



**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF MAY 20, 2009**

Chairman and it is as follows: Ayes: Cox, Derry, McCallon, Pearson, Smith, Williams. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Curatalo (Commissioner Smith voting in his stead), Mitzelfelt, Nuaimi (Commissioner Williams voting in his stead).

As Chairman Nuaimi had not yet arrived, by consensus the Commission appoints Commissioner Pearson to act as chairman.

**APPROVAL OF MINUTES FOR REGULAR MEETING OF APRIL 15, 2009 – APPROVE STAFF RECOMMENDATION**

Commissioner Pearson calls for any corrections, additions, or deletions to the minutes. There are none. Commissioner McCallon moves approval of the minutes as presented, second by Commissioner Derry. Commissioner Pearson calls for opposition to the motion.

(It is noted that Chairman Nuaimi arrives at 9:05 a.m.)

Commissioner McCallon asks if the minutes could be placed on the consent calendar in the future. Ms. McDonald states that the rules of order adopted many years ago have shown the minutes as a separate item; however those rules can be changed. Legal Counsel Clark Alsop states that the Commission may direct the Executive Officer to place this request on next month's agenda. The Commission directs Ms. McDonald to return at the June hearing with a report.

There being no opposition to the motion to approve the minutes, the motion passes with the following vote: Ayes: Derry, McCallon, Nuaimi, Pearson, Smith. Noes: None. Abstain: Cox. Absent: Biane (Commissioner Derry voting in his stead), Curatalo (Commissioner Smith voting in his stead), Mitzelfelt.

**CONSENT ITEMS – APPROVE STAFF RECOMMENDATIONS**

LAFCO considers the items listed under its consent calendar. The consent calendar consists of:

Item 3. Approval of Executive Officer's Expense Report

Item 4. Ratify Payments as Reconciled for Month of April 2009 and Note Cash Receipts

A Visa Justification for the Executive Officer's expense report, as well as a staff report outlining the staff recommendation for the reconciled payments, have been prepared and copies of each are on file in the LAFCO office and are made a part of the record by their reference here.

Commissioner Cox moves approval of the consent calendar, second by Commissioner Pearson. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Cox, Derry, McCallon, Nuaimi, Pearson, Smith. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Curatalo (Commissioner Smith voting in his stead), Mitzelfelt.

**CONTINUED/DISCUSSION ITEMS:**

**CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR SCHEDULE OF FEES, DEPOSITS AND CHARGES REVISIONS; AND (2) REVIEW AND ADOPTION OF SCHEDULE OF FEES, DEPOSITS AND CHARGES FOR FISCAL YEAR 2009-10 – APPROVE STAFF RECOMMENDATION**

LAFCO conducts a continued public hearing to review and consider adoption of its Schedule of Fees, Deposits and Charges for Fiscal Year 2009-10, to be effective June 1, 2009. Notice of the original hearing on April 15, 2009 was advertised as required by law through publication in *The Sun*, a newspaper of general circulation. Individual notice of this hearing was provided to affected and

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interested agencies, County departments, Cities/Towns, Independent Special Districts, the County and those individuals and agencies requesting mailed notice.

LAFCO Analyst Michael Tuerpe presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Mr. Tuerpe states that at the April hearing, LAFCO staff presented the proposed schedule of fees, deposits and charges for Fiscal Year 2009-10. He adds that, following that hearing, staff forwarded the fee schedule to the County, independent special districts, and cities and towns in the County for review and comment. He says that LAFCO staff has received no proposed changes or comments. Therefore, LAFCO staff recommends the Commission take the action outlined in the staff report for approval.

Chairman Nuaimi calls for questions from the Commission. There are none.

Chairman Nuaimi opens the public hearing and calls upon those wishing to speak. There is no one. Chairman Nuaimi closes the public hearing.

Commissioner McCallon moves approval of staff recommendation, second by Commissioner Derry. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Cox, Derry, McCallon, Nuaimi, Pearson, Smith. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Curatalo (Commissioner Smith voting in his stead), Mitzelfelt.

**REVIEW AND ADOPTION OF FINAL BUDGET FOR FISCAL YEAR 2009-10 – APPROVE STAFF RECOMMENDATION**

LAFCO conducts a continued public hearing to review and adopt the Final Budget for Fiscal Year 2009-10. Notice of the original hearing on April 15, 2009 was advertised as required by law through publication in *The Sun*, a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, County departments, Cities/Towns, Independent Special Districts, the County and those individuals and agencies requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by reference herein. She states that the only comment received was a question regarding the apportionment process by the Auditor/Controller-Recorder. She says that a response has been provided to that question.

Ms. McDonald adds that, following the April hearing, LAFCO staff conferred with City of San Bernardino staff regarding cancellation of the video production contract. In reviewing the details, it was discovered that cancellation of that contract would also cancel the use of the video screens in the council chambers. Because of the clarity provided by the use of these screens, it is recommended that the budget be modified to include contracting with the City of San Bernardino in the amount of \$2,700 for the year for the City's services. That contract will include broadcasting of the hearings on the local TV channels.

Ms. McDonald states that staff recommends that the Commission adopt the budget as modified and request that the Auditor/Controller apportion costs pursuant to the estimates provided to the Cities, Towns and Independent Special Districts, that the Commission approve the contract with the City of San Bernardino, adopt LAFCO Resolution 3058 which reflects the determinations that were a part of the budget, defer salary adjustments that were previously approved for one year, moving both to the years 2010 and 2011, amend the hiring practices for the assumption of leave balances, direct the Executive Officer to submit those to the Auditor/Controller-Recorder and the County and cities/towns and direct the Auditor/Controller-Recorder to bill and receive the apportionment process.

Chairman Nuaimi calls for questions from the Commission. Commissioner Cox comments that, in reviewing the apportionment plan, it seems disproportionate that a special district with a revenue

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stream as little as \$2 million pays \$10,000 to the agency, when there are cities with, for example, a \$26 million revenue only paying \$4,000. She adds that for many of the smaller special districts, this is a significant burden. She asks if this can be addressed legislatively.

Ms. McDonald responds that it does not have to be addressed legislatively. She explains that the independent special districts adopted a formula to distribute costs in 2001-02 by vote of the independent special districts. She says that changing that process would be incumbent upon the independent special districts to submit a request to reopen that consideration and LAFCO staff would act as staff for the Special Districts Selection Committee and would circulate the request. Commissioner Cox states she would like to begin the process to attempt to make that change. Ms. McDonald comments that the formula does not include an inflationary factor, so as revenue streams fluctuate there is no change. She adds that that was the reason staff asked the four largest districts to participate in a revised apportionment process.

Chairman Nuaimi opens the public hearing and calls upon those wishing to speak. There is no one. Chairman Nuaimi closes the public hearing.

Commissioner Cox moves approval of staff recommendation, second by Commissioner Derry. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Cox, Derry, McCallon, Nuaimi, Pearson, Smith. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Curatalo (Commissioner Smith voting in his stead), Mitzelfelt.

**MUNICIPAL SERVICE REVIEW FOR THE COMMUNITIES OF YERMO, DAGGETT AND NEWBERRY SPRINGS, AND THE FOLLOWING SPHERE OF INFLUENCE UPDATE/AMENDMENT REVIEWS – APPROVE STAFF RECOMMENDATION TO CONTINUE TO JUNE 17, 2009**

Chairman Nuaimi opens the public hearing and notes a request has been made to continue the matter to the June 17, 2009 hearing. Ms. McDonald states that Commissioner Mitzelfelt has requested that the matter be continued in order for him to be present and participate in the discussion. Chairman Nuaimi states that he will not be attending the June hearing.

Chairman Nuaimi calls upon those wishing to speak. There is no one. Chairman Nuaimi closes the public hearing.

Commissioner McCallon moves approval of staff recommendation, second by Commissioner Cox. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Cox, Derry, McCallon, Nuaimi, Pearson, Smith. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Curatalo (Commissioner Smith voting in his stead), Mitzelfelt.

**CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3008A; AND (2) LAFCO 3008A – ACTIVATION OF WATER POWERS FOR YERMO COMMUNITY SERVICES DISTRICT – APPROVE STAFF RECOMMENDATION TO CONTINUE TO JUNE 17, 2009**

Chairman Nuaimi opens the public hearing and notes that staff is requesting that the matter be continued to the June 17, 2009 hearing. Ms. McDonald states that an unintended consequence of legislation that was drafted to clarify the determination of a change of organization has had an effect on the property tax negotiation process set out in the Revenue and Taxation Code Section 99. She explains that a change of jurisdiction in the Revenue and Taxation Code, by definition, refers back to LAFCO's definition, which means that a change in function or service for a special district now requires a property tax transfer resolution. She states that a process has been established with the County Administrative Office to move forward with a zero property tax transfer resolution which will be

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submitted before the June hearing. She points out that the CALAFCO legislative committee will work next year to correct the unintended consequence of the language change.

(It is noted that Commissioner Curatalo arrives at 9:18 a.m.)

Commissioner Pearson asks if this continuance will have an effect on the service provided by the water company to its customers. Ms. McDonald states the PUC has rendered an opinion and has directed its staff to petition the San Bernardino Superior Court to take receivership of the Yermo Water Company. She explains that the Yermo Water Company does not provide satisfactory service and LAFCO must move forward with the activation of water powers so that the receiver can consider the Yermo CSD as a possibility in acquiring the system. She says the receiver will make sure that service continues for the customers.

Chairman Nuaimi calls upon those wishing to speak. There is no one. Chairman Nuaimi closes the public hearing.

Commissioner Cox moves approval of staff recommendation, second by Commissioner Derry. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Cox, Curatalo, Derry, McCallon, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Mitzelfelt.

**PENDING LEGISLATION REPORT**

Ms. McDonald states that her pending legislation report includes a review of three bills sponsored or cosponsored by CALAFCO. The first is AB528 (Silva) which is the final piece to transfer to the FPPC expenditure reporting requirements for LAFCO actions. She states LAFCOs are fully supporting this bill. The others, SB113 and AB1582, are omnibus bills making non-substantive changes in LAFCO law.

Ms. McDonald reports that AB1109 (Blakeslee) will address what the assemblyman has identified as "non-performing special districts." The bill would establish a process much like the PUC's receivership mechanism to allow the district to continue to exist but be managed by another entity. She states there are number of small districts in northern California that have problems. Locally, the Rim of the World Park and Recreation District and others are experiencing problems. She states this is a two-year bill to allow for more work to take place with stakeholder groups including California Special Districts Association, Sanitation Districts Association, Water Districts Association, etc. Ms. McDonald states she is serving on a CALAFCO subcommittee to make sure that the LAFCO process is protected.

She states that there are two other bills of importance. Those are SB194 (Florez), the "Community Equity Investment Act of 2009," and its companion, AB853 (Arumbula). She says that SB194 is proposing to change the way infrastructure and block grant funds are delivered, to address the issues for disadvantaged communities which, until yesterday, were identified as island communities that were 75 percent surrounded and could be communities that could be 1½ miles of a city or adjacent to a city sphere of influence. She states that there is concern because it identified that island communities had to be 75 percent surrounded. LAFCO law specifically does not provide a percentage and each LAFCO is permitted to define for itself what it considers to be an island. She says that, as of Monday, the bill has been amended and CALAFCO is maintaining a watch position as it moves forward.

Ms. McDonald states that AB853 (Arumbula) is the companion bill and is intended to provide an expedited annexation process for what it defines as unincorporated disadvantaged communities. She says it is sponsored by the California Rural Legal Assistance and the Planning and Conservation League. The bill is purported to address concerns including denial of annexation of unincorporated

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farm labor communities with annexation of territory around those communities leaving them without services. She explains that this type of action has sparked the environmental justice issues from the Salinas Valley and others.

She explains that the legislator is trying to encourage annexation of these types of fringe communities to cities and by doing so is changing the annexation process in its entirety. She says that her report includes several bullets which provide for a definition of "unincorporated fringe community" which would be different from SB194, and discusses a legacy community which is a small community outside a city limit. She states that CALAFCO is very concerned that the provisions of this bill will promote leapfrog development and do not address the current requirement that annexations be contiguous to City boundaries. This bill implies that annexation can occur for these unincorporated fringe disadvantaged communities if they are within the sphere of influence and/or within 1½ miles of the city's boundaries. She says it requires LAFCO to approve these annexations unless it finds "a preponderance of evidence" that the change will not result in a net benefit to the public health. This would be a difficult determination to make if city services create a benefit because roads are better, policing and fire protection are better, etc. In addition, the bill is currently silent on the issue of special districts and it requires that the City amend the General Plan after the annexation takes place. She explains that this implies that annexation can take place before planning occurs, making it difficult to evaluate a plan for service to be delivered. She says that if the city and county cannot reach a property tax agreement it includes a special provision that LAFCO will determine a revenue neutrality agreement. Current revenue and taxation code requirements include that the property tax agreement be agreed to by the City and County and if either side does not agree, the proposal terminates. She states that this provision takes the discretion of either side away and says that LAFCO will determine, through revenue neutrality, the property taxes to be transferred in this annexation. She emphasizes that liabilities for LAFCO in doing so would be significant. She adds that the legislation states that protest is removed, forcing the annexation of inhabited territory based solely on a petition of 25% of the registered voters.

She summarizes by stating there are several grave concerns to LAFCOs as a whole. She requests that the Commission express its concern regarding the bill moving forward as to the language and the need to address LAFCO issues. Ms. McDonald states she will draft a letter to Senator Flores and Assemblyman Arumbula if the Commission desires.

Legal Counsel Alsop states that with regard to the liability of LAFCO, assuming this proceeds, the County would be the applicant. He explains that typically LAFCO requires the County to indemnify and defend LAFCO for its actions; however, the County does not have a choice in being an applicant.

Commissioner Bagley asks if there are projects driving this legislation. Ms. McDonald states the situation in the central valley for areas that have been surrounded and excluded from cities are driving it.

It is the consensus of the Commission that Ms. McDonald draft a letter to Senator Flores and Assemblyman Arumbula in opposition to the bill.

**EXECUTIVE OFFICER'S ORAL REPORT**

Ms. McDonald states that she has provided the Commission with the CALAFCO Board of Directors agenda item discussing representation on CALAFCO. She states that at the April budget hearing discussion was held regarding cost-saving measures and it was indicated that maintaining a presence on CALAFCO was desired in order to vote on the representation issue. She says the direction by the CALAFCO Board was given to provide additional information at its August meeting. She explains that the committee has been directed to meet with the southern California LAFCOs to determine if there is another mechanism to address regional representation. Ms. McDonald requests direction from the

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Commissioner as to its previous position to withhold payment of CALAFCO dues until it is determined whether this item will be included in the general membership agenda for voting. She says there is a meeting of the southern California LAFCOs scheduled for June 19 and asks if one or two of the Commissioners would like to attend with her in Santa Ana. She states that it appears that CALAFCO is not inclined to approve the bylaw amendment.

Commissioner McCallon moves to withhold payment of CALAFCO dues until it is determined whether this item will be included in the general membership agenda for voting, second by Commissioner Cox.

Commissioner Pearson volunteers to attend the meeting on June 19. Chairman Nuaimi suggests that Commissioner Mitzelfelt be asked to attend.

Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Cox, Curatalo, Derry, McCallon, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Mitzelfelt.

Ms. McDonald reports that the June meeting will be confined to the Yermo-Daggett-Newberry service review, the Yermo activation of water powers, and the change of rules for the agenda relating to approval of the minutes. She states that the July hearing will include consideration of the consolidation of San Bernardino Valley Water Conservation District and San Bernardino Valley Municipal Water District, as the consultant for the independent financial analysis is working to complete his report. She says the municipal service review for the City of Adelanto is also tentatively scheduled for July. Per the Commission's new hearing schedule, there will be no hearing in August.

**COMMISSIONER COMMENTS**

Chairman Nuaimi calls for comments from the Commission. There are none.

**COMMENTS FROM THE PUBLIC**

Chairman Nuaimi calls for comments from the public. There are none.

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS ADJOURNED AT 9:37 A.M.**

**ATTEST:**

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**ANNA M. RAEF, Clerk to the Commission**

**LOCAL AGENCY FORMATION COMMISSION**

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**MARK NUAIMI, Chairman**