MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF OCTOBER 21, 2009

REGULAR MEETING **9:00 A.M.** **OCTOBER 21, 2009**

PRESENT:

COMMISSIONERS:

Jim Bagley, Alternate
Paul Biane
Kimberly Cox
James V. Curatalo
Neil Derry, Alternate
Larry McCallon
Brad Mitzelfelt, Vice-Chairman
Mark Nuaimi, Chairman
Richard P. Pearson
Robert Smith, Alternate
Diane Williams, Alternate

STAFF:

Kathleen Rollings-McDonald, Executive Officer
Clark Alsop, Legal Counsel
Samuel Martinez, Senior LAFCO Analyst
Michael Tuerpe, LAFCO Analyst
Rebecca Lowery, Deputy Clerk to the Commission

ABSENT:

COMMISSIONERS:

REGULAR SESSION OF THE LOCAL AGENCY FORMATION COMMISSION – CALL TO ORDER – 9:02 A.M.

Executive Officer Kathleen Rollings-McDonald indicates that the Chair and Vice-Chair for the Commission are not present at the hearing; therefore, the Commission will need to designate a member to conduct the hearing. Commissioner Cox moves, seconded by Commissioner McCallon to have past Chairman Commissioner Pearson chair the LAFCO Hearing in the absence of Chairman Nuaimi and Vice Chairman Mitzelfelt. There is no opposition and the motion carries as by the following vote: Ayes: Cox, Curatalo, Derry, McCallon, Pearson. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Nuaimi, Mitzelfelt, Williams.

Commissioner Pearson calls the regular session of the Local Agency Formation Commission to order and leads the flag salute.

Commissioner Pearson requests those present who are involved with any of the changes of organization to be considered today by the Commission and have made a contribution of more than $250 within the past twelve months to any member of the Commission to come forward and state for the record their name, the member to whom the contribution has been made, and the matter of consideration with which they are involved. There are none.

CONSENT ITEMS – APPROVE STAFF RECOMMENDATIONS

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

1. Approval of Minutes for Regular Meeting of September 16, 2009

2. Approval of Executive Officer's Expense Report

3. Ratify Payments as Reconciled for Month of September 2009 and Note Cash Receipts

4. Review and Adoption of Contract with Alcock and McFadden for Recruitment for LAFCO Executive Officer Position

5. Review and Adoption of a Retention Policy and Schedule for San Bernardino LAFCO

6. Review and Adoption of Resolution No. 3069 for LAFCO 3080 – Service Review and Sphere of Influence Update for the City of Adelanto

A Visa Justification for the Executive Officer's expense report, as well as staff reports outlining the staff recommendation for the reconciled payments, contract for Executive Officer Recruitment and Adoption of the Retention Policy and Schedule 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 as recommended by staff, seconded by Commissioner Curatalo. Commissioner Pearson calls for opposition to the motion. There being no opposition, the motion carries with the following vote: Ayes: Cox, Curatalo, Derry, McCallon, Pearson. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Nuaimi, Mitzelfelt.

CONSIDERATION OF CALAFCO REQUEST FOR SAN BERNARDINO LAFCO TO HOST THE 2012 CALAFCO ANNUAL CONFERENCE

LAFCO conducts a public hearing to consider the CALAFCO Request for San Bernardino LAFCO to Host the 2012 CALAFCO Annual Conference. Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made part of the record by its reference herein.

Ms. McDonald states that the CALAFCO Executive Board has asked if the San Bernardino LAFCO would consider hosting the 2012 Annual Conference. She states that the conference typically has an attendance of over 300 representatives from all the counties in the State of California and that the conference lasts for about 3 days. She says that hosting the conference would give the Commission an opportunity to showcase the county and all that the county has to offer. She asks that the Commission provide direction to LAFCO staff in responding to this request.

Commissioner Curatalo asks if the Conference has ever been hosted by San Bernardino LAFCO, to which Ms. McDonald responds that San Bernardino LAFCO has never hosted a CALAFCO Conference, but has helped in the past by chairing the Program Committee. She says that CALAFCO tries to find resort venues for the conference and that the conference typically takes place in September or October.

Commissioner Cox states that she would be in favor of hosting the CALAFCO Conference in San Bernardino County. Commissioner Curatalo also states his support of hosting the CALAFCO Conference.

Commissioner Cox moves approval of the request for San Bernardino LAFCO to host the 2012 CALAFCO Annual Conference, seconded by Commissioner Derry. Commissioner Pearson calls for opposition to the motion. There being no opposition, the motion carries with the following vote: Ayes: Cox, Curatalo, Derry, McCallon, Pearson. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Nuaimi, Mitzelfelt.

FIRST QUARTER FINANCIAL REPORT: (A) - FINANCIAL REPORT FOR PERIOD JULY 1 THROUGH SEPTEMBER 30, 2009 (B) - CONSIDERATION OF BUDGET AMENDMENTS FOR FISCAL YEAR 2009-10 (C) - CONSIDERATION OF BENEFIT PLAN MODIFICATION FOR RETIREMENT *(TO BE CONTINUED TO THE JANUARY 20, 2010 HEARING)*

LAFCO conducts a public hearing to consider the First Quarter Financial Report which includes (a) Financial Report for Period July 1 through September 30, 2009 (b) Consideration of Budget Amendments for Fiscal Year 2009-10 and (c) Consideration of Benefit Plan Modification for Retirement. Individual mailed notice of this hearing was provided to affected and interested agencies and County departments. LAFCO Analyst Michael Tuerpe presents the staff report, a complete copy of which is on file in the LAFCO office and is made part of the record by its reference herein.

Mr. Tuerpe states that he will present to the Commission item (a) Financial Report for Period July 1 through September 30, 2009 and item (b) Consideration of Budget Amendments for Fiscal Year 2009-10; however, a continuance for item (c) Consideration of Benefit Plan Modification for Retirement is recommended since it is not prepared at this time to provide the report.

Mr. Tuerpe reviews the First Quarter report for the period of July 1, 2009 through September 30, 2009. He states that currently the expenditures within the Salaries and Benefit Expenditure Series (1000) are at $272,660 for the First Quarter, which is 35% of budget authority. This is a higher percentage than normal due to certain activities which include the following: (a) in the September hearing as part of his FY 08-09 year end budget review, he informed the Commission of a carryover of earned funds in the 1000 series to cover an additional pay period that had been anticipated in FY 08-09 but actually took place in the First Quarter of FY 09-10; (b) monies had been budgeted for leave cashouts in FY 08-09 that did not occur as anticipated; and (c) the budgeted activities related to the termination of the former Clerk also took place in the First Quarter. The termination activities included termination payments in the amount of $73,546, which consist of mandatory and requested leave cashouts and mandatory sick-leave conversion to the Retirement Medical Trust Fund. He says that the former Clerk also worked 3 pay periods into FY 09-10 and received salary and benefits payments totaling approximately $13,000. By adjusting for these activities, salaries and benefits has experienced an increase of 33% of budget authority. He states that LAFCO staff is requesting that the Commission increase expenditure authority in Account 1010 by $36,198 to accommodate payment of the additional pay period as well as leave cashouts that did not occur in FY 08-09.

(It is noted that Commissioners Paul Biane and Brad Mitzelfelt arrive at 9:11 a.m.)

Mr. Tuerpe reviews the Services and Supplies (2000 and 5000 series). He states that it is typical for the first quarter to see increased activity due to one time and full-year payments. He notes these items such as Memberships, Computer Software, Insurance, County Wide Cost Allocation Plan (COWCAP), the CALAFCO Conference, and Training for staff, total $73,029. In addition, the application, legal and environmental cost related to LAFCO 3076 totaled $27,718. These costs were not budgeted for FY 09-10 due to the fact that the completion for this proposal was scheduled for FY 08-09. However, most of those costs have been recovered from the applicant. He also says that currently LAFCO is engaged in litigation related to LAFCO 3048 which to date have cost $5,573. These costs are not recoverable. Mr. Tuerpe states that LAFCO staff is requesting that the Commission increase the expenditure account 2445 by $2,358 to cover the remaining cost for the Independent Financial analysis for LAFCO 3076 and to increase the expenditure account 2400 by $29,498 to accommodate legal counsel and environmental processing for LAFCO 3076

Mr. Tuerpe reviews the Revenues for the First Quarter. He states that LAFCO has received 103% of its anticipated revenues through the first quarter. He says that at the September Hearing the Commission approved a refund of the LAFCO apportionment to the County, cities and independent special districts in the amount of $32,496. In order to acknowledge this refund, LAFCO staff is recommending that the Commission decrease budget authority in Account 8842 by $32,496. He says that other actions that have taken place are the recovery of proposal processing costs and fee revenue; $30,987 has been recovered this year for proposal and service review processing, of this amount $26,568 is related to legal and environmental processing. To accommodate for this activity, staff is recommending that the Commission increase Account 9555 (Legal Services) by $29,498.

(It is noted that Chairman Nuaimi arrives at 9:14 a.m. and assumes Chairmanship of the meeting.)

Mr. Tuerpe states that as identified, the Commission received 103% of its anticipated revenues through the first quarter, however at the September hearing, LAFCO staff informed the Commission that the year-end carryover into FY 09-10 was $100,550 more than budgeted for FY 09-10 which has led to a higher than actual reflection of revenues received for activities that have not yet occurred. LAFCO staff is recommending that the Commission increase Account 9970 (Carryover from Prior Year) by $71,052 to

acknowledge the change. In summary, Mr. Tuerpe reviews the overall activity for the LAFCO Commission and states that LAFCO is on track for the First Quarter with its salaries and benefits; service and supplies is slightly high for the First Quarter, totaling 35% in expenditures, but is still within the normal range for First Quarter activity.

Mr. Tuerpe reviews the Proposal Activity chart for the First Quarter. LAFCO staff received 2 proposals during the First Quarter; however, one proposal was withdrawn by the applicant (Sphere Expansion to the Town of Yucca Valley) resulting in one proposal for the quarter. Three service reviews were completed during the First Quarter as well. He then reviews the LAFCO Activity Chart for Proposal & Service Contracts that shows 1 Proposal, 1 Service Contract and 3 Service Reviews completed.

Mr. Tuerpe states that LAFCO staff is recommending the changes to the appropriations as follows; (a) - Increase Expenditure Account 1010 (Regular Salary) by $36,198 to $516,166; (b) - Increase Expenditure Account 2400 (Legal Counsel) by $29,498 to $59,761; (c) - Increase Expenditure Account 2445 (Other Professional Services) by $2,358 to $40,237; (d) - Decrease Revenue Account 8842 (Local Government – Apportionment) by $32,496 to $1,001,415; (e) - Increase Revenue Account 9555 (Legal Services) by $29,498 to 78,048; (f) - Increase Revenue Account 9970 (Carryover from Prior Year) by $71,052 to $215,087. He says that staff is also requesting that the Commission continue consideration of the Benefit Plan Modification for Retirement to the January 20, 2010 hearing as LAFCO staff does not have complete information on the item at this time.

Chairman Nuaimi asks if the Commission has any questions.

Commissioner Cox moves approval of the item, seconded by Commissioner McCallon. Chairman Nuaimi calls for opposition to the motion. There being no opposition, the motion carries with the following vote,: Ayes: Biane, Cox, Curatalo, McCallon, Mitzelfelt, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: None.

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

SERVICE REVIEW FOR VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY

LAFCO conducts a public hearing to consider the Service Review for Victor Valley Wastewater Reclamation Authority. Notice of the hearing was advertised as required by law through publication of an 1/8 page ad in the *Daily Press,* a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, 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 reviews a map of Current Service Obligation Area of the Victor Valley Wastewater Reclamation Authority (VVWRA) on the overhead display.

Commissioner Mitzelfelt asks staff to clarify the origin and the purpose of the service review for the VVWRA. Mr. Tuerpe states that in July 2008 the Commission directed LAFCO staff to prepare a service review for the VVWRA due to questions raised by the local press, and adds that a copy of that minute action has been attached to the staff report as Attachment #1. This report serves as the completion of that direction from the Commission. He says that in reviewing the materials provided by VVWRA, LAFCO staff prepared a service review that is consistent with San Bernardino LAFCO policies and procedures and LAFCO law and guidelines. He continues that while LAFCO does not have direct authority over VVWRA, a service review presents information on all public and private agencies which provide municipal level services within a region.

Commissioner Pearson states that VVWRA is an agency that is out LAFCO's purview for municipal services, however, LAFCO has in the past conducted service reviews on agencies where it could answer

questions or concerns a community or other entity might have. He says that at the time that the Commission directed LAFCO staff to review the VVWRA, there was a great deal of concern and consternation in the community regarding the operation of VVWRA. The direction for a service review was a way for the Commission to review and address the concerns of the Community.

Executive Officer Kathleen Rollings-McDonald states that service review laws provide direction to provide information that will allow for a complete understanding of the entities that deliver municipal services, whether or not they fall under LAFCO's purview. LAFCO looks at service delivery for the entire Community, whether an agency falls under the LAFCO purview or not. In this case the processing of wastewater collected in the Victor Valley is the reason that VVWRA fell into the discussion of delivery of service as well.

Commissioner Mitzelfelt says that he would like to inform the Commission that he represents the County Service Area on the Board of Commissioners of VVWRA.

Mr. Tuerpe states that VVWRA is located in the north desert portion of the County and includes the majority of the populated centers of the region commonly known as the Victor Valley, with the exception of the City of Adelanto. He states that the VVWRA owns and operates a regional wastewater treatment plant to provide for the disposal of treated effluent for the majority of the Victor Valley region of San Bernardino County. The membership of the VVWRA is currently made up of 4 members: the Cities of Hesperia and Victorville, Town of Apple Valley, and County of San Bernardino on behalf of CSA 42 and CSA 64.

Mr. Tuerpe provides an overview of the wastewater collection system. He states that the member entities collect wastewater through their own systems, which they own, and then the wastewater is transmitted to the VVWRA interceptors. The wastewater is then transported, via the interceptors, to the treatment plant located near the Southern California Logistics Airport for treatment and disposal. He states that prior to 2006, the condition of the VVWRA treatment plant in Victorville was generally not up to standards as evidenced by a spill in 2005 of 9 million gallons of un-chlorinated secondary effluent into the Mojave River. In response to the spill, the Regional Water Quality Control Board issued an Administrative Civil Liability Order and imposed a $500,000 fine. Mr. Tuerpe states that since that incident, VVWRA has implemented many corrective and efficiency measures including investments of millions of dollars for planned expansions; they have conducted their first flow projection study in 2007; they have increased their public outreach; they have delivered the first on time budget in five years; and the provided the first comprehensive annual financial review. He says that today the operational efficiency of the VVWRA is much improved and that they have also implemented a benchmarking analysis for performance against other similar size agencies in the state and nation.

Mr. Tuerpe states that despite all the improvements made by the VVWRA thus far; LAFCO still has some concerns regarding revenues and finances. VVWRA has had one rate increase within the past 14 years in 2005-06. Mr Tuerpe notes that one rate increase in that long amount of time does not allow for the set aside of the revenues necessary to fund the improvements needed. The existing treatment plant continues to experience capacity issues and challenges; there have been additional discharge requirements of nitrates imposed by the Regional Board. Correcting these deficiencies will require substantial upgrades and development of sub-regional plants, one in Hesperia and one in Apple Valley; the building of these two sub-regional plants is estimated to have a cost of $70 million.

Mr. Tuerpe states the during the processing of this service review, LAFCO staff learned that VVWRA is in the process of revising the joint powers agreement to include County Service Area 70 (CSA 70) as a member entity. According to VVWRA staff the inclusion of CSA 70 is based on two requests to provide sewer service to unincorporated areas outside its boundaries. The inclusion of CSA 70 is intended to allow VVWRA to provide service to each development that wishes to use its facilities without having to acquire separate agreements. He says that LAFCO staff continues to question how the addition of CSA 70 as a member agency would alleviate the need for separate agreements since CSA 70 only provides

service through the creation of improvement zones and not the parent district and the County identifies the improvement zones as separate legal entities.

Mr. Tuerpe reviews the chart for growth and population projection for VVWRA on the overhead screen. He states that the Victor Valley has had significant growth in population making this area one of the fasting growing areas since the year 2000 with a projected growth of 52% by 2010 and a projected growth of 141% by 2030. He says not all those within the boundaries of VVWRA are connected to sewer systems. He reviews on the overhead the chart for sewered population projections in five year increments, showing 141,071 sewered populations for 2005 and growing to a projected 320,276 by the year 2025.

Mr. Tuerpe reviews the chart for Projected VVWRA Flow based on Historical Growth Rates on the over head screen. He states that the chart shows an average daily flow for 2009 was 12.46 million gallons per day and is estimated to increase to 20.79 million gallons per day by 2022. He says that increased capacity will be needed in order to facilitate and ensure adequate wastewater flow service for not just the short term but for the long term as well. He says that the collection interceptor system was constructed prior to the operation of the treatment plant and was designed to provide service for approximately 20 years. Much of the interceptor system has been in use for over 20 years and the Hesperia and South Apple Valley interceptors are reaching capacity; they are estimated to reach capacity around 2012 and 2015 respectively. He further states that the Hesperia interceptors both north and south of Bear Valley Road will also require improvements this fiscal year to meet capacity needs. However, the construction of sub-regional treatment plants upstream in Apple Valley and Hesperia have been identified to help reduce the hydraulic load on the interceptors.

Mr. Tuerpe states that the subject of increasing the interceptor systems capacity is complicated. The solution that VVWRA has proposed it to place sub-regional plants upstream, one in Apple Valley and one in Hesperia; these sub-regional plants will be capable of treating 2 million gallons per day which will allow the utilization of Title 22 reclaimed water as an alternative source. The use of reclaimed water from these plants is planned to irrigate public lands in addition to residential communities and commercial businesses along the I-15 corridor.

(It is noted that Commissioner Derry leaves the hearing at 9:30 a.m.)

Mr. Tuerpe states that VVWRA is also required by the Regional Water Quality Control Board to remove nitrogen from its water discharge; the current plant is not designed to remove nitrogen. This is of importance because the Mojave River loses its surface flow by percolation into the groundwater; the discharge is likely causing groundwater downstream of the discharge location to have elevated nitrate concentrations. The removal of these nitrate concentrations will require the implementation of a system by VVWRA. The system currently being evaluated VVWRA is an “Integrated Fixed Film Activated Sludge System” (IFAS), which would include tertiary filtration by cloth filters to reduce nitrogen in the treated effluent, however this system would reduce the capacity of water that can be processed at the treatment plant. According to VVWRA staff, installation of the IFAS system would de-rate the treatment plant from 18.0 mgd to 14.0 mgd since is has a lesser capacity to treat influent. In turn, VVWRA will have to construct the two sub-regional plants to process up to 4 mgd.

Mr. Tuerpe states that VVWRA’s two primary sources of revenue are connection fees and charges to member agencies. As noted before, VVWRA has only had one rate increase in the past 14 years, which took place in 2005-06. Historically, VVWRA has not been able to generate enough revenue to cover its operations, which has contributed to its operations, maintenance, repair and replacement fund budgets exceeding its user fees for the past 7 years. During these years VVWRA has relied on transfers from the Adelanto Separation Fund and the Capital Fund to supplement the funding requirements of the Operations & Maintenance and Repair & Replacements funds. However, the Capital Fund receives revenue through connection fees which according to the Joint Powers Agreement are to be used exclusively for capital improvements and are not to be used for operations and maintenance and repairs.

Although the practice has been curtailed, the Capital Fund has lost revenue gained for the dedicated purpose of capital improvements. This practice has led to the funds to end the year with a negative balance. LAFCO staff questions how a fund can have a running negative balance and still continue activity. He says that further complicating this position is the current economic climate. Due to the economic climate, connection receipts have been reduced and VVWRA is faced with significant funding requirements to fulfill the nitrate requirements that have been placed by the Regional Water Quality Control Board and the interceptor and capacity issues.

He states that due to the requirement from the Regional Water Quality Control Board to expand plant capacity and the need to restore financial stability, rate increases have been adopted for the next two years. Even if there is no population growth for two years, generally resulting in a constant flow to the treatment plant, projected user charges need to increase to fund the discharge requirements set forth by the Regional Board. He further states that VVWRA's funding for capital projects could come from existing funds in the Capital Fund, outside funds (loans, bonds, grants). However, currently VVWRA does not have the ability to obtain long-term debt or stimulus monies for two reasons. One, lenders will not loan to entities which do not obtain sufficient revenues to address their operation expenses and two, the Member Agencies are currently drafting a revised Joint Powers Agreement. Until this document is finalized, lenders will not loan to an entity with an undefined funding source for repayment. As a result, the funding for the pre-design of the sub-regional treatment plants will be paid by the Town of Apple Valley and City of Hesperia with a refund of associated costs when VVWRAs financial situation improves.

Mr. Tuerpe states that the factor of Opportunities for shared facilities applies to the VVWRA. VVWRA leases 50 acres of its 600-acre property to California Bio Mass, Inc., a company that recycles organic waste materials. Under the terms of the agreement, VVWRA receive monthly rent of $1 per acre. In turn, the regional compost facility must accept and process, at no cost, all bio-solids generated by VVWRA.

Mr. Tuerpe states that the final factor of the review involves accountability for Community Service needs, including Governmental Structure and Operation efficiencies. Mr. Tuerpe states that VVWRA was recently awarded the Outstanding Financial Reporting for the year ending June 30, 2008 by the California Society of Municipal Finance Officers and has been recognized by the Desert and Mountain Section of the California Water Environment Association as the 2008 Treatment Plant of the Year for medium sized plants. Additionally, in August 2009, VVWRA's investment policy was certified by the Association of Public Treasurers of the United States and Canada.

He says that VVWRA also has operational efficiencies that include a memorandum of understanding with the City of Victorville to provide recycled water to the Westwinds Golf Course along with other uses at the Southern California Logistics Airport. VVWRA is also a member of the Alliance for Water Awareness and participates in workshops, outreach events, and public education to communicate the conservation message. They also plan on capturing gas from their digesters for use at the treatment plant. With the largest variable costs being electricity, natural gas and chemicals, the capturing of this latent energy source will help reduce operating costs.

Mr. Tuerpe reviews the benchmarking analysis indicating that it was in response to the concerns expressed by member agencies of VVWRA about its efficiency. To address the concerns of the member agencies, VVWRA conducted a benchmarking analysis to identify areas where efficiency could be improved. The report was presented to the VVWRA Commission in a staff report dated June 20, 2008. Specifically, the report evaluated performance efficiency against other similar sized agencies in the state and nation. He states that for the Sewer Overflow Rate VVWRA is performing below the median value; however, the Capital Improvement Plan has specific projects to address those issues once funded. VVWRA performs above the median value in the Operation and Maintenance Cost per Million Gallons Processed and slightly below median value when all expenses are included. He states that for the direct cost of treatment per million gallons and million gallons per day processed per employee, the VVWRA's efficiency is in the top quartile and that VVWRA's debt ratio is above the median.

Mr. Tuerpe adds that the debt of VVWRA is likely to increase due to the requirements to increase capacity. Revenue issues continue to overshadow the agency as the capital improvement needs continue to grow. The existing wastewater treatment plant continues to experience capacity issues and increased discharge requirements. Correcting these deficiencies will require substantial upgrades and development of sub-regional treatment plants anticipated to cost over $70 million, of which $28 million has been estimated for near-term critical improvements.

Mr. Tuerpe reviews the VVWRA Regional Location map that outlines the Joint Powers Agreement on the overhead.

Chairman Nuaimi asks if the Commission has any questions.

Commissioner Cox asks with regards to the 7.4 mgd for Hesperia in 2022, if the City of Hesperia is expecting a large project that would demand that amount of recycled water, to which Mr. Tuerpe responds that it has been outlined in the city plan to take an aggressive approach to utilizing as much Title 22 water as possible for all of its nonpotable uses such as school grounds and parks. It is estimated to reach 7.4 mgd by 2022, but that is only an estimate, no projects have been outlined to date.

Commission Cox states that in the VVWRA Capital Budget there is an item listed called SAFARI. She asks what that project is. Mr. Tuerpe responds that SAFARI is an acronym and that a representative from VVWRA is in attendance and would be able to better answer questions regarding VVWRA Capital Budget line items.

Logan Olds, General Manager, VVWRA, addresses Commissioner Cox question by stating that SAFARI stands for Santa Fe Interceptor and is an expansion of approximately 4 mgd capacity between Lemon Street and Bear Valley Road. He states that VVWRA is planning an additional 4mgd of capacity increases between Bear Valley Road and Spring Valley Lake line and 8mgd of capacity between Spring Valley Lake and the upper Narrows. He says that all of the increased mgds are part of the Capital Improvement Plan and are currently under design. Commission Cox asks if all these planned increases are part of the SAFARI as listed in the Capital Budget, to which Mr. Olds states that SAFARI is a project on its own and that each increase project has its own acronym.

Commissioner Mitzelfelt states that he would like to inform the Commission and LAFCO staff as to why the inclusion of CSA 70 to the JPA is relevant and that it was at his request. He says that the spheres of influence in the Victor Valley area are large and where the opportunity for sewer service is challenging to provide with the CSA included in the JPA, providing that service would be less challenging. This would enable the cities and the CSDs in and around the JPA boundaries to also receive sewer service presently and in the future as projects and populations increase.

Mr. Olds states that he also represents two organizations that have development projects that occur adjacent to the VVWRA boundaries. He says that one of the difficulties that VVWRA encounters is how to provide service and manage individual agreements for these smaller projects when they are part of a larger future plan. He says that the inclusion of CSA 70 will make it easier for the County to use the existing JPAs infrastructure for current and future projects. Commissioner Mitzelfelt states that for the record currently CSA 42 – Oro Grande and CSA 64 Spring Valley Lake are currently part of the JPA.

Chairman Nuaimi asks if the Commission has additional questions. Hearing none he states that the report is to be received and filed and thanks LAFCO staff for the service review.

CONSIDERATION OF: (1) FINAL ENVIRONMENTAL IMPACT REPORT ADOPTED BY CITY OF ADELANTO FOR SOUTH ADELANTO ANNEXATION (SCH NO. 2007051115), AS CEQA RESPONSIBLE AGENCY FOR LAFCO 3083; (2) ADOPTION OF FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS; AND (3) LAFCO 3083 – REORGANIZATION TO INCLUDE CITY OF ADELANTO ANNEXATION AND DETACHMENT FROM SAN BERNARDINO

COUNTY FIRE PROTECTION DISTRICT AND ITS NORTH DESERT SERVICE ZONE AND COUNTY SERVICE AREA 70 *(TO BE CONTINUED TO THE JANUARY 20, 2010 HEARING)*

Executive Officer Kathleen Rollings-McDonald states that LAFCO 3083 -- Reorganization to include City of Adelanto Annexation and Detachment from San Bernardino County Fire Protection District and Its North Desert Service Zone and County Service Area 70 has been advertised as required by law. She states that staff is recommending that the item be continued to the January 2010 Hearing to allow LAFCO staff to work with the City of Adelanto officials to resolve questions regarding service funding shortfalls. She says that the city manager of the City of Adelanto has submitted a written request for continuance.

Chairman Nuaimi asks if it is LAFCO staff expectation that this proposal will continue forward or if the City is requesting that the item be continued indefinitely. Ms. McDonald states that it is LAFCO staff anticipation that the annexation will be presented for consideration in January. She says that the city has submitted a Plan for Service and a Fiscal Impact Analysis. In reviewing the Fiscal Impact Analysis, LAFCO staff found a service funding shortfall. LAFCO staff is currently working with the City to resolve this issue and develop a financing plan and recommends approval of the continuance so that the necessary information can be gathered to provide a complete analysis of the proposal for presentation to the Commission for consideration.

Chairman Nuaimi notes that staff is requesting that the matter be continued to the January 20, 2010 hearing.

Commissioner Mitzelfelt moves approval of the item, seconded by Commissioner Curatalo. Chairman Nuaimi calls for opposition to the motion. There being no opposition, the motion carries with the following vote: Ayes: Biane, Cox, Curatalo, McCallon, Mitzelfelt, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: None.

CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3100; AND (3) LAFCO 3100 – REORGANIZATION TO INCLUDE ANNEXATION TO THE CITY OF VICTORVILLE AND VICTORVILLE WATER DISTRICT, AND DETACHMENT FROM SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT AND ITS NORTH DESERT SERVICE ZONE AND COUNTY SERVICE AREA 70 (SPACE CENTER MIRA LOMA)

LAFCO conducts a public hearing to consider LAFCO 3100 – Reorganization to Include Annexation to the City of Victorville and Victorville Water District, and Detachment from San Bernardino County Fire Protection District and its North Desert Service Zone and County Service Area 70 (Space Center Mira Loma). Notice of the hearing was advertised as required by law through publication of an 1/8 page ad in the *Daily Press,* a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, and those individuals and agencies requesting mailed notice. Senior LAFCO Analyst Samuel Martinez 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. Martinez reviews the Vicinity Map of the project area as shown on the overhead. He states that LAFCO 3100 is a reorganization proposal to annex approximately 6.46 +/- acres to the City of Victorville and the Victorville Water District which will include a detachment from the San Bernardino County Fire Protection District (SBCFPD), its North Desert Service Zone, and CSA 70. The reorganization area is generally located south of Terra Linda Street, within the City's unincorporated Coad Road Island.

He says that the proposal was initiated by landowner petition. The applicant's primary reason for submitting the proposal is to facilitate the development of an industrial project. The overall project, which has been processed through the City, is a 1,045,839 square-foot distribution warehouse on 52 acres that includes two parcels that are currently within the County's jurisdiction. He says that in order to complete the project entitlement process through the City, the two unincorporated parcels need to be annexed into the City.

Mr. Martinez states that during the processing of the application, LAFCO staff identified that the railroad parcel that was added to square off the boundary on Terra Linda Street is within the SBCFPD boundary. He says that the processing of the project has been expanded to include the detachment of this area from SBCFPD upon its annexation to the City of Victorville. He further states that it is LAFCO staff position that this reorganization proposal, as modified, is a logical boundary since it squares off the City's boundary along Terra Linda Street, which is an easily identifiable boundary for service delivery.

Mr. Martinez states that there are two boundary issues for Commission Review. The first being the Commissions' directive which requires a city to annex it's totally and/or substantially-surrounded islands when requesting approval of a development-related annexation. The reorganization area is within the City's unincorporated "Coad Road Island." Generally the Coad Road Island would qualify as an Island annexation; however one of the requirements for consideration as an island annexation is that the city initiates the request for annexation by resolution. He says that since LAFCO 3100 was initiated by landowner petition, the Commission can not approve the proposal as an island annexation under the provision of Government Code Section 56375.3 nor can the Commission expand it to include the entirety of the Island and process it as such. Mr. Martinez states that in keeping with the Commissions policies and directives, there are three options available to the Commission. The first would be to require the initiation of the balance of the Coad Road Island as a condition of approval for LAFCO 3100. This would require that the City initiate the island proposal prior to the commencement of the protest proceedings for LAFCO 3100, which would take place within the 6 month abeyance period. Failure of the City to comply with the condition within the six-month period would terminate LAFCO 3100. He states that the second option available to the Commission would be the inclusion of a finding that the City of Victorville will be required to initiate the balance of the Coad Road Island within one year of the approval of LAFCO 3100. The last option would be for the Commission to determine to override its policy direction and approve the reorganization without the requirement to annex the balance of the Coad Road Island. Mr. Martinez states that it is LAFCO staff's recommendation that the Commission approve the annexation with the imposition of the condition of approval requiring initiation of the Coad Road Island within the six month period.

Mr. Martinez states that at each Commissioners' place LAFCO staff has placed a copy of a letter from the applicant requesting that the Commission take the option of overriding its existing policy and approve the reorganization without the requirement to annex the Coad Road Island. Mr. Martinez states that as indicated in the staff report, LAFCO staff reviewed with the City staff and the applicant early in the process the Commission's directives regarding totally and/or substantially-surrounded islands when requesting approval of development-related annexations. He says that the City and the applicant are fully aware of the Commissions directives and policies and adds that the City has conducted at least two community meetings with residents and voters within the Coad Road Island. He further states that LAFCO staff understands that the City is approximately three months away from initiating the Coad Road Island. Mr. Martinez reiterates LAFCO staff's position that the imposition of the condition of approval is appropriate in order to address the balance of the Coad Road Island.

Mr. Martinez states that the other issue the Commission needs to address is that the reorganization of the boundary splits a parcel. The parcel is in a railroad easement, a portion of which has been included within the reorganization area in order to square off the City's boundary along the proposal's eastern edge. He states that splitting a parcel is not consistent with State directive that requires boundaries to conform to lines of assessment or ownership; however, the Commission can override this directive if it deems that there is a rationale to do so. In this case, the exclusion of the southern portion of the parcel will create a peninsula of unincorporated area between the existing boundary of the City and the reorganization area. The inclusion of the entire parcel will create another notch of city territory that would not be an easily identifiable boundary for service delivery. He says that for these reasons, LAFCO staff is recommending that the Commission accept the boundary that splits the railroad parcel.

Mr. Martinez reviews for the Commission the County Land Use Designation stating that the reorganization area is currently a mix of vacant lands and the railroad right of way. The two parcels had originally held single-family residence, but those were demolished by the applicant in April 2008, so the territory is considered vacant. He says that the county's current land use designation for the area is Community Industrial (IC) and that the City's General Plan Designation for the area is Light Industrial making the area land use determinations between the City and the County generally compatible. The City has pre-zoned the area to Light Industrial and Heavy Industrial both of which are consistent with the City's Land Use Designation for the area and the surrounding land uses.

Mr. Martinez reviews on the overhead the Aerial Map, photos of the industrial project area and photos of the reorganization area for LAFCO 3100.

Mr. Martinez states that with regards to service issues, it is LAFCO staff position that LAFCO 3100 is a straightforward and logical extension of service delivery boundaries through the City of Victorville and its subsidiary district, the Victorville Water District. The Plan for Services submitted by the City and the District indicate that the extension of service within the reorganization area will maintain and/or exceed current service level provided by the County.

Mr. Martinez states that the Commission's Environmental Consultant, Tom Dodson, from Tom Dodson and Associates, has indicated that LAFCO 3100 is statutorily exempt from the California Environmental Quality Act (CEQA) and that the recommendation is based on the finding that approval of the reorganization has no potential to cause any adverse effect on the environment and is exempt from the requirements of CEQA.

Mr. Martinez states in conclusion that LAFCO 3100 was submitted in order to facilitate the development of an industrial project that has been processed through the City. Since a portion of the proposed industrial project area is within the County's jurisdiction, the annexation of the unincorporated area needs to take place before the applicant can finalize City entitlements for the proposed industrial project. For that reason and those outlined in the staff report, LAFCO staff supports the approval of LAFCO 3100. He says that in keeping with Commission policies and directives to require a City to annex its totally or substantially surrounded island when annexing development related annexations, it is LAFCO staff's recommendation that the Commission impose the condition that requires the City to initiate the annexation of the Coad Road Island prior to commencement of the protest proceedings for LAFCO 3100.

Mr. Martinez states that LAFCO staff is recommending that the Commission approve LAFCO 3100 by taking the actions outlined in the staff report as follows: (1) Certify that LAFCO 3100, as modified, is statutorily exempt from environmental review and direct that the Notice of Exemption be filed within five days; (2) Modify LAFCO 3100 to include detachment from the San Bernardino County Fire Protection District and its North Desert Service Zone for the railroad parcel along the eastern edge of the application boundary; (3) Approve LAFCO 3100, as modified, with the following conditions: (a) Standard terms and conditions that include the "hold harmless" clause for potential litigation costs, continuation of fees, charges, assessments, and the identification that the transfer of utility accounts will occur within 90 days of the recording of the Certificate of Completion; (b) Protest proceedings for this reorganization shall be held in abeyance, for a period not to exceed six months. The City of Victorville is required to initiate the annexation of the totally-surrounded island, identified as the "Coad Road Island" located immediately north of the annexation area, as shown on the maps within this report during the identified six-month abeyance period. Compliance with this condition shall be deemed fulfilled upon issuance of the Certificate of Filing for the Coad Road Island annexation proposal; (4) Adopt LAFCO Resolution #3070, setting forth the Commission's findings, determinations, and conditions for the proposal.

Chairman Nuaimi asks if the Commission has any questions.

Commissioner Mitzelfelt asks how LAFCO staff will ensure that the City of Victorville will initiate the annexation of Coad Road Island and also asks what LAFCO staff's experience with the City of Victorville

has been in terms of follow through with action items such as this. Mr. Martinez states that the condition of approval requires the initiation of the island while the determination of a finding to occur within one year for initiation of the annexation of Coad Road by the City is a statement with no enforcement ability.

Executive Officer Kathleen Rollings-McDonald states that the City of Victorville's follow through has been marginal. She says that when the Commission processed a development project for the City of Barstow, a similar statement was included in the resolution and LAFCO had in fact received commitment from the City of Barstow at the time that the City would initiate annexation within one year. Ms. McDonald notes that LAFCO is now at month 24 for that proposal and no annexation has been initiated. With the City of Victorville, LAFCO staff has worked closely with City staff and the City has held Community meetings with the landowner in preparation for the annexation of Coad Road Island to discuss land use and delivery of service. However, those discussions have been ongoing for almost a year.

Commissioner Mitzelfelt asks what type of industrial facility is being proposed for LAFCO 3100, to which Ms. McDonald states that the facility is a logistics warehouse.

Commissioner Cox asks if the applicant will be encumbered with the abeyance. Ms. McDonald states that it has the potential of stalling the applicant's project and ability to move forward. LAFCO staff will not move forward with the protest hearing until the City of Victorville initiates the annexation of Coad Road Island which could take more that six months. Commissioner Cox states that she supports the Commission's policy regarding island annexations; and that Coad Road Island has been in discussion by the City of several years and will eventually become annexed however, she is loathe to encumber a potential developer in an area that would benefit during this economy. Ms. McDonald states that the Commission has not received written confirmation from the City of Victorville indicating that they are willing to move forward with the annexation of Coad Road Island to date.

Chairman Nuaimi asks if the Coad Road Island is inhabited and if so how many voters and landowners are in the area. Ms. McDonald states that the area is inhabited and that the numbers are clearly over 12 but she does not have the detail numbers at hand, but a large number are residents that have their businesses on their properties. Commissioner Cox states that it is a rural area and has historically experienced a lot of flooding due to the drainage facility that goes through Coad Road Island. Chairman Nuaimi states that there appears to be many good reasons for the island to be annexed to the City and that in this case, upholding the Commission's policy on industrial proposals and island annexations makes sense. The proposal area is immediately adjacent to the City and the Commission has an opportunity to fix what has been historically a long standing problem. Ms. McDonald states that the Coad Road Island has qualified for an island annexation for the last few years as the area is completely surrounded by the City of Victorville. Commissioner McCallon states that the Commission needs to be consistent in their application of Commission policy and the policy has applied in other annexation proposals and he sees no reason to change that policy in this case. Commissioner Biane states that he agrees with Commissioner McCallon that the Commission needs to stay consistent and that this project clearly falls into the Commission's Annexation policy for industrial proposals.

Commissioner Biane questions LAFCO staff's recommendation to split a parcel placing one part in the City and one part in the County. Mr. Martinez states that the parcel in question is a utility parcel, in this case a rail road, and that utility parcels can be quite large and that if the parcel were a private parcel staff would not have recommended the parcel split. Commissioner Biane asks how quickly LAFCO staff will be able to complete the protest proceeding and complete the annexation process once the City submits the initiation of the annexation. Mr. Martinez states that once the application is received LAFCO reviews it for completeness, circulates the materials, and issues the certificate of filing, this process takes about two months. Commissioner Biane asks if that process requires an action from the Commission, to which Ms. McDonald states that the process is an administrative one and does not require an action from the Commission. The certificate of filing is a staff milestone and once the certificate of filing is issued, staff can continue with the protest proceeding.

Commissioner Curatalo states that he does not wish to impede on development especially in these tough economic times, however, consistency in following the Commission's policies is important. He asks if the City of Victorville was aware of these annexation requirement prior to processing the application. Ms. McDonald states that both the City of Victorville and the applicant were made aware of the process and of the requirements. She states that the applicant was made aware of the requirements prior to the submission of the application and that the applicant has been delayed by the pre-zoning, environmental process and Plan for Service with the City of Victorville. She says that LAFCO staff is sensitive to that, however, LAFCO staff must follow Commission direction and policy. Commissioner Curatalo asks if there is any middle ground that LAFCO staff can recommend, to which Ms. McDonald states that in this case, there is no middle ground. Chairman Nuaimi states the condition of approval can be seen as a middle ground in that the Commission is not asking that the annexation be completed prior to completing the LAFCO 3100 proposal, but is asking that the City of Victorville initiate its application for the annexation.

Clark Alsop, Commission Legal Counsel, states that the condition of approval can be seen as a middle ground and that the 6 month abeyance is in the statutes.

Ms. McDonald states that as soon as the City of Victorville submits the initiation of the annexation, LAFCO staff will move forward to complete the process. The law mandates that the City of Victorville must fulfill the required annexation within that 6 month period. She also reminds the Commission of prior applications with the City of Victorville, the dissolutions of the Park and Recreation District and the Fire Protection District, where in the terms and conditions the City was required to contract with various entities to provide service within a 6 month period and the City asked for an additional 6 months to complete those terms and conditions.

Commission Mitzelfelt moves to approve LAFCO staff's recommendations for LAFCO 3100 to include the requirement of the annexation of the entire Coad Road Island as a condition of approval and that the initiation be commenced prior to the protest proceedings.

Chairman Nuaimi opens the public hearing and calls on those wishing to speak.

Robert Kilpatrick, Hall & Foreman, representing the applicant the Space Center, LLC. states that as has been indicated by LAFCO staff, the applicant has had a complex time in getting this application to come to fruition. They are very sensitive to the issues surrounding the annexation and have been working with the City of Victorville to complete this project. He says that the application encompasses 6.5 acres which is part of 55 acre industrial project. The proposal is 1 million square feet distribution warehousing. This project is part of a very important economic development area for the City of Victorville and of the redevelopment agency. It is the only property that has direct rail service. He says that as the Commission has discussed, the economy is not great at this time, however, it is important that this project be completed and put in place so that as the economy improves, the developer can move forward. He says that LAFCO staff has indicate that they have experienced difficulty in the past with other City Island annexations, however, what makes this request unique is that the application is to annex 6.5 acres of a project that is 55 acres. The applicant would like to request of the commission that they override it policy direction and approve the reorganization without the requirement to annex the Coad Road Island.

Graham Tingler, President of Space Center Mira Loma, Inc. states that he would like to support everything that Robert Kilpatrick stated and that as the owner of the property, he feels like he is stuck between the LAFCO Commission and the City of Victorville with this proposal. Over $7 million has been spent on the acquisition of these properties, with the service plans, encroachments, rail design and others and that with the Commission voting for the condition of approval, they put the Space Center in a position where they cannot move forward. He says that in these economic times, they need to be ready to react if an opportunity comes along and if the City is slow, it impedes Space Center from those potential opportunities. He states that the goal is to create jobs and stimulate monies for everyone, the City & the Space Center. He adds that he has worked with the City in developing the plan for service and he asks that the Commission take his comments into consideration when making their decision.

Chairman Nuaimi asks if there are anymore requests to speak, hearing none he closes the public hearing.

Commissioner Mitzelfelt states that he is sympathetic to the property owners' trial and that he will encourage the City of Victorville to move forward with the annexation, however, he does not see a reason to go against existing Commission policy at this time.

Chairman Nuaimi states that based on the public testimony, there is not a current development that has been identified for this project. He says that everyone would like to see the developer be able to develop in this area once the economy improves and annexing the whole island is a way to ensure that the City is ready when that time comes and that this is a perfect opportunity to make that happen.

Ms. McDonald states that LAFCO staff is available to help the City complete the necessary steps to initiate the annexation and that LAFCO staff has been involved with the City in all the steps of the proposal.

Commissioner Mitzelfelt moves adoption of staff recommendation to approve the item including the requirement to initiate the Coad Road Island by the City of Victorville, seconded by Commissioner McCallon. Chairman Nuaimi calls for opposition to the motion. There being no opposition, the motion carries with the following vote: Ayes: Biane, Cox, Curatalo, McCallon, Mitzelfelt, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: None.

(It is noted that Commissioner Biane leaves the hearing at 10:32 a.m.)

PENDING LEGISLATION REPORT

(Chairman Nuaimi leaves the hearing at 10:33 a.m. Vice-Chairman Mitzelfelt assumes leadership of the meeting).

Executive Officer Kathleen Rollings-McDonald presents the pending legislative report. She states that she has provided the Commission with the CALAFCO Legislative Report that outlines the bills effecting LAFCO that have been chaptered or vetoed. She notes that AB 666 which requires State funding for Wild Fire and Fire Prevention has been vetoed by the Governor due to a lack of funding stream for fulfilling the requirements.

EXECUTIVE OFFICER'S ORAL REPORT

Executive Officer Kathleen Rollings-McDonald states that for the November hearing, the Commission will hear the Sphere of Influence and Annexation requests from the Beaumont-Cherry Valley Water District, the City of San Bernardino Islands Proposal, and the Arrowhead Springs Annexation to the City of San Bernardino. She states that at each Commissioner's place is a copy of the EIR for the Arrowhead Specific Plan that will be discussed as part of the Arrowhead Springs Annexation. She also says that the Commission will be dark for the month of December. She states that at the January hearing, LAFCO staff will present the City of Victorville Sphere of Influence expansion to the north and the Sphere of Influence establishment for the Helendale CSD; these are competing proposals for a portion of the same area and will be heard together. The Commission will also hear the Service Review for the Red Mountain-Trona-Searles Valley area including discussion of some Kern County agencies that extend into San Bernardino County. The Commission is also scheduled to begin the Service Reviews for the Mountain Communities, starting with the Crest Forest Community and also the Commission will hear the City of Adelanto Annexation in January.

Ms. McDonald states that in the Month of February LAFCO staff has projected that the Commission will hear either the Service Review for the Lake Arrowhead Community or the Service Review for the Community of Running Springs, the Service Review for the Joshua Tree Community and the Service

Review for Yucca Valley Community; and possibly the reorganization of the County Fire and the Apple Valley Fire.

COMMISSIONER COMMENTS

Vice Chairman Mitzelfelt calls for comments from the Commission. There are none.

COMMENTS FROM THE PUBLIC

Vice Chairman Mitzelfelt calls for comments from the public. There are none.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS ADJOURNED AT 10:37 TO THE CALIFORNIA ASSOCIATION OF LAFCOS 2009 ANNUAL CONFERENCE IN YOSEMITE, OCTOBER 28TH THROUGH OCTOBER 30TH, 2009, AT THE TENAYA LODGE

ATTEST:

REBECCA LOWERY,
Deputy Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

MARK NUAIMI, Chairman