at this time

> As LAFCO staff has indicated on numerous occasions, Prop. 13 changed the understanding of property owners in the governments which serve them. No longer on the tax bill are the agencies which share in the general levy identified, so the general public does not know it is a part of SBVWCD, Valley District, San Bernardino Flood Control District, Inland Empire Resource Conservation District, East Valley Water District or the various Cities in this area. This is only a small sample of the agencies in the area. This lack of knowledge has, in the staff view, contributed to the decline in participation.
>
> If, as the SBVWCD indicated in its service review, the SBVWCD constituents are the water retailers and extractors in the basin, then the relationship with a consolidated Valley District provides for a broader accountability as it is the agency which has responsibility for replenishment of the basin with State Project Water and would be the entity charged with diversion and percolation of local waters.
>
> For all these reasons, staff believes that the determination can be made as required by Government Code Section 56881(b)(2) both for community service needs and financial resources.

LAFCO staff's response to each of these elements is that the Commission can make the determinations required by Government Code Section 56881 to allow for consolidation of two districts not formed under the same principal act and its can make the determination that all existing services provided by SBVWCD will be continued through the consolidated Valley District as required by Government Code Section 56826.5.

In regard to the factor of consideration related to sufficiency of revenues to provide the service, LAFCO staff believes that the revenues to sustain the service are available, even though the mining revenues are volatile based upon larger economic factors. This determination is based in part on determinations made by the State of California Department of Conservation indicating that the mineral resources in the area proposed for set aside in the Wash Plan contain significant aggregate deposits. Other studies done by the Department of Conservation indicate that of the projected aggregate needs for the Southern California region through 2050 as a whole, only 55% has been permitted. While the revenue stream to the District may fluctuate, the need does not appear to be dissipating.

In regard to the question of facilities and set aside of funds to support replacement of facilities or the necessary improvements, LAFCO staff would indicate that Valley District along with SBVWCD are currently working on enhanced facilities through the program identified as Optimization of the Santa Ana River Groundwater Recharge Facilities. This program will provide for increased capabilities to recharge and replenish the groundwater basins within the study area along with providing the funding mechanism, whether or not the consolidation is approved.

ENVIRONMENTAL:

As a part of the LAFCO processing of LAFCO 3076, staff distributed the Notice of Filing and conducted a DRC meeting on January 25, 2007. At the DRC meeting the technical aspects of the proposal were discussed with affected and interested agencies, as well as County Departments. At the DRC meeting the Commission's environmental consultant, Tom Dodson of Tom Dodson and Associates, indicated that it would be the most prudent course to proceed with the preparation of Environmental Impact Report (EIR). This assessment was based upon the advice of Legal Counsel regarding prior questions related to the environmental consequence of such a consolidation of the Conservation and Valley Districts, and the expectation that LAFCO would be sued irrespective of its decision on LAFCO 3076. LAFCO staff concurred with the course of action outlined by the Commission's Environmental Consultant.

Thereafter, LAFCO initiated the environmental review process and distributed a Notice of Preparation (NOP) for the Draft EIR on September 7, 2007 pursuant to State CEQA Guidelines Section 15082. The NOP, which was prepared by the Commission's environmental consultant, was distributed for review and comment to affected and interested public agencies including the State of California Governor's Office of Planning and Research, as well as to all interested organizations and individuals. The NOP was published in *The Sun*, a newspaper of general circulation in San Bernardino County and within the Project area on September 7, 2007. The public review period for the NOP remained open until October 8, 2007.

LAFCO solicited comments from government agencies and potentially interested parties, including members of the public, by distributing the NOP and holding a public scoping meeting on September 26, 2007 in order to identify issues that should be considered in the preparation of the EIR.

The public scoping meeting participants included representatives from the SBVWCD, the Valley District, the Center for Biological Diversity, and the City of Highland. Issues identified in the response to the NOP, including those contained in three (3) written comment letters received during the public review period and those provided by the SBVWCD, the Valley District, and members of the public during the public scoping meeting, assisted LAFCO in narrowing the issues and alternatives for analysis in the Draft EIR.

On March 13, 2008, RBF Consulting[7], together with LAFCO, met with the SBVWCD and the Valley District to discuss the proposed Project description and solicited additional input from both districts for consideration in the Draft EIR.

[7] At the September 19, 2007 LAFCO hearing, the Commission authorized the release of a Request for Proposal to provide environmental consulting services for the preparation of the EIR for LAFCO 3076. On November 14, 2007, a committee comprised of two members of the Commission, the Commission's environmental consultant, and LAFCO Executive Officer, met to review the three (3) proposals submitted and made a recommendation to the Commission to select RBF Consulting to prepare the EIR for LAFCO 3076. On November 28, 2007, the Commission affirmed the recommendation by the committee to select RBF Consulting.

LAFCO released the Draft EIR (State Clearinghouse No. 2007091035) on June 4, 2008. Pursuant to State CEQA Guidelines Section 15085, the Notice of Completion and the Notice of Availability (NOA) was filed with the State Office of Planning and Research, together with copies of the Draft EIR for distribution to the different State agencies, on June 4, 2008.

Pursuant to State CEQA Guidelines Section 15087, the NOA was advertised in *The Sun*, a newspaper of general circulation in San Bernardino County and within the Project area on June 4, 2008. The NOA was posted at the LAFCO staff office building posting board and was filed and posted with the County Clerk's Office on June 5, 2008. The NOA and Draft EIR were also mailed to all the members of the Commission, to affected and interested public agencies as well as to all interested organizations and individuals on June 5, 2008. A copy of the NOA and Draft EIR were also made available for public review at the LAFCO Office, on the Commission's website, and at twelve (12) different San Bernardino County public libraries located in the east-end of the San Bernardino valley, including the City of San Bernardino's Norman F. Feldheym Central Library.

The release of the Draft EIR initiated a 45-day public review period pursuant to State CEQA Guidelines Section 15105. The public review period remained open until July 21, 2008. The public review period was extended beyond the 45-day public review period due to LAFCO's filing of the NOA with the County Clerk on June 5, 2008 and the fact that the last day of the review period fell on a weekend.

Pursuant to State CEQA Guidelines Section 15086, LAFCO consulted with and requested comments from all trustee agencies, all affected and interested public agencies and all interested organizations and individuals during the 45-day public review period.

LAFCO received six (6) written comments during the public review period for the Draft EIR. LAFCO prepared the Final EIR pursuant to State CEQA Guidelines Section 15089. The Final EIR is comprised of the Draft EIR, comments and recommendations received on the Draft EIR, a list of persons, organizations and public agencies commenting on the Draft EIR, LAFCO's responses to comments, the Errata, and all attachments and documents incorporated by reference.

Pursuant to State CEQA Guidelines Section 15088, LAFCO provided copies of the Final EIR to all commenting agencies, to all the members of the Commission, and to all organizations and individuals requesting copies of the responses to comments on January 9, 2009.

LAFCO, at its regularly scheduled public meeting on January 21, 2009, reviewed the Final EIR, which included the Draft EIR, the comments received from the public and interested agencies, LAFCO's responses to comments, the Errata, and all attachments and documents incorporated by reference. Pursuant to State CEQA Guidelines Section 15090, the Commission certified that it had independently reviewed and considered the

Final EIR for LAFCO 3076, certified that the Final EIR for LAFCO 3076 is consistent with the CEQA, and certified that the Final EIR for LAFCO 3076 is complete. Since the adoption of this resolution there has been no change in circumstance related to the project; therefore, there is no requirement for additional environmental assessment.

The action before the Commission at this hearing is to review and adopt the Statement of Facts and Findings (included as a part of Attachment #9) related to the Final EIR prepared for LAFCO 3076 and if the determination of the Commission is to approve to proposal that it direct the staff to file the Notice of Determination within five days.

The Commission's environmental consultant, Tom Dodson of Tom Dodson and Associates has provided a letter dated July 2, 2009 (included as a part of Attachment #9) which outlines the actions required for the environmental review process for the Commission. Also attached to this report is a copy of the Draft Statement of Facts and Findings for the Commission's consideration. The certified Final EIR, which includes the Draft EIR, the comments received from the public and interested agencies, LAFCO's responses to comments, the Errata, and all attachments and documents incorporated by reference, is included as Attachment #9 to this staff report pursuant to State CEQA Guidelines Section 15095(b).

FINDINGS AND DETERMINATIONS:

The following findings and determinations are required to be provided by Commission policy and Government Code Section 56668 for any change of organization proposal.

1. The Registrar of Voters Office has certified that the study area as a whole is legally inhabited, containing a total of 259,631 registered voters as of June 22, 2009. This number represents the registered voters within the boundaries of San Bernardino Valley Municipal Water District. The boundaries of the San Bernardino Valley Water Conservation District contain 98,017 registered voters as of June 22, 2009, which represents 37.76 percent of the voters of Valley District.

2. The study area, comprised of 225,430 acres (352 +/- square miles) representing the Valley District, includes the 49,960 acres (78 +/- square miles) representing the Water Conservation District. The study area is within the sphere of influence assigned the San Bernardino Valley Municipal Water District.

3. The County Assessor has determined that the assessed value of land and improvements within the entirety of the consolidation area is $36,368,123,802 as of January 1, 2007. The break down of values is as follows:

AGENCY	LAND VALUE	IMPROVEMENT VALUE	TOTAL LAND & IMPROVEMENT VALUE
WATER CONSERVATION DISTRICT	$3,932,923,487	$10,791,434,930	$14,724,358,417
MUNICIPAL WATER DISTRICT	$10,255,672,703	$26,112,454,009	$36,368,126,802

The value of land and improvements within the San Bernardino Valley Water Conservation District is 41% of the total value of Valley District.

4. Commission review of this proposal has been advertised in *The Sun,* a newspaper of general circulation within the study area. Individual notice has been provided to affected and interested agencies, County departments, and those individuals and agencies having requested such notification.

5. Legal advertisement of the Commission's consideration has been provided through publication in *The* Sun through publication of an 1/8th page legal ad as required by law and Commission policy. In accordance with Commission Policy, an 1/8th page legal ad was provided in lieu of individual notice since the number of notices would exceed 1,000.

6. The consolidation study area has been assigned land uses through the County of San Bernardino General Plan (updated in March 2007), and the General Plans of the Cities of Yucaipa, Highland, Redlands, Loma Linda, Grand Terrace, San Bernardino, Colton, Rialto, and Fontana. The consolidation will have no effect on these land use designations.

7. The consolidation area is presently served by the following local agencies within Local Agency Formation Commission purview:

   County of San Bernardino
   All or portions of the Cities of Yucaipa, Highland, Redlands, Loma Linda, Grand Terrace, San Bernardino, Colton, Rialto, and Fontana
   San Bernardino Valley Municipal Water District
   San Bernardino Valley Water Conservation District
   Yucaipa Valley Water District
   East Valley Water District
   West Valley Water District
   Inland Empire Resource Conservation District
   Riverside Corona Resource Conservation District
   San Bernardino County Fire Protection District and its Valley Service Zone
   Fontana Fire Protection District
   Bloomington Park and Recreation District
   Rubidoux Community Services District
   County Service Area SL-1 (Streetlighting)
   County Service Area 63
   County Service Area 70 (multi-function unincorporated area Countywide) and its Improvement Zones P-10, P-11, P-2, P-7, R-30, EV-1, and CR

   A listing of all the pubic agencies within the study area is on file in the LAFCO office. The San Bernardino Valley Municipal Water District and San Bernardino Valley Water Conservation District are the only affected agencies. None of the

other agencies will be directly affected by the completion of this proposal through an adjustment in their boundaries.

8. The Commission's Environmental Consultant, Tom Dodson and Associates, has provided an outline of the environmental actions necessary at this hearing, specifically to acknowledge that the Commission certified the Final Environmental Impact Report as complete on January 21, 2009 through adoption of LAFCO Resolution No. 3046, adoption of the Statement of Facts and Findings and the direction to the Clerk to the Commission to file the Notice of Determination.

9. Upon consolidation the successor District, the San Bernardino Valley Municipal Water District, will extend its services to the residents, landowners and governments within its boundaries. The Plan for Service submitted by the San Bernardino Valley Municipal Water District provides an outline of the delivery of services as mandated by Government Code Section 56653. The Plan indicates that the consolidated District can maintain the level and range of water conservation services currently provided by the predecessor agencies, the San Bernardino Valley Municipal Water District and the San Bernardino Valley Water Conservation District. This Plan is included as Attachment #2 to this report.

   On February 18, 2009, the Commission contracted for the provision of an Independent Financial Analysis of the Plan for Service by the Rosenow Spevacek Group Inc. This report was to provide a response on factors required by Government Code Section 56881. The report presented by RSG indicates that revenues are anticipated to be sufficient to provide the level of services identified as the "core" operations of the Water Conservation District by the consolidated agency and that the consolidation will provide for public access and accountability of the financial resources for the service.

10. The consolidation complies with Commission findings in its service review for the San Bernardino Valley Water Conservation District that a single entity to plan and provide for the water conservation needs of the Bunker Hill Basin as a unit would be appropriate.

11. The service area can benefit from consolidation through the economies of scale available and the coordination of efforts in conjunction with other water retailers in the region to address water resources within the entirety of the Bunker Hill basin.

12. This proposal will have no effect on the ability of the Cities' within the boundaries of this change of organization to achieve their fair share of the regional housing needs.

13. The County of San Bernardino has determined the exchange of property tax revenues as required by Revenue and Taxation Code Section 99 indicating the transfer of the San Bernardino Valley Water Conservation District share to the

San Bernardino Valley Municipal Water District. The adoption of the resolution by the San Bernardino County Board of Supervisors on March 27, 2007 fulfills the requirements of Section 99 of the Revenue and Taxation Code.

14. In response to the determination regarding environmental justice, the consolidation will not result in the unfair treatment of any person or agency based on race, culture or income.

15. The map and legal description are in substantial compliance with LAFCO and State standards through certification by the County Surveyor's Office.

CONCLUSION:

Throughout the past five years of reviewing the issue of water recharge and replenishment in the Bunker Hill Basin, LAFCO staff has presented the Commission with literally boxes of information regarding the SBVWCD and Valley District. Throughout this discussion, the issue of the most efficient and effective method for providing water recharge and replenishment services has been the paramount consideration of LAFCO staff and the Commission. In the staff view, the most effective means to provide for water recharge in this area is through a single agency with responsibility for the entirety of the Bunker Hill Basin and that would be the San Bernardino Valley Municipal Water District. Since the early 1970s Valley District has had the responsibility to balance the water needs of the Bunker Hill Basin with judgments requiring delivery of water to downstream users and its management responsibility as a State Water Project contractor. Approval of LAFCO 3076 will clarify, and hopefully expedite, responses to water issues in this part of the Valley.

In addition, over the last couple of years, a more earnest effort has begun to take shape in the East Valley for providing education of the water users and to provide for a means of recycled water to reduce the drain on the groundwater basin. This educational effort has been spearheaded by the Water Resource Institute at Cal-State San Bernardino. All residents and agencies in the water business will need to look at best practices to utilize the finite resource of our local groundwater. Efforts by the State Legislature to mandate changes in the way we use water will also require a regional perspective, such as the new requirements for landscape ordinances. In all these efforts, a single agency responsible for the physical recharge of the basin will be, in the LAFCO staff view, a benefit to the general public.

State law requires that the Commission make specific determinations related to the consolidation of two special districts formed under different principal acts (Government Code Section 56826.5) and the factors of consideration require that the Commission determine that there are sufficient revenues to sustain the service following the change of organization. It is the staff's position that the Commission can make the determinations required as follows:

1. The successor agency, Valley District, will succeed to and provide all the services currently provided by the existing Valley District and the SBVWCD.

2. The successor agency, Valley District, will have sufficient revenues to provide the service following the change of organization. This determination is made even though the revenues associated with the mining activities fluctuate due to larger economic factors. However, the existing financial resources of Valley District can smooth those revenue fluctuations without access to the current groundwater assessment imposed by SBVWCD.

3. The IFR has identified that the public service costs for providing the services are substantially similar to the costs of alternative means of providing the service (existing status quo).

4. The change as proposed for approval promotes public access and accountability for community service needs and financial resources as outlined in the discussion above.

For all the reasons outlined in this report and the prior reports related to the MSR for the San Bernardino Valley Water Conservation District, staff recommends approval of the consolidation of the San Bernardino Valley Water Conservation District and San Bernardino Valley Municipal Water District.

RECOMMENDATION:

Staff recommends that the Commission take the following actions:

1. For environmental review:

   a. Acknowledge that the Commission has certified the Final EIR for LAFCO 3076 at its January 21, 2009 Commission hearing as set forth in Resolution No. 3046 (copies included as a part of Attachment #9);
   b. Adopt the Statement of Facts and Findings as presented in Attachment #9 to this report; and,
   c. Direct the Clerk to the Commission to file a Notice of Determination within five days with the Clerk to the Board of Supervisors and the State Clearinghouse.

2. Approve LAFCO 3076 subject to the standard LAFCO terms and conditions including the following condition:

   As of the date of Commission approval of LAFCO 3076 and pursuant to the provisions of Government Code Section 56885.5(a)(4), the SBVWCD and Valley District shall be prohibited from taking the following actions unless they each first finds an emergency situation exists as defined in Government Code Section 54956.5:

a. No increase in compensation or benefits.
Providing any increase in compensation or benefits for members of the governing board, its officers, staff or the contracts related to the general manager or assistant general manager of the SBVWCD and Valley District;

b. Bound by current budget
Appropriating, encumbering, expending or otherwise obligating any revenue of SBVWCD or Valley District beyond that provided in the current budget at the time of commission approval.

3. Direct the Executive Officer to convene the Water Stakeholders Group during the month of August to review terms and conditions which include, but are not limited to, the transfer of water rights, use of water, properties, establishment of Basin accounts and other items regarding the transition of the assets and employees of the SBVWCD following consolidation; and,

4. Defer adoption of the Final Resolution of Approval to the September 16, 2009 Commission hearing to allow for integration of the terms and conditions as reviewed with the Water Stakeholders Group.

/krm

Attachments:

1 – Maps of LAFCO 3076
2 – Application Submitted by the San Bernardino Valley Municipal Water District which includes: Resolution No. 924 Initiating Proposal, Justification for Proposal, Supplement Form, Plan for Service dated November 15, 2006; Final Performance for Effective Recharge Coordination Report (known as the PERC Report) of the SBVWCD dated March 7, 2007, Letter from the City of Redlands Dated March 26, 2009 Related to Memorandum of Understanding on Transfer of Property
3 – LAFCO Staff Report for SBVWCD Request for Non-District Status Dated January 8, 2007, Copy of SBVWCD Resolution No. 446 Outlining Its Opposition to LAFCO 3076
4 – Independent Financial Report Prepared By Rosenow Spevacek Group, Dated July 1, 2009,
5 – Response Received from San Bernardino Valley Municipal Water District Dated June 11, 2009, Response Received from San Bernardino Valley Water Conservation District Dated June 11, 2009, Response to Comments Provided by Rosenow Spevacek Group Dated July 1, 2009
6 – Resolution No. 951 of the San Bernardino Valley Municipal Water District Board of Directors Outlining its Commitment to the "Wash Plan"; SBVWCD Resolution No. 444 Adopting the "Wash Plan", and the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan Document, Dated

November 2008, and San Bernardino Valley Municipal Water District Resolution No. 945 Reaffirming Commitment to Wash Plan

7 –November 10, 2008 Staff Report Related to Request from City of San Bernardino Municipal Water Department to Reconstitute Water Producers Advisory Committee

8 – LAFCO Resolution No. 2893 Related to LAFCO 2919 and Staff Reports Related to Processing of Municipal Service Review for San Bernardino Valley Water Conservation District

9 – Letter from Tom Dodson, of Tom Dodson and Associates For Environmental Determinations for LAFCO 3076, Draft of Statement of Facts and Findings for LAFCO 3076, LAFCO Resolution No. 3046 Certifying Final Environmental Impact Report and Final Environmental Impact Report for LAFCO 3076 Which Includes Response to Comments and Errata together with the Draft Environmental Impact Report