

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JULY 15, 2009**

REGULAR MEETING

9:00 A.M.

JULY 15, 2009

PRESENT:

COMMISSIONERS:

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

STAFF:

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

ABSENT:

COMMISSIONERS: Paul Biane

REGULAR SESSION OF THE LOCAL AGENCY FORMATION COMMISSION – CALL TO ORDER – 9:03 A.M.

Chairman Mark Nuaimi calls the regular session of the Local Agency Formation Commission to order and leads the flag salute.

Chairman Nuaimi 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 the following Agenda Items:

1. Approval of Minutes for Regular Meeting of June 17, 2009
2. Approval of Executive Officer's Expense Report
3. Ratify Payments as Reconciled for Month of June 2009 and Note Cash Receipts
4. Consideration of: (1) Review of Mitigated Negative Declaration Prepared by County of San Bernardino for Conditional Use Permit to Establish a 75,000 Sq. Ft. Worship Center Complex on 8.9 +/- Acres as CEQA Responsible Agency for LAFCO SC#344; and (2) LAFCO SC#344 – City of Loma Linda Irrevocable Agreement to Annex for Water and Sewer Service (Spanish Seventh Day Adventist Church)
5. Review and Adoption of Resolution No. 3062 for LAFCO 3008 – Service Review and Sphere of Influence Update for Yermo CSD

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6. Review and Adoption of Resolution No. 3063 for LAFCO 3045 – Service Review and Sphere of Influence Update for Daggett CSD
7. Review and Adoption of Resolution No. 3064 for LAFCO 3046 – Service Review and Sphere of Influence Update for Newberry CSD

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

Notice of the hearing for the consideration of LAFCO SC#344 was advertised as required by law through publication in The Sun, a newspaper of general circulation in the area and individual notice was provided to landowners and registered voters within and surrounding the area, pursuant to State law and Commission policy. Individual mailed notice of the hearing was provided to affected and interested agencies, County departments, and those individuals and agencies requesting mailed notices,

Commissioner McCallon moves approval of the consent calendar, 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, Pearson, Smith, Williams. Noes: None. Abstain: Nuaimi (Commissioner Williams Voting in his stead), Curatalo (Commissioner Smith voting in his stead). Absent: Biane (Commissioner Derry voting in his stead), Mitzelfelt

CONTINUED/DISCUSSION ITEMS:

Chairman Nuaimi states that a request has been made to hear agenda items 9A and 9B prior to agenda item 8 and calls for objection to the change. There being none, Chairman Nuaimi call upon staff to present agenda items 9A and 9B.

CONSIDERATION OF ADOPTION OF RESOLUTION FOR THE ELECTION OF DIRECTORS TO THE SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY

LAFCO considers the adoption of a resolution for the election of directors to the Special District Risk Management Authority (SDRMA) Board of Directors.

LAFCO Analyst Michael Tuerpe presents the staff report for review, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. Mr. Tuerpe states that the Commission is a member of the SDRMA which is currently holding elections for membership on the Board of Directors. For this election the Commission may select up to four candidates for the position of Director from a field of eight candidates. Mr. Tuerpe notes that currently, four directors represent the Central California region and three directors represent the Northern California region; there is no Southern California representation on the Board of Directors. Therefore, in an effort to promote Southern California representation staff recommends that the two candidates from Southern California be selected; Jean Bracy from the Mojave Desert Air Quality Management District and Ed Gray from Chino Valley Independent Fire District. Staff is recommending that the Commission adopt LAFCO Resolution 3065 making its selection.

Chairman Nuaimi calls for any questions from the Commission or the public related to the item. There are none.

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

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NOMINATIONS FOR CALAFCO BOARD OF DIRECTORS POSITIONS

LAFCO considers nominations for positions on the CALAFCO Board of Directors. Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and made a part of the record by its reference here.

Ms. McDonald states that currently there are seven positions open on the CALAFCO Board of Directors, two for county members, two for city members, two for special district members and one for a public member with the election to be conducted at the Annual meeting in October. Ms McDonald notes that at the July 2 meeting of the Southern California LAFCOs the issue of regional representation was discussed. It was requested that each Commission nominate at least one candidate in an effort to put together a slate of Southern California candidates. The Southern California LAFCOs requested that the Commission nominate a County member from San Bernardino LAFCO for the Board of Directors. Ms. McDonald states that she has contacted Supervisor Biane, who has served on the CALAFCO Board of Directors previously, and he has consented to run for election to the CALAFCO Board of Directors. In addition, Ms McDonald states that staff is asking that the Commission designate a voting delegate for the Annual Conference Business Meeting. Currently Commissioners Bagley, Cox, Pearson, and Smith are planning on attending the Annual Conference and any of these Commissioners can serve as the designated delegate, as well as the Executive Officer. Ms. McDonald states that if the determination of the Board of Directors at the August meeting is to not place the question of regional representation before the membership, the Commission has directed staff to not to pay the annual membership dues. In that event, LAFCO Commissioners attending the Annual Conference would be attending as non-voting members and the nomination of Commissioner Biane would be voided. Ms. McDonald recommends that the Commission take an action to nominate Supervisor Biane for the CALAFCO Board of Directors and also to designate the voting delegate at the Annual Conference.

Chairman Nuaimi asks if there are any preferences from the Commission as to who should serve as the delegate for the Commission. There are none. Chairman Nuaimi asks the Commission if there is any opposition to selecting the Executive Officer to serve as the delegate. There is none.

Chairman Nuaimi asks if there are any alternatives to the nomination of Supervisor Biane to the CALAFCO Board of Directors to be discussed. There are none.

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

(It is noted that Commissioner Mitzelfelt arrives at 9:10 a.m.)

CONSIDERATION OF: (1) ACKNOWLEDGE REVIEW OF CERTIFIED FINAL EIR FOR LAFCO 3076; (2) ADOPTION OF STATEMENT OF FINDINGS AND FACTS FOR LAFCO 3076; AND (3) LAFCO 3076 – CONSOLIDATION OF SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT AND SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT (CONTINUED FROM APRIL 15, 2009)

LAFCO conducts a public hearing to consider LAFCO 3076 - Consolidation of San Bernardino Valley Water Conservation District and San Bernardino Valley Municipal Water District. Notice of this hearing has been advertised as required by law through publication of an 1/8th page legal ad in The Sun, a newspaper of general circulation within the area. Individual notice of this hearing was provided to affected and interested agencies, and those individuals and agencies requesting mailed notice.

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Chairman Nuaimi informs the audience that anyone wishing to speak on this matter must fill out a request to speak form and turn it in to the LAFCO Clerk. Executive Officer Kathleen Rollings-McDonald states that it is the Commission's practice that representative from each of the affected agencies be allowed five minutes to speak; all others will adhere to the Commission standard three minute rule.

Ms. 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 its reference here. She states that today opens the formal consideration of a proposal that was originally submitted in 2006. This proposal was initiated by the San Bernardino Valley Municipal Water District (hereafter shown as "Valley District") through a resolution adopted by its Board of Directors. Ms. McDonald shows a map on the overhead display of the boundaries of the Valley District and the San Bernardino Valley Water Conservation District (hereafter shown as "SBVWCD") and the boundaries of the hydrologic area known as the Bunker Hill Basin.

Ms. McDonald reviews the materials that were mailed to the Commissioners and interested and affected agencies and individuals on July 8, 2009 as follows: LAFCO Staff Report, Plan for Service, Independent Financial Analysis, & Environmental Impact Report. In addition, a supplemental report was provided that included information received after the staff report had gone to print which includes a letter addressed to Commissioner Williams asking LAFCO staff to provide to the Commission the meeting information and handouts from SBVWCD's meeting with Commissioner Williams on June 30, 2009, among other materials. Ms. McDonald states that the letters received from the City of Highland and West Valley Water District expressing opposition to the proposal were provided in the mailed packet.

Ms. McDonald notes that a correction to the staff report was issued on July 13, 2009 by LAFCO staff. The second sentence on page 30 of the staff report is revised to read as follows: "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 corrected information was communicated to the Commissioners via email, posted on the LAFCO website and distributed to the affected agencies.

Ms. McDonald states that at each Commissioner's place are: (1) copies of letters received by LAFCO staff following distribution of the reports: one from the City of Riverside dated July 14, 2009 and one from the Western Municipal Water District dated July 13, 2009 indicating their support for the consolidation; (2). a copy of an email from Ms. Rosemary Hoerning, Public Works Director for the City of Redlands, outlining the action taken in a special meeting by the City of Redlands as well as supporting documenting regarding the potential transfer of the Mill Creek Spreading Basins to the City of Redlands; and (3) a letter received from United Strategies Incorporated requesting that the successor agency develop a Comprehensive Regional Multi Species Habitat Conservation Plan, if the consolidation is approved. A complete copy of all materials is on file in the LAFCO office.

Ms. McDonalds states that these are the materials provided to the Commission for its review and consideration of the consolidation. She states that the 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). The staff reports outline what these determinations are: (1) the Commission must be able to designate a successor to all services provided or delivered by the consolidated districts at the time of Consolidation; (2) the Commission must determine that the public service costs of the proposal that is being authorized are likely to be less than of substantially similar to the costs of alternative means of providing this service; and (3) the Commission must determine that the proposal promotes public access and accountability for community service needs and financial resources.

The staff report provides an historic outline of the agencies. Ms. McDonald indicates that as the Commission will recall the SBVWCD submitted a request for a declaration of non district status and that they were determined to be a non district under LAFCO procedures. Such designation indicates that the processing for the protest procedure would go back to the principal act for SBVWCD. LAFCO staff indicated in the report related to the non-district determination and this report, that the process would come full circle back to LAFCO -- the approval of Non-District Status (56127-56128 Cortese-Knox-Hertzberg)

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which points to Water Conservation District Law (Water Code Section 76020) that then directs the Commission to Water Code Section 32560 et seq. which was repealed in 1965 by adoption of the District Reorganization Act (DRA) which was repealed by the Cortese-Knox Act (AB 115 and 558) which leads to AB 2838 which rewrote LAFCO law as the Cortese-Knox-Hertzberg (CKH) Local Government Reorganization Act of 2000 – Government Code Section 56000 et seq., which places the protest procedure back to the Commission for review and action.

Ms. McDonald states that this has been a litigious process without the full consideration of the application, with litigation related to the method for processing of the protest procedures as well as whether the proposal was dissolution rather than a consolidation. The Ventura Superior Court made its determination and in April of this year, it was determined by the Appellate Court that should the Commission determine to approve the proposal, the protest proceedings would be conducted under the Cortese-Knox-Hertzberg Local Government Reorganization Act and that the proposal was indeed a consolidation.

Ms. McDonald states that while the litigation was in the process of being resolved, LAFCO staff continued to conduct its review of the proposal including the review of the environmental assessment and the LAFCO staff analysis. From September 2007 through January 2009, the environmental assessment process was conducted with the Final EIR prepared for this project reviewed and considered by the Commission at its January 21, 2009 hearing. At that hearing the EIR was certified as complete through the adoption of LAFCO Resolution 3046. She states that on April 6, 2009 the SBVWCD presented LAFCO staff with its Resolution No. 446 outlining its opposition to the Consolidation, which has been included in the materials provided with the staff report.

Ms. McDonald states that the Commission has been presented with all the material related to this proposal and must now turn its attention to those factors of consideration that are required for all LAFCO proposals which are: boundaries, land use issues, service considerations and environmental impacts.

Ms. McDonald presents information related to the boundaries. She states that the physical boundaries for SBVWCD are shown on the overhead display. The District was formed by election of the registered voters in 1932. LAFCO staff is aware of only two times that these boundaries have been altered; once in the mid 70's and once in the early 90's. She states that the Commission conducted its Municipal Service Review which culminated in a zero sphere of influence being designated for SBVWCD. She reviews the boundaries of the seven districts from which the seven members Board of Directors are drawn. Ms. McDonald reviews the boundary and sphere of influence of the Valley District, stating that the Sphere of influence is generally defined as the area tributary to the San Bernardino, Lytle Creek and Rialto Basins. This district has, by law, five division within its territory from which its representatives are elected, four of which are in the existing SBVWCD boundary. The Valley District was formed in the 1950s. Ms. McDonald presents information related to the San Bernardino County Flood Control District. She states that this agency was formed in 1939 and overlays the entirety of the County. She states that by definition of the Special Act creating the San Bernardino Flood Control District it provides for the provision of water conservation activities to assure the maintenance of the groundwater basins within the County.

Ms. McDonald presents information related to land use information for the territory within the consolidation proposal. She states that this area includes every type of land use except beach front property. Within the 49,885 acres which are within both the SBVWCD and Valley District boundaries are land use designations ranging from open space to heaving industrial. These areas include unincorporated area which is governed by the San Bernardino County General Plan and territories within the cities of San Bernardino, Highland, Colton, Loma Linda, Redlands, and Yucaipa. The General Plans of those cities dictate the full range of land uses available within those territories.

One element that has been of primary concern during the review of the consolidation which does have land use implications is the work done on the "Upper Santa Ana River Wash Management Plan" identified in the materials presented to the Commission on numerous occasions as the "Wash Plan". This document was adopted by the SBVWCD through Resolution No. 444 in November 2008. In the staff report LAFCO staff

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identified the goals and objectives of the Wash Plan and the project specific components. She states that it is staff's opinion that the consolidation will have no direct impact on the "Wash Plan" since, as a condition of approval, LAFCO will require the successor agency to continue to provide all levels of service currently provided by the SBVWCD.

Ms. McDonalds presents an aerial review and flyover of the consolidation area showing the area of the Santa Ana River outside the SBVWCD boundary.

Ms. McDonald presents information related to the Service Considerations. She states that staff has provided the mission statement that each of the districts has put forward for its operation included on page 13 of the staff report. SBVWCD's mission statement is "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 ground water, balancing such demands with those of land, mineral, and biological resources." (Taken from its website)

Valley District's mission statement is "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." (Taken from page 5 of the Plan for Service). Ms. McDonald notes that in the staff view the purpose of both agencies is to maximize the local water resources in the best way possible.

Ms. McDonald displays a map of the flood control district. In 1939 when the San Bernardino County Flood Control District Act was placed into law, the definition and purpose of the district for the entirety of the county was defined to provide for the control and conservation of flood waters. Ms McDonald continues that of interest was that it also states that it is "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 such waters for beneficial use in said district". In 1932 the SBVWCD was formed, in 1939 the flood control district was formed and in 1954 the Valley District was formed all overlaying the same territory, to a certain degree, and all charged with the same purpose, to maximize local water resources for the use and benefit of the constituents.

Ms McDonald states that currently LAFCO has authorized both the Valley District and the SBVWCD specific services, as required by law. In the case of a proposal to expand the level and range of service, it requires that the Commission review and approve such a plan and that the agency requesting additional services show how the service would be paid for and where it would be provided. In 2006, at the end of the municipal service review for SBVWCD, LAFCO did amend and clarify the services provided by SBVWCD. The specific services were water conservation and the surveys of water supply. The service review specifically lists the services that can be performed. One of the questions that has been asked by the West Valley Water District is whether the SBVWCD will be implementing the habitat conservation plan that is currently being reviewed and considered as a part of the wash plan. Ms McDonald states that in none of the definitions of service for SBVWCD is the maintenance of mitigation lands or use for park facilities identified as a service that is available through the District.

Valley District went through its municipal service review and has the functions and services of water, sewer, power, park and recreation, electrical production and electrical transmission. The park and recreation function is related to its maintenance and ownership of the Yucaipa Regional Park. The lands are owned by the Valley District, utilized for water storage and in conjunction with the county regional parks department they provide for park use in that area.

Ms. McDonald states that there are a number of determinations that are required related to the ongoing services that were outlined in the plan for service, which are summarized as:.

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1. Surface Water Rights. LAFCO staff has indicated that LAFCO has the authority, through the government code, to transfer the water rights and the use of that water through a condition of approval to the successor agency.
2. Mining Leases. The mining leases are contractual obligations that staff has proposed as a condition of approval that they be included and transferred to the successor agency. LAFCO staff has the authority through the cited government code to implement this condition.
3. Wash Plan. LAFCO staff is also recommending that the Commission adopt a condition of approval that requires the continuation of this service as has been supported by Valley District through adoption of its resolution 945 on September 3, 2008 and Resolution 951 on February 18, 2009.
4. Institutional Management Agreements. The Plan for Service identifies two specific management agreements, Santa Ana River-Mill Creek Cooperative Water Project Agreement and Big Bear Watermaster, both of which SBVWCD serves as manager. A determination on the continuation of service is needed. LAFCO staff is recommending that the Commission adopt a condition of approval that requires transfer of these services to the successor agency.
5. Transfer of Facilities. Government Code Section 56886(h) allows for the transfer of real property to the successor agency as part of its review process. LAFCO staff has identified that the Mill Creek Facilities would fall under this Code Section. The City of Redlands has submitted to the Commission a letter related to the transfer of these facilities. As a part of the Plan for Service, the Valley District included the Memorandum of Understanding (MOU) which was signed in conjunction with the City of Redlands in 2005 as part of the Municipal Service Review. This MOU had a sunset date of July 1, 2008. LAFCO staff contacted the City of Redlands and the Valley District to determine whether it was attempting to seek an extension of the MOU or pursuing a new effort. Valley District indicated to LAFCO staff that they were working with the City of Redlands to seek an extension of that MOU. LAFCO staff awaited response from the City of Redlands. During January 2009, staff was informed that the City of Redlands had taken an action to review the issue again and to support a new MOU for the transfer of the Mill Creek Facilities. LAFCO staff met with representatives of City staff to review the concern that the information had not been conveyed to allow for consideration during the processing of LAFCO 3076. LAFCO staff worked with the City of Redlands until March of 2009, a copy of the information from the City of Redlands indicating that the City was planning to continue to work on the MOU has been provided to the Commission. The basis for the request for information was that the MOU had implications on the Independent Financial Report to be prepared at the direction of the Commission. LAFCO staff wanted to ensure that all information pertinent to the financial analysis was available for RSG's Analysis and review. LAFCO staff continued forward with evaluating the continued operation of the Mill Creek Spreading grounds and the financial report as though the facility would be operated by the successor agency. In addition, as identified in this report, since the mill creek spreading grounds are a regional facility, LAFCO staff has concern regarding the transfer of those facilities to a local municipality Ms. McDonald states that staff's concern is that the facilities be maintained for spreading and recharging of all the water that are available for the benefit of a number of entities who extract their water from that area, including the City of Redlands, and the smaller mutual water companies that serve the citrus groves in the area. It is indicated in the staff report that LAFCO staff did not support the transfer of facilities. The letter from the city received via email late last evening identifies that the City of Redlands now wishes to reiterate its support for the Consolidation contingent on the spreading grounds being returned to the City of Redlands.

In the EIR in the plan for service originally these lands were a part of and owned by the City of Redlands and transferred to SBVWCD with the stipulation the lands be used for water recharge only. The Commission now has a request from the City of Redlands that the provisions of the 2005 MOU apply and that the transfer of the Mill Creek spreading basins be to the City of Redlands in fee ownership and that all the terms and conditions of the prior 2005 MOU be provided for as a condition of approval.

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LAFCO staff has heard from Valley District that they have no issue with returning to the terms and conditions of the 2005 MOU with the City of Redlands. Staff would indicate that if that is the direction from the Commission that it be very clear that when these terms and condition are reviewed with the water stakeholders group that a deed restriction, a covenant, something be applied to the transfer of these lands to restrict their use solely to water conservation purposes for the future of the residents of the city and the water users in that area that rely on the basin for their agricultural uses.

6. Transfer of Employees: Government Code Section 56886(I) provides the Commission with the ability to transfer the employment, benefits and rights of the existing SBVWCD employees to the successor district, Valley District. Pursuant to that authority, a condition of approval transferring the employees will be included in the final resolution. The two employees that are of issue are the General Manager and Assistant General Manager, who are employed through contracts. Those contracts will transferred under a separate provision that states that all existing contracts of the SBVWCD will transfer under a separate conditional authority.

7. Board of Directors: The Commission is required to determine what the make up of the board of directors of the successor agency will be. It is anticipated that the successor agency is a municipal water district, subject to municipal water district law. This water district has a 5 member board of director elected by division, however, in a Consolidation or reorganization, Municipal Water District law (Water Code Section 71250.1) allows a LAFCO to increase the number of directors to serve on the Board of Directors up to a maximum of 11 members. The Commission will need to determine a condition of approval specifying what the board of directors will look like. The recommendation and request of Valley District in the plan for service is that the existing board of director be retained and that all existing seven members of the SBVWCD board of director be put in place as an advisory Commission to serve for a four year period and two members of the Valley District Board be place on the advisory Commission as well to advise on water conservation activities as the districts transition.

Ms. McDonald states that at the February 2009 hearing, the Commission contracted with the firm of Rosenow Spevacek Group (hereafter shown as "RSG") to perform an independent Financial Report on the plan for service and the issues regarding the financial review of this proposal. She turns the presentations over to Ken Lee, from RSG.

Mr. Lee reviews the Independent Financial Review (IFR), a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. Mr. Lee points out some important observations in the processing of this financial analysis. The first factor being that this analysis is of the financial aspects of the Plan for Service presented for the Consolidation. He states that while there are number of other financial factors and policy determinations that would need to be considered during the Commission's review, it is important to remember that none of the individual factors or determinations requires a specific action. Each factor 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. Mr. Lee states that RSG is not making any recommendations as a financial consulting firm, but merely presenting findings and conclusions as part of their review of the financial aspects of this application. Mr. Lee provides an outline of the methodologies utilized in developing the IFR as well as the conclusions which indicate that the determinations as required for this proposal for financial considerations, can be made – that there are sufficient revenues available to continue to provide for the service and that it will provide for a clearer more transparent government.

Ms. McDonald states that LAFCO staff believes that the Commission can make the determinations required by Government Code section 56881, which allows for the Consolidation of two districts formed under different principle acts, and that all existing services provided by SBVWCD will be continued through the consolidated Valley District as required by Government Code Section 56826.5.

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Ms. McDonald states that the next consideration relates to Environmental Review. She states that in January of 2009 the Commission considered the Environmental Impact Report (EIR) prepared by RBF Consulting. The Commission adopted a resolution certifying the Final EIR.

Ms. McDonald asks Tom Dodson of Tom Dodson and Associates, Environmental Consultant to the Commission, to speak on the environmental portion of the report.

Mr. Dodson states that the Commission has adopted a resolution certifying that the Final EIR for LAFCO 3076 is consistent with the CEQA and that through that resolution the Commission has certified that the Final EIR for LAFCO 3076 is complete. He states the since the adoption of that resolution there has been no change in circumstances related to the project, therefore, there is no requirement for additional environmental assessment. He states that the action before the Commission at this hearing is to review and adopt the Statement of Facts and Finding related to the Final EIR and if the determination of the Commission is to approve the proposal that the Commission direct staff to file the Notice of Determination within five days.

Executive Officer Kathleen Rollings-McDonald notes once more that in preparation of the staff report for LAFCO 3076, page 30 had a word in the environmental section the was inadvertently omitted. A copy of the corrected page was circulated. The second sentence at the top of page 30 of the staff report should read as follows: "Since the adoption of the resolution there has been **no** change in circumstance related to the project; therefore, there is no requirement for additional environmental assessment." Executive Officer Kathleen Rollings-McDonald states that page 30 of the staff report begins the outline of the findings and determinations which are required as delineated in Government Code section 56668 for any change of organization proposal.

Ms. McDonald states that LAFCO staff believes that the Commission can make the determinations required by Government Code Section 56881, which allows for the Consolidation of two districts formed under different principle acts. She states the throughout the review of this proposal, LAFCO staff has had the one defining policy declaration for the Commission which is to provide for the most efficient and effective water recharge and conservation effort for the Bunker Hill Basin and the issue of whether one agency is more appropriate for that review and obligation than multiple agencies. LAFCO staff still believes that one consolidated agency is the most appropriate effort for these essential services for all of the residents of the eastern portion of San Bernardino valley

Ms. McDonald requests that after the Commission has heard all the public comments on this proposal that staff be allowed an opportunity to respond to any question or information presented prior to the closing of the public hearing.

She states that Valley District, as the successor agency will provide all the services currently provided by the SBVWCD and Valley District as it exists today. That they will have sufficient revenue to provide the services following the change of organization, knowing that the mining revenues are volatile, knowing that this is one of the most significant aggregate deposits in the overall southern California region and the need for aggregate as we move forward in our economy is critical. Ms McDonald states that the volatility of mining revenues will occur whether or not this Consolidation is approved. She says that the existing financial resources available to Valley District will smooth the fluctuation in revenues and continue to provide the same level of services and that LAFCO staff believes that the IFR has shown that the costs for providing these services are substantially similar through this reorganization it doesn't say that there has to be significant cost savings. She states that LAFCO staff believes that this Consolidation will promote public access and accountability for community service needs and resources.

Ms. McDonald states that staff's recommendation is to approve LAFCO 3076 by taking the following actions that for environmental review that the Commission acknowledge that they have reviewed and certified the Final EIR, that the Commission adopt the statement of Facts and Findings as presented and that the Clerk to the Commission be directed to file a Notice of Determination within five days with the Clerk

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of the Board of Supervisors and the State Clearinghouse. She states that staff recommends that the Commission approve LAFCO 3076 subject to the standard LAFCO terms and conditions, including the provisions of Government Code Section 56885.5(a)(4), which prohibits both of the agencies from increasing compensation or benefits and that binds both agencies to the current budget, unless an emergency situation exists, as defined in Government Code Section 54956.5' is documented and presented to their individual board of directors. That the Commission direct the Executive Officer to convene the Water Stakeholders Group to review the terms and conditions related to this proposal for the transfer of facilities, employees, water rights and the establishment of separate accounts and the review of the fiduciary responsibilities that will be transferred to the successor agency, and that the Commission defer adoption of the Final Resolution of Approval to the September hearing to allow the stake holders group to meet.

Ms. McDonald states that she would like to thank the staff of both agencies for providing all requested documents in both a diligent and timely manner. She states that she would be happy to answer any questions.

Chairman Nuaimi asks the Commission if they have any question for staff. There are none.

Chairman Nuaimi asks Clark Alsop, Legal Counsel to the Commission, for clarification as to the process of calling up those who wish to speak on this matter. Mr. Alsop states that the Commission practice is to call upon the applicant, Valley District, to speak first, then SBVWCD, followed by general public comments. Mr. Alsop states that what has been done in the past is then at the conclusion of all the testimony the Commission has allowed the applicant to sum up their position. In addition, as the Executive Officer indicated, prior to the closing of the hearing, in the event there is new information, she would like an opportunity to respond.

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

Mr. Pat Milligan, President of the Board of Directors for the Valley District, states that it is a great pleasure to be in attendance. He has been seeking to ensure that the people of the Valley have adequate water for a number of years. He was first elected to the Board of Directors for the Valley District in 1964 and is now president of the board, elected by the people of San Bernardino. Mr. Milligan states that the process of Consolidation started a number of years ago. He recalls the legislature of the State of California, which mandated that local agency formation Commissions meet and decide whether there were duplicative districts, both performing the same tasks, and that the Commission should look toward the consolidation of those districts where it would be more efficient. He states that in March of 2006, the LAFCO Commission, after conducting the Municipal Service Review for the SBVWCD, determined that a duplication of services did exist and that the Consolidation of these two districts would better serve the public interest. At the request of LAFCO, Valley District filed a petition to move the question of whether or not there should be a Consolidation forward. After the filing of that petition, in November of 2006, the trek to determine whether or not the people of this valley would benefit by this Consolidation began in earnest. He says that what will happen if a Consolidation does occur is this, instead of there being a district controlled by 90 thousand voters and a district controlled by 250 thousand voters, the democratic process will be expanded so that all of the questions about the Bunker Hill Basin will in fact be decided by the greater group of voters. He says that if the Consolidation moves forward, it will enfranchise a lot of additional people in the question of the replenishment and the preservation of the Bunker Hill Basin.

He states that since November 2006, when Valley District filed the petition for Consolidation, the SBVWCD has thrown up all most every conceivable objection to the proposed Consolidation. SBVWCD has maintained that LAFCO does not have jurisdiction over the proposed Consolidation; they maintain that the Consolidation would hurt the environment, that the Consolidation does not make financial sense. The SBVWCD has gone so far as to authorize the expenditure of \$25,000 a month to a consultant in an effort to influence the vote that the Commission will make today. He says that no one knows how this money has been spent because there has been no report from the consultant. He states that LAFCO staff has been

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incredibly patient throughout this process and the report that staff has prepared provides for the recommendation to approve the consolidation.

Chairman Nuaimi reminds the assembly that there is a three-minute time limit and that he will be adhering to that time limit, however the SBVWCD will be given six minute time limit since the Valley District took six.

Randy Van Gelder, General Manager of San Bernardino Valley Municipal Water District, states that he has been involved in the water business in the San Bernardino Valley for 30 years. He states that the Valley District has a good track record when it comes to local issues. The top two people of Valley District have over 60 years experience currently within the San Bernardino Valley. He says that there has been a lot of mention about various issues and he wants to focus on two things mainly, one dealing with the financial impacts. He states that something that wasn't mentioned regarding the financial charts RSG had on the overhead display was that even with RSG's conservative analysis, after you don't collect the \$600,000 in pump tax, there is still enough cash in their conservative analysis, which Valley District believes is too conservative, to cover costs. He states that some may have read in the newspaper on Sunday that some have said that it will cost an extra five million a year. He says that SBVWCD budget is \$3.5 million , two of that is for capital improvements, leaving \$1.5 million , which is the number that was presented in the RSG report as their actual cost of doing business. Based upon that information, it is his opinion that it is impossible for the Consolidation to result in an expenditure of \$5 million . He says that one simple thing to think about is when you add a staff of seven people to another organization such as his with about twenty people, you don't need a second general manager so long term there are going to be additional cost savings. You don't need a second assistant general manager; you certainly don't need all the consultants who do battle with each other, so he thinks the savings would be much more than that which has been represented by RSG. However, even with their conservative assumptions, the Consolidation still makes sense.

He states that with regard to the City of Redlands, as was mentioned, Valley District has an MOU with the City of Redlands which has expired; Valley District's board has offered to the City of Redlands to continue that MOU and Valley District is prepared to do that. One suggestion on the property – if people are worried about maintaining that and restricting it for water conservation purposes, then a simple deed restriction on the property transfer could accomplish that and Valley District would offer their attorney and staff to work with LAFCO staff on this item. He closes by stating that in the interest of time, he suggests that Valley District's counsel and staff, Mr. Doug Hedrick not testify at this time, Valley District is simply in attendance to answer any questions the Commission might have.

Melody McDonald, president of the Board of Directors for San Bernardino Valley Water Conservation District states that she would like to share a few personal thoughts about the process. When this Consolidation process began, she along with most of her fellow board members were very defensive; perceived by some as lashing out at their opponents, becoming more narrow and even insular. However as the SBVWCD began to move through this process, she began to see it in a different light. She says that SBVWCD has taken a hard look internally at their district governance, staff, efforts and results. She states that she will admit and own up to SBVWCD's past mistakes. They have new leadership in their district and are working tirelessly to improve relationships with water agencies and participate in regional water management. She says that SBVWCD is a better agency today because of their self reflection and evaluation through this process. It has been extremely constructive and is bearing fruit. She states that they are a changed agency and those changes that have caused a shift in the Consolidation debate amongst the stakeholders. She states that all elected leaders know that changing the structure of government only makes sense if those changes make our region a better place to live. And today with all that information in front of them, SBVWCD believes that the proposed Consolidation would be a failure. As detailed in the RSG report, there is no cost savings; the numbers to support Consolidation aren't there. Ms. McDonald states her opinion that a vote to consolidate the districts puts water quality and its long term sustainability in jeopardy. She says that SBVWCD believes that Consolidation must be a consensus driven policy to succeed and there is no consensus. She says that they have learned a lot from this process, and are moving forward and are poised to bring a renewed and sustainable value to the future of this area. She

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says it is time to put this Consolidation to bed once and for all and allow them to face that challenge with the benefit of lessons learned. She urges the Commission to vote no on Consolidation and thanks the Commission for their time.

Robert Neufeld, General Manager, SBVWCD states he has only been with the SBVWCD for 13 months. He states that he knows that the way that the SBVWCD has approached the Consolidation has been more than a bit bumpy. He says that 13 months ago he received his marching orders from his board of directors, and those were to make sure that the right decisions were being made by SBVWCD for the right reasons. He states that he has brought his years of political and professional experience as well as his communication skills to the table in all dealings with his board, with LAFCO staff, with the Valley District and all of the local water community. In January when the Commission certified the EIR, SBVWCD were very support of the actions taken that day to hire and independent financial consultant. He states that he wants to thank the Commission for insisting on the IFR. SBVWCD has learned a lot from it. He says that while the IFR report states that in the long term there may efficiencies that could lower costs, none were specifically identified. He states that SBVWCD believes that the report, as it stands supports that Consolidation is not the way to go, in fact there is a significant risk that Consolidation will actually cost the public more in the first five years through the Consolidation. The simple truth is that Consolidation brings less revenue with the same costs placing public accountability at risk. He says that prior to the Consolidation process, which has undeniably taken attention away from other SBVWCD functions, SBVWCD had began an important strategic planning process; in fact that process started at the same time that preparations were being made for the service review for LAFCO. That municipal service review process got the SBVWCD to think outside the box; to visualize change in its mission and expand its responsibilities to better serve the public. Mr. Neufeld states that SBVWCD will be returning to that process at the conclusion of these considerations. He says that on behalf of his board and district, he asks the Commission to vote against this Consolidation, and that they are committed to being a good partner with other agencies and outstanding stewards of all of the resources that they are receiving.

Chris Aldinger, CPA hired to speak on behalf of the SBVWCD, states that he would like to point out two specific issues included in the RGS report to ensure that everyone is aware not only of what the report says, but what the report doesn't say. First, RSG was tasked with the preparing of a financial report. This IFR makes projections based on trend analysis. This means that RSG looked at costs and revenues over the last dozen years or so, and projected the future based on the past, without consideration of current economic conditions. He says that with regards to revenues, the IFR states "premised on a trend analysis that did not factor in certain economical variables affect mining royalties and interest income." (page 21) on further the report states "while the trends analysis projects sufficient revenues beginning in year two, LAFCO will need to consider the reliability of these revenues" that is also on page 21. He states that RSG is sending a clear message to LAFCO that states that the trend model has limitations and doesn't always reflect reality. He says that as of today, mining operations are virtually shut down. This was not factored into the IFR. The mine operator has told the SBVWCD to expect no more revenue in 2010 than that which was received in 2009. So what this means is the first year of the financial report alone, revenues using the trend model have over stated the revenues by approximately \$1 million . He says that there is another key area of the IFR which the Commission needs to give extended consideration, which is public accountability; "If legally permissible, Valley District's, ability to back fill temporary deficits would increase public accountability of financial resources within the segregated basin management account. " (page 22) He says that it doesn't make sense; borrowing from Peter to pay Paul does nothing to increase public or financial accountability. In fact the shifting of funds and the borrowing to cover deficits is proof itself of less financial accountability. He says to imagine the reaction of the San Bernardino County residents and taxpayers when they realize that they are now paying for something that Riverside County folks used to pay for. He states that the ultimate backfill mechanism is already in place today, it is called a groundwater charge, it is fair and it is equitable; the party receiving the benefit pays the cost

Cheryl Tubbs, immediate past president for board of directors for the SBVWCD, states that she would like to speak on the functions of the SBVWCD and the unique role that they play in the communities that they serve. She states that the Commission should consider the decision of the Consolidation of the two

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districts beyond its financial implications. While it is a critical consideration and has great consequences on its own, this decision at its core is about the fundamental sustainability of the areas most precious resource, the local water supply. For over seventy years the SBVWCD has been the trusted steward of the local water supply. She says that they are charged with responsible ground water management, environmental protection, and a guarantee that high quality and low cost water is available for the local communities. Ms. Tubbs states her opinion that it is not logical to support consolidation based on the facts and it is simply not in the best interest of the water users in this region. Ms. Tubbs states that the customers of the SBVWCD are the elected officials, many of whom are here today, and they would like to stress their opposition to this proposed Consolidation. She says that she is urging the Commission to avoid making a decision based on a desire to expand the service of a state water contractor, to gain control of local water supplies that could be sold to users outside of the valley. She says that the Commission has a responsibility to protect and preserve the local water for the residents of the region. She asks that the Commission allow them to continue for the sake of the residents of the San Bernardino Valley.

John Longville, member of the Board of Directors for the SBVWCD, states that he wants to focus on two key points. First, he says that Consolidation eliminates a perfect fee to support ground water recharging, a fee which reflects actual usage and places much of the financial burden on Riverside County users. Second, this Consolidation fails the common sense test and is squarely against the guidelines established in the law. He states that as to the ground water fee issue, the Commission received a letter from the City of Riverside supporting the Consolidation. A major source of revenue for the SBVWCD is a ground water fee that provides about \$600,000 a year. The money is paid by those extracting ground water and pays the costs of recharging the basin. He says that the Valley District does not have the legal authority to collect such a fee; there is no dispute about this point. \$600,000 per year in perfect revenue tied to usage is lost by Consolidation, a big chunk of that money being paid by Riverside County users. Mr. Longville states that the Plan for Services identifies that the Valley District proposes to back fill this tremendous loss through a shift in the burden from extractors in our neighboring county to the people of San Bernardino County. He states that there will be no additional benefit, but the people will be bearing a bigger burden. Second, he urges that the Commission take a common sense look at this Consolidation, and note in the staff report that this Consolidation is being brought forward under California Government Code Section 56826.5. He says that he is very familiar with this law, it was created in 2004 by Assembly Bill 267. He was a member of the Assembly then, and he voted for this law. He says that the intent of the law is simple, and was spelled out in the assembly floor analysis; which indicates "Consolidations are encouraged whenever there is an opportunity to better capture economies of scale and provide an improved or more cost effective level of service to the constituencies of the agencies". Mr. Longville states his position that the IFR found no costs reductions through Consolidation; Is there an improved or more cost effective level of service, with the elimination of the ground water fee, its just the opposite, He says that Consolidation eliminates a perfectly dedicated user fee and the system to pay for ground water recharge will be hurt, not improved ,through Consolidation. He says that the Commission should congratulate themselves on having asked the hard questions and insisted on an independent financial review. If the Commission rejects this Consolidation, they are proving that the system works: that is if something is carefully studied first, you have the tools to make the right decision.

Chairman Nuaimi asks the Commissioners if they wish to ask questions of the SBVWCD at this time or if they prefer to take the balance of the testimony from those in favor, opposed and others and then ask questions. The Commission indicates that they would like to continue to hear public testimony.

Chairman Nuaimi calls upon those wishing to speak in favor of the item and reminds the public that the time limit for comments is three minutes.

William Rusty Bailey, City Councilman, City of Riverside and Chair of the Land Use Committee, Public Utilities for the City of Riverside, states that he has a simple message. He says that with the 250 pages of the IFR that was received, the Commission also read the letter of support from the City of Riverside supporting the Consolidation of the two agencies. He states that the City of Riverside is a strong supporter of joint management of the San Bernardino Basin Area by the water purveyors that extract the water from

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the basin, also a supporter of the mission of the SBVWCD, which is to maintain and replenish the ground water levels in the San Bernardino Basin Area. The City of Riverside supports the Consolidation of these two water agencies on the ground that it promotes the policy of good governance and economic efficiencies. He states that he appreciates the consideration.

Tom Evans, President of the Board, Western Municipal Water District (Western), states that they are in attendance to support the recommendation to approve the Consolidation. Mr. Evans states that Western, has existed since 1954 and has responsibilities within the Bunker Hill area by virtue of the fact that they are a co-watermaster for this area. He states that they believe very strongly that effective water management must be continued and they believe that the Consolidation will accomplish that. He states that they are also in a unique situation in that Western consolidated with another water agency in Riverside County approximately five years ago and he is here to tell the Commission that it actually works. They consolidated the employees, and they were not adversely affected at all and the customers benefited. He states that they have continued to save costs, certainly eliminated the overheads associated with two separate water agencies not needing legal, accounting and other service in a duplicated basis.

He also states that there is no question about the fact there is an immediate financial benefit to all customers in Riverside and San Bernardino County by virtue of the fact of the elimination of pump tax. All water producers will eliminate that cost and the benefit flows directly to the customer, and that is what they are primarily concerned about. He states that they are here if the Commission has questions related to the implementation of a consolidation by virtue of the fact that Western has actually done it and that they recommend the approval of the recommendation of staff.

Brenda Densted, member of the Board of Directors for Western, states that she was a director on the Murrieta County Water District when they merged with Western about five years ago and now sits on Western's board. She states that she would like to applaud staff efforts and that Western is in support of the Staff Report. She says that LAFCO staff did a very thorough detailed report of the Consolidation. She says that services were not adversely affected, no employees had any type of contradictory benefits that were in the merger, and everybody successfully merged with the group. There were no benefits that were lost to any employees and there were no benefits lost to any of their constituents, their service area has benefited from the merger and it has been very successful and they've enjoyed the services and the relationship. She says that they consolidated and elected to put in place a committee for the year after the Consolidation to ensure that it was a smooth transition.

John Rossi, General Manager of Western, states that he serves as one of the two watermasters in this basin. He states that water issues are becoming more complex, that if it wasn't for the State budget crisis, it would be the number one issue that we would be dealing with in this State. He states that Western has had a successful merger five years ago, they anticipated savings of about \$500,000 a year, a little bigger budget, but not very much. The duplication of cost that have been mentioned before for things like administrators, attorneys, consultants and so forth, by those savings they've been able to solve very complex water supply issues in Murrieta. Mr. Rossi states that by the virtue of a larger district working with the benefit of the employees that had experiences from the absorbed district, they were able to work on water supply issues, conservation issues, and were able to double the size and the capacity for imported water, which was a key agency issue at that time for the Murrieta County Water District. He says that they have continued to focus on the benefit to the end customer and they have maintained that as an operating division and an accounting division to ensure that the saving was achieved through the Consolidation flowed to those customers specifically. Mr. Rossi states that they have achieved greater savings than they had estimated at the time of the Consolidation. He asks that the Commission consider a vote in favor of the Consolidation.

Chairman Nuaimi states that the Commission will now hear from those opposed to the Consolidation.

Ross Jones, member of the Highland City Council, states that he has before the Commission a booklet that is rare in the East Valley, it's called a "Bulletin #4". It is the original and early development of water

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rights in the East San Bernardino Valley, written by George William Beatty. The interesting part about this bulletin is that it is the history of water in the Santa Ana River, the Mill Creek and the Zanja in the early 1819 to 1951. He says that as you review the course of history, as dynamic and interesting as it is, one will find that the early needs of those early pioneers and farmers were that they needed to dig ditches, they needed to divert water and build dams in order to supply the needs that they had at those particular times, they also learned that the more people they involved in it the greater the fight. He says that the fights over water were settled in the courts, they were disputed in the streets, people died over it. Mr. Jones states that now we find ourselves in the same battles today, fighting for a very valuable water resource, keeping the control of that water local. He says that he wants to keep the water local. , He says that he has farmed his property on this very water. He states that it is interesting that on page 36 of this report, were the minutes of January 19, 1932, the forming of the SBVWCD, and from that point forward, their sole purpose has been to recharge the ground water into this Valley. He says that he also wants to bring to the Commissions attention the letter that was recently sent from the City of Highland, restating their points in opposition to the consolidation..

Dennis Johnson, resident of the city of Highland, states that this is an issue about which agency can function the cheapest, who can provide the service, but the hidden agenda is water. He says that if that water is lost, we've lost our destiny. He says that Valley District is not subject to prop 13, they can raise his taxes. He says that he has two commercial properties and at the present time those two commercial properties add up to \$3,894.03. He states that he recommends a refusal of the Consolidation; that it is not in the best interest of the Valley for the short or long term.

Chairman Nuaimi calls those who have not stated a position on this issue to speak.

Rosemary Hoerning, Public Works Director for the City of Redlands, states that she is here to express the City Council of the City of Redlands position regarding the Consolidation proposal, specifically related to the Mill Creek spreading basins. She says that in the staff report on pages 18 & 19, the LAFCO report specifically states that staff's position is that they oppose the transfer of the Mill Creek spreading basins to the City of Redlands. She says that the Commission did hear comments from Ms. McDonald that emphasized the City's position regarding the Mill Creek Basin. She says that she did hear from Mr. Van Gelder that as one of the conditions of approval could be to place a deed restriction on returning those properties back to the City of Redlands. What the City of Redlands would propose is that if there was some sort of deed restriction, that it would be the spreading of Mill Creek water at the Mill Creek spreading basins and putting that water to beneficial use. She says that the City is very concerned about the fact that LAFCO staff has come out in opposition to the City of Redlands receiving these Mill Creek spreading basin properties. Ms. Hoerning states that throughout the LAFCO review process, its been the City's intention that the basins be returned Redlands and she would like to go on record stating that the recommendation to oppose the return of the Mill Creek Spreading Basins to Redlands and potentially a corresponding decision by the LAFCO Commission to accept LAFCO staff's new position, is inconsistent with the environmental impact report that has been prepared by LAFCO which recognized the intention of the Valley District and the City of Redlands to have received those Mill Creek spreading grounds back to the City of Redlands.

Mick Gallagher, City Councilman, City of Redlands, states that on behalf of the City of Redlands and the entire City Council, he is here today to encourage the Commission to return the Mill Creek spreading grounds to the City of Redlands, their rightful owner. The city deeded the Mill Creek spreading basins to the SBVWCD in 1979. The SBVWCD has been spreading water there since. The recharge of Mill Creek water at this location is essential to the City of Redlands and the replenishment of its ground water and production wells which supply water to the Redlands Community. He says that the City has a vested interest in the Mill Creek spreading basins to ensure water replenishments to their wells, fields and groundwater basin. He submits that Redlands is a good steward of their local water basin. He says that an MOU was signed between Valley District and the City on August 2, 2005, memorializing the transfer of the Mill Creek spreading basin and its management to Redlands. The transfer of the Mill Creek spreading basins is consistent with all documents LAFCO received in this matter for evaluation.

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Pete Aguilar, City Councilman, City of Redlands, states that he wants to reiterate the City's position, that the Mill Creek spreading basins be transferred back, if the Consolidation takes place. The City's position has been that the Plan of Services and the certified EIR that was acted on previously considered the Mill Creek basins being returned back to the City. He says that a position contrary to that would be inconsistent with those two documents. The City's position is neutral however, if the Consolidation takes place, the City feels that the transfer of the spreading basins back to Redlands should be a condition of approval, only subject to this body's decision and not for discussion by any stakeholder group. He says that if the Commission's charge is the efficient and effective delivery of service, the City feels that returning the Mill Creek spreading grounds back to the City, its former owner, is the best public policy.

Chairman Nuaimi states that there are no further requests to speak. He asks the Executive Officer, to speak to statements that have been made.

Executive Officer Kathleen Rollings-McDonald states that the only item she would like to respond to is the statement that the LAFCO staff position is inconsistent with the EIR. The EIR was to provide an analysis of the Plan for Service as submitted by the Valley District for review of this proposal and the affects on that change should it occur. The issue regarding whether or not the Mill Creek Spreading Grounds were to go to the City of Redlands or to Valley District for future operation were to have been resolved by the Commission in its deliberations. The statement was made that the staff's recommendation and concern regarding the transfer of this regional facility and the recommendation in the staff report were inconsistent with the EIR, recognizing the position of the City of Redlands and the Plan for Service. LAFCO staff's evaluation of the Plan for Service that was presented was that these are regional facilities and should be retained by the successor agency. She says that both the City of Redlands and the Valley District have indicated support for transfer of those facilities back to the City of Redlands, the historic owner of these and if there is the issue regarding deed restrictions and other items, those issues can be resolved. However, staffs concern remains that these are a regional facility because it serves more than just the water needs of the City of Redlands for recharge of that portion of the basin. She says that she did not say that she changed her opinion, but will accept that if there are deed restrictions included that convey this, that will be an acceptable position.

Chairman Nuaimi asks the Commission if the have any comments or questions pertaining to the information regarding the City of Redlands and the Mill Creek Spreading Basins. The Commission has no comments.

Chairman Nuaimi states that he does have one question regarding the Mill Creek Spreading Basins returning to the City of Redlands, the MOU obligates that Valley District would continue to paying for the maintenance so how is it that the rightful owner does not pay for the maintenance. He asks what the logic is there. Executive Officer Kathleen Rollings-McDonald states that because the Mill Creek Spreading Basins are a regional facility and the Basin management account is to support the recharge of the facilities regionally, is her understanding of the rational of the Valley District helping to support the maintenance of the Basin from the revenues of that basin management account. Chairman Nuaimi questions if the basins are deeded back to the City of Redlands would there be future mining revenue potentials from those basins? Is there a revenue stream? What is the importance of the basins being transferred to the City yet maintained by the Valley District? Executive Officer Kathleen Rollings-McDonald states that both the City of Redlands and the Valley District would be able to explain what the benefits to them would be in the transferring of the Spreading Basins back to the City of Redlands with Valley District paying for the maintenance. The retention of the recharge facility is the only concern that LAFCO staff has, that the recharge remains a regional facility; the ownership of that facility, with the understanding that it will continue to be used for recharge of the ground water basin is LAFCO staff's only concern. She says that she is not aware of the rational behind the original transfer of the facility from the City to the SBVWCD. Chairman Nuaimi states that from the LAFCO perspective the key issue is the deed restricting the basin so that it maintains the purpose of regional recharge.

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Ms. Hoerning responds to Chairman Nuaimi's questions starting with the question of mining. She states that the only mining is if the basins are cleaned out in an effort to restore the percolation capacity. The City of Redlands believes those properties should come back to them, they directly recharge the City's well fields, they are an important part of local water supply and have been for a number of years. She says that with respect to using the funds out of the basin management account, those are the revenues that were collected under the SBVWCD. The City is paying into that account, those facilities are part of the expenses associated with the SBVWCD maintenance program and so that is why there is a funding methodology or proposal. Chairman Nuaimi asks that in actual operation of the recharge basin it would be the City of Redlands diverting flows to those recharge basins and not the Valley District. Ms. Hoerning responds that he is correct and adds that it should be a condition of approval that would require that the Basin be deeded back to the City and that the City continue forward with those operations.

Commissioner McCallon states that his understanding of the position of the City of Redlands is that regarding the Consolidation they are neutral; however, if the Commission decides to move forward with Consolidation, then the City wants the Spreading Basins returned to the City. Ms. Hoerning states that Commissioner McCallon is correct. Commissioner Curatalo asks the City of Redlands if the current needs of the City are being met by the SBVWCD, to which Ms. Hoerning responds in the affirmative. Commissioner Cox asks if it would be an acceptable resolution to the City of Redlands for that area to be held jointly by the Valley District and the City of Redlands, to which Ms. Hoerning states that it is the preference of the City that they be returned to the City of Redlands. Commissioner Curatalo states that if the City is satisfied now, and if the Commission moves forward with the Consolidation, why the City feels that their interests would not be served by the successor agency, to which Ms. Hoerning states that the City would like to maintain local control of the Mill Creek water.

Chairman Nuaimi asks if there are any questions from the Commission for the SBVWCD.

Commission Mitzelfelt states that the figure of \$5 million was mentioned as a potential cost, yet he can not determine what time period that is attributed to and asks that someone speak to that figure, to which Mr. David Cosgrove, General Counsel for SBVWCD, states that the \$5 million figure comes from SBVWCD's take on the IFR's expense projections but with what they think are much more realistic revenue presumptions. Mr. Cosgrove indicates that the figure utilizes the existing mining revenue received or the past year compared to what they believe is a wildly optimistic 15% growth weight over the first five years. He says that if you take that, change the revenues which the IFR indicates were only restricted to their trend, but take the actual revenues, grow them and project out over the five years you wind up with over a \$5 million deficit over the first five years of the projected Consolidation.

Chairman Nuaimi states that he has several questions. In some of the materials that have been previously provided to Commissioners, SBVWCD has provided spreadsheets showing cost accounting for the SBVWCD and there is a new revenue stream that shows up called deferred income. What is deferred income, since it does not show up in the independent assessment that was done, but it does show up in SBVWCD's actuals for 08/09. Mr. Cosgrove states that he believes that is attributable to additional mining revenue that was received as a result of the periodic audits conducted by SBVWCD in the administration of the mining leases. It was discovered that certain production was under reported as part of that audit process and the operator, CEMEX paid SBVWCD additional revenues that were due. Chairman Nuaimi asks if those revenues are the \$932,000 shown in the spreadsheet, to which Mr. Cosgrove responds that it is his belief that that amount was not received. Chairman Nuaimi states his main concern is the SBVWCD adopted a budget with a \$1 million deficit, for an agency whose budget revenues are 2 million, a 50 percent deficit spending budget for this year. This includes the \$932,000 being a deferred income one time source. He states that his concerns are with the financial viability of either entity for the Future. Chairman Nuaimi states that SBVWCD has expressed that there would be insufficient revenue with the Consolidation, yet they are currently subjected to that same scenario as they move forward today. Mr. Cosgrove states that SBVWCD acknowledges that the budget for 08/09 was challenged, as most public entities are. A small increase to the ground water charge has been added, to try to offset some of the loss of the mining revenues, they are also looking a \$8.5 million of reserve that SBVWCD has kept from stewardship of

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properties and basically keeping condemnation awards that came from earlier condemnations one of which was for the Borrow Pit that was shown earlier. He states that the SBVWCD holds on to those monies in order to ease out bumps in the road and also a commitment to capital facilities improvements that is in the projected budget for 09/10. Chairman Nuaimi states that the SBVWCD accountant had noted earlier that the ground water charge is the responsible way to manage the agency, and asked what the increase to the ground water charge that is being projected, to which Mr. Cosgrove states that it went from \$6.65 to \$7.18 per acre foot. He states that the increase is among the lowest in the state. Chairman Nuaimi states that the SBVWCD still has a \$1 million deficit, and wants to determine how past performance demonstrates a responsible groundwater management through use of the groundwater charge. Mr. Cosgrove states that six figures of the deficit relates to defense of the current legal proceedings, the Consolidation and the SBVWCD did have a lot of unusual expenses as a result of defending itself against the Consolidation of the two districts. These expenditures would be non- recurring and how that would be addressed from the last deficit would have to be addressed by the General Manager and the SBVWCD's accounting team.

Bob Neufeld, General Manager, SBVWCD, states that Chairman Nuaimi has very valid questions. He says that first he would like to address the issue of the mining revenues. The mining revenues that were received were for a two year period following an audit performed at the request of SBVWCD since they suspected that there were some things that needed to be verified. The audit determined that the revenue over a two year period that should have been collected during those two years that was the \$900,000. That was a one time deferred income and was put on the books as a one time method to account for that money. As far as the issue of the deficit in the budget it is a reflection of what is happening in the local economy, mining revenues are down and the SBVWCD will be collecting minimum revenues. He says that every agency in the State of California that is a public agency has reserves available for the purpose of offsetting those peaks and valleys in their budget. SBVWCD will fund the required capital projects that are on the books for this year, through the use of those reserves.

Chairman Nuaimi asks about the Wash Plan. He asks if the Wash Plan provides future expansion of mining revenues will it yield future dividends to the SBVWCD. Mr. Neufeld states that it will produce revenue, but it is an offset of the existing revenues on hand. He explains that part of the Wash Plan is a land swap between three agencies, the operators, the SBVWCD and the Federal Bureau of Land Management. That property that will move over to the mining operators is basically a replacement for the property that they are on now. He says that yes, revenues will be available, but it will not be a bonus or an increase over the amount of current revenues. Chairman Nuaimi asks if it is providing a fresh supply of aggregate to continue the revenue stream, so with out the Wash Plan, the revenue stream dries up. Mr. Neufeld states that he is correct.

Commissioner Cox says that the Chairman brings up an interesting line of questions and the comment about the six hundred thousand in legal fees that would not be recurring if this Consolidation moves forward; she would like to know how RSG treated that number in the IFR. Mr. Lee states that in the trend analysis they looked at thirteen years, but for legal services they looked at ten years due to the current unique spike in legal costs for the last three years. This enabled RSG to show a flatter basic trend for that section.

Chairman Nuaimi asks if there are any other questions for the SBVWCD. Hearing none he asks if there are any questions from the Commission for the Valley District.

Commissioner Cox states that in the report that was presented, it states that the Valley District is willing to backfill any deficits, is the projection for the mining royalties reported to be over inflated given the current economy, understanding as General Manager Neufeld pointed out there are reserves to back fill those peaks and valleys, are there any issues with the Valley District filling in for those deficits in the event that the projected money and revenues are not realized? Doug Headrick, Assistant General Manager for San Bernardino Valley Municipal Water District, states that the Valley District has cash reserves and the ability to cover any revenues not realized; in addition they receive not only property taxes but also revenue from

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sales of water, and both of those could be used temporarily to fill any gap that is created between mining revenue and the expenses.

Commission Curatalo asked what Valley District bases their certainty that the monies would be available in the event the revenues were not realized. He says that he has to go back to the original request that an independent financial review be conducted. He states that perhaps better communication was needed from the Commission as to their expectation, but he assumed that an independent financial review of this situation, this proposal, would include looking at the Valley District also, not just the SBVWCD and he would like to know why it seems the scope of the IFR just focused on the SBVWCD. He says that the reason he brings it up is if a very important expectation as we move forward is that a number of services will be continued on into the future, he thinks that it is a very reasonable expectation for the Commission to get an independent, not just this is what we have in our check book, but have the books get looked at and have the revenue streams looked from a number of different perspectives. He states that doesn't see that it has been satisfied to his expectations. Executive Officer Kathleen Rollings-McDonald states that the IFR was prepared to address the issues of the plan for service and that is the way the contract's scope of work was defined. And the question really is can the Services currently provided by the SBVWCD be absorbed and provided through a consolidated agency under the Valley District, and the guarantees regarding the continuation regarding the delivery of those services. The question as to whether or not the Valley District is providing the other range of services that it currently provides for maintenance of the water contract, for payments to the state for the canals and other things was not at issue. It was defined in the scope of work in the contract that was reviewed with the Commission in February to address and analysis of the implications of the plan for service. The Valley District has in fact provided information that its resources are sufficient to allow for a back filling should the need arise, but the scope of work that was presented and the contract that was presented did not identify looking beyond the scope of the plan for service for consolidating the district.

Commissioner Curatalo states that from the IFR that has been presented to the Commission, of the SBVWCD expenditures, 94% of the money spent goes toward core functions. If there is just a 3% margin of error in estimation, at worst it would be at about 91% performance towards core functions and at best it could even go to 97% performance towards core functions. He says that is a pretty good accounting of an agency handling finances. Ms. Rollings-McDonald states that the information provided was that the revenue streams and expenses for the SBVWCD activities would be separated into a segregated fund to be maintained separately and accounted for separately; just like enterprise funds through water districts you cannot take sewer funds to use them for water operation. The information presented in the plan for service and other materials clearly identified that a separate management account would be established to operated those so that the addressing of the financial issues was isolated to the transition from the water conservation district to the Valley District since it would be obligated as a condition of approval of this Commission, and as a fiduciary responsibility to separate those funds.

Chairman Nuaimi states that he was also struggling with this issue as well, until he started looking at the numbers. He says that the question before the commission is whether a \$75 million entity can absorb a \$1.5 to \$2 million entity and be able to continue those services given the potential for economic fluctuations. And more specifically, the loss of the principle revenue stream to that entity, which is the Ground Water Charge. He says that he doesn't know if the Commission needs to look at the whole \$75 million of accounting for the Valley District to make a determination, but it seems like it is a big enough entity to have resources to manage if the Consolidation is approved. He states that he deferred to the Plan of Services and really looked at what were the assumptions that the Valley District had, and they were able to come up with a nominal surplus. Then the IFR, taking a more aggressive view of the mining revenues, also shows a surplus in the Valley District, so we have two different looks at the numbers, both saying that there is a surplus but he points out that we are in a recession where the current operation is \$1 million in deficit. He says that it is unrealistic for the Commission to expect that RSG's or Valley District's analysis of this stand alone entity would be surplus for the next couple years while there is a huge recession underway. He states that once the mining dollars return, the Valley District is a self sustaining, stand alone

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entity and the Valley Districts analysis did not include the property taxes. He says that there are a lot of pluses and minuses on a small budget, compared to the \$75 million entity.

Commission Curatalo states that the method of trending is sound when the situation is right, that he would like to sell his home based on the trend of residential homes in his neighborhood over the last five years. He states that it is a recognized method applied in this situation, it leads him to believe that the numbers don't make sense and he certainly would not invest in those numbers, so there should have been a little more critiquing done on the both sides, he feels that he is only getting one end of the scale in this report.

Commissioner McCallon states that he has the same issue, that based on the data of the actual mining income that has been shown in 08/09, and the projections by the mining industry that says that the industry will not get any better, being an engineer and a math major, he would draw the line differently through the data. Commission McCallon continues that, looking at the standard deviation of the points and based on the economic situation, even if you keep the historic trend going and keep the slope you are certainly going to have a lot less revenue out in year two, three, four, and five that is shown in the report, and even if you increase the slope going up at some higher rate, you are still going to have a deficit. He states that he thinks that the mining revenues will increase over time, so the income for mining revenues is defiantly overstated.

Chairman Nuaimi asks the Commission for their comments.

Commissioner Derry states that the real concern as the IFR points out is the volatility of the revenues that remain after Consolidation, the loss of the ground water charge is a significant revenue source for the conservation district which would go away under the proposal to consolidate and it would be gone for good. He says that the other revenue sources are significantly more volatile both today and in the future, as a revenue source for funding these services. He states that that is his biggest concern if we move forward with Consolidation. He says that he also does not like the idea, as was mentioned, that Riverside and San Bernardino have had numerous long term discussions over water, significant battles, law suits, and if the revenue did not come through in the future, Valley District would only be able to go to San Bernardino County residents to help cover the loses with increased taxes, and the City of Riverside would get a pass. Commissioner Derry continues that this would be trued even though Riverside takes substantial amounts of water out of the Bunker Hill Basin as well as other areas of the City of San Bernardino and the region to service their constituent's needs. He states that he has a concern about that, that there is a fairness issue, the costs of maintaining the Basin should be paid on an as-used basis. This is his major concern with the proposal, is that the usage charge would be eliminated, which is a much better way of paying for usage than increasing the property tax on a tax bill which is not directly related to actual water usage. He states that it is the biggest area of concern in his inability to support staffs recommendation on this proposal at this point.

Commissioner Mitzelfelt states that he has some questions for the Executive Officer. One is regarding the groundwater charge and Valley District's inability to charge for it. He questions if there are any similar restrictions on collecting mining revenues or will they have an identical ability to collect those? Ms. Rollings-McDonald states that the mining revenues are a contractually based revenue stream through the negotiation of the mining leases and royalties and rentals, those would be defined. As LAFCO staff indicated in the staff report, the existing mining leases as a contract to be transferred to the successor agency as a condition of approval. Any future mining leases and royalties would be negotiated just as they would be if the SBVWCD continued.

Commissioner Mitzelfelt states that of the customers of the SBVWCD, Redlands, Loma Linda, Highland, Rialto, San Bernardino and a few others, some have taken a position on the proposed Consolidation, and asks the Executive Officer to summarize how these Cities stand on the issue. Ms. Rollings-McDonald states that the City of San Bernardino Municipal Water Department supports the Consolidation. She notes that in the supplemental report a copy of the letter of support from the City of San Bernardino was provided. The City of Redlands has indicated a neutral position, with the understanding that if the Consolidation

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moves forward, they would like the spreading grounds returned to the City, they would like standard language included in the conditions for transfers of employees in the continuation of the Wash Plan. Valley District, as the applicant supports the Consolidation, and the Elsinore Valley Municipal Water District submitted a letter in January 2007 in support of the Consolidation. Loma Linda has indicated a neutral position per a city council action, which was included in the supplemental report. The SBVWCD is opposed to the Consolidation, the City of Highland opposes the Consolidation through a letter reiterating its prior positions, and the West Valley Water District, in Rialto, opposes the Consolidation. East Valley submitted a letter indicating opposition to the Municipal Service Review, to date, no letter has been received from East Valley opposing the Consolidation, but it can be assumed that they continue with the same position.. Not provided at this time are the positions of the prior water stakeholders group, such as Bear Valley Mutual Water Company, who were given a copy of the notice of filing and were requested to comment on it.

Chairman Nuaimi addresses the question on the ground water charge. He asks if the restriction is due to the fact that the SBVWCD is permitted by state law to asses a ground water charge, where Valley District is not. Ms. McDonald says that municipal water district law does allow for a replenishment charge by vote of the people. If in fact the Valley District wanted to, they could go to the people and seek by vote to implement a replenishment charge. The ground water charge implemented by the SBVWCD, by their statute, indicates that they are to do an engineering study and make certain determinations and then in fact can impose a groundwater charge. She says that to her knowledge, there has never been a vote on the groundwater charge, that there is an engineering assessment done annually, they determine the recharge needs and the groundwater assessment is charged. The original implementation of the groundwater charge for the SBVWCD occurred in 1994 and it was through the engineering study and the development of that the costs were charged per acre foot extracted. Chairman Nuaimi asks if that groundwater charge is subject to proposition 218. Ms. McDonald states that there are those who say it is and those who say it is not. The SBVWCD takes the position that it is not. Chairman Nuaimi states that whereas the Valley District could implement a similar fee, but it would require voter approval, to which Ms. McDonald responds that it would be a replenishment charge and it would require a vote of the electoral not the water producers, but the registered voters.

Mr. Van Gelder states that there are two ways that the replenishment charge could be accomplished; one would be by going to the legislature and getting an authorization, a special legislation, the other would be by subjecting the matter to a vote. He also states that he would like to respond to Commissioner Derry's question. He states that the question was what does the City of Riverside end up paying for water in the East Valley. He says that the City of Riverside pays property tax for any of their facilities, any of their commercial buildings, it is a small amount, but he wanted to make the point that the City of Riverside does pay taxes to San Bernardino County, to which Commissioner Derry states that the City of Riverside does not pay utility taxes to the City of San Bernardino any more.

Mr. John Longville states the he just has two quick points. First, regarding the question about support, the City of Riverside does support the Consolidation and City of Rialto took a formal position of opposition to Consolidation, even though he has not read any documentation stating that position in the staff report, Secondly with regard to the property tax issue, the property taxes which Riverside pays on their property is less than \$ 2,000 per year.

(It is noted that Commissioner Diane Williams leaves the Hearing at 11:50 am)

Chairman Nuaimi asks if that is within the SBVWCD boundaries, to which Mr. Longville states it is within Valley District's boundaries. Executive Officer Kathleen Rollings-McDonald states that the City of Riverside is the largest land owner in the Agua Mansa area of Colton and when LAFCO did the annexation of the Agua Mansa area, the valuation and property tax bill for the City of Riverside and its mutual water companies exceeded the value of anyone else. She states the information is just a point for clarification and that she would also like to clarify that the opposition submitted by the City of Rialto was in opposition to the Municipal Service Review which concluded with the adoption of the LAFCO resolution some two years ago. Ms. McDonald continues that once LAFCO staff received the application for the Consolidation of the

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Valley District and the SBVWCD, LAFCO staff provided a notice of filing along with the request to the agencies to submit comment regarding the Consolidation application. LAFCO staff did not receive a response on this review and the circulation of documents from the City of Rialto. So they were not included in the review of those opposed.

Chairman Nuaimi states that in the interest of time, if the Commission could finish with their questions, close the public hearing and then hear comments.

Chairman Nuaimi asks if there are any other questions.

Commissioner Mitzelfelt asks if the financial consultant can address his questions. There was a considerable drop in interest revenues over time that was projected and asks for explanation of that drop. Mr. Lee states that a trend line was used for interest income. One of the charts shows a fairly large fluctuation over time. It reflects past recessions and there is a fluctuation and over all there was a decline in interest income due to transfers in and out of the funds. Commissioner Mitzelfelt asks with regard to the capital outlay fund, there was a \$9 million amount in a reserve; he asks if that was a capital reserve. Mr. Lee states that is was not in the capital reserve fund. He also reminds the Commission that RSG was not making any recommendations necessarily, it was strictly an observation. In the findings and conclusions about the financial accountability, the \$9 million amount referred to the existing reserve fund to for the SBVWCD and it has been maintained at about that level, it is a healthy reserve fund for any agency, which would transfer to Valley District upon Consolidation, which they would be able to dip into during deficit years as well. The outlay only referred to the fact that within RSG's review of the budget and actual expenditures for the conservation district, there has never really been a line item specifically called out to set aside money for a capital outlay for larger types of facilities, repairs, or replacement.

Chairman Nuaimi asks if there are any other questions. Hearing none, he asks for any final comments.

Mr. Lee states that he would like to clarify the core and non core services referenced in the IFR. It is important to understand what the core and non-core services and activities of an organization are. In government, core services can be considered those powers and activities that are expressly granted to an agency through their governing act, and that the agency provides for the public good. Non-core services may also serve a public good, but are not expressly authorized by the agency's governing act as its primary purposes or powers. These services and activities are usually broadly authorized by law.

Kevin Milligan, City of Riverside, Assistant General Manager, Water Department, states that he wants to clarify comments that have been made. First, that the City of Riverside owns approximately 600 acres of largely undeveloped land within San Bernardino County. Last year the City paid \$98,572 in property tax on that land. He states that the City also purchased approximately \$2 million worth of power from Southern California Edison, most of the power use was within the City of San Bernardino, and that the City of Riverside, does pay utility user tax at 6.5%, more than \$120,000 in utility user tax. He says that the City of Riverside has limited extraction rights from the Bunker Hill Basin, those rights are based on what is called natural safe yield of the basin. Riverside's export right does not require artificial recharge to be sustained over a long term period.

Chairman Nuaimi asks for any additional comments.

Pat Milligan states that he wants to assist in the answering of question about whether or not the City of Riverside pays taxes in San Bernardino County and whether or not, if the pump tax is removed, which they are committed to doing, to the benefit of the City of San Bernardino and everybody else who has a well in this Valley, that it will not amount to a windfall to people in Riverside for the following reason and that is that the San Bernardino Valley and the Riverside interests are partnered in this basin and have been ever since the one county was turned into two counties, and it became Riverside and San Bernardino. He says that Riverside pays taxes just like everybody else does when they come to San Bernardino and operate the pumps that they have had ever since pumps were first installed.

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He says that there is one additional factor that he wants to point out and that is that the Riverside interests bear a major interest in replenishment of the basin. Riverside has a huge investment, they have come up with the money and invest it in the conservation pool, which is being built behind the Seven Oaks Dam, which eventually could produce up to 200,000 acre feet of supplemental water.

Chairman Nuaimi asks if there is any further public comment, seeing none, he thanks everyone for their comments and closes the public hearing. He asks the Commission for their comments and opens the Commission discussion.

Commissioner McCallon states that the City of Highland, of which he is a Council Member, is opposed to the Consolidation. He says that since he became a Commissioner on the LAFCO Board he has not participated in discussions with the City or with his colleagues regarding the Consolidation in order to preserve his independence while reviewing all the materials that LAFCO staff has provided. Mr. McCallon states that he would like to congratulate staff, the consultants, both the SBVWCD and the Valley Districts for compiling the information and for working together to present the necessary data for the Commission to review. He says that in looking at the data presented he can see no cost savings in the Consolidation of the two districts. The Valley District has not outlined any costs savings as far as he can see and since Valley District can raise taxes without a Prop. 218 hearing, they are not forced to keep their costs under control unlike a City who requires a Prop 218 hearing for a raise in taxation by the people. He says that 11% of his personal tax bill goes to the Valley district second only to the school district. Mr. McCallon states that he sees an incompatibility between the two districts; one has a mission to conserve water and the other has a mission to sell water. He states that marketing and selling the water from San Bernardino County to outside agencies and counties is not in the best interest of the County of San Bernardino. He says that the winners of the Consolidation would be the agencies out side of the San Bernardino County, but the losers would be the tax payers in San Bernardino County, they would lose local control. For these reasons, he states that he cannot support the Consolidation.

Commissioner Cox states that since the Commission designated a zero sphere of influence for the SBVWCD, she has seen no compelling data that would cause the Commission to not stay the course. She would have liked to have seen a more detailed financial report; however, she sees no reason not to move forward with the Consolidation. She states that she can personally attest to the efficiency of a regional organization, particularly a state water contractor being the entity to oversee ground water recharge in a basin, especially in a basin of this significance to this area in San Bernardino County, so she would have to support staff's recommendation. She says that her only area of concern is regarding the Mill Creek property and the ownership issues involved. She says that she would like to see a joint ownership with the City of Redlands and the Valley District so that the City can be assured that the recharge will continue.

Commissioner Derry states that he has already expressed his concerns, he states that there is also a great deal of opposition and neutrality to the proposal, City's have changed from support to a neutral position, some cities have taken a position of opposition, water districts have changed positions to opposition, two of the water districts that are effected are opposing, He says that a Consolidation should have financial numbers that laud its necessity and usefulness. The IFR does not show that; therefore, he sees no sense of unity in the community supporting this Consolidation, the proposal has been LAFCO driven; the Valley District was approached by LAFCO to pursue this process, the process has been contentious for three years; he states that he does not remember anything this contentious since the "donut hole." He does not see the benefit to the customers, he does not see accountability, and he sees a loss of local control.

Commissioner Derry moves to deny the Consolidation, seconded by Commissioner McCallon.

Chairman Nuaimi states that he has a motion and a second, but will continue commission comments.

Chairman Nuaimi states that what LAFCO started was a pure review of what makes sense from a governmental perspective. Where two overlapping entities have the basic principle purpose of conserving

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and replenishing the groundwater as their charge, does it make sense to have those entities remain? The LAFCO commission made that determination by designating a zero sphere of influence for the SBVWCD. The LAFCO Commission determined that a Consolidation or a merger was necessary. He says that he is surprised to hear comments that there are no demonstrated cost savings in the Consolidation of the two entities. In reading the data provided he sees nominal savings, in addition, the SBVWCD's adopted budget is \$1 million in deficit spending for the last year and that included \$1 million one time deferred income. He states that there are two entities, one small that deficit spent \$1 million, with the acknowledgement that a large amount of that was legal fees, and in looking at the financial numbers and data provided by the small entity, it causes him some concern. He says that merging a large entity with a small entity, how could there not be cost saving. The large entity that is willing to advocate for capital projects on be half of the entire basin seems like it would be productive. He says that with the Consolidation there would be a surplus of properties, those dollars could be put in a reserve; there is a healthy reserve for the Valley District. He states that there seems to be a perspective that the ills of the Valley District need to be fixed, but the role of the Commission with regard to the Consolidation, is not to fix the ills of the Valley District today. He says that the Commission would do a disservice to the Community by leaving overlapping entities because someone doesn't like the big guy, because they can raise taxes and don't have to go to the voters. We should be replacing their elected officials if we are not satisfied the expenditure of the tax revenues. He says that what the Commission is charged with today is determining whether or not to have two overlapping districts. He further adds that what seems to be the most underscored in this Consolidation process is control and power and politics in this region. To say that merging big and little doesn't come with an economy of scale, then the Commission is missing the boat.

Commissioner Curatalo states that the economy of scale is not the only item that needs to be considered in making the decision as to whether or not to consolidate these entities. As a Commission they need to look at efficiencies, effectiveness, and a number of things. He states that the Commission is here because they have a responsibility to periodically conduct service reviews, and in that process they look at everything from the finances to the efficiencies and the effectiveness and when a consolidation makes sense, he is willing to support that. He says that he believes that in principle a smaller agency generally is closer to the people, generally more accessible, responsive and accountable to the people, that is one of the principles behind Special Districts, and that he doesn't always believe that bigger necessarily always better. He further states that when managing a basin, the hydraulic boundaries don't align themselves with the political boundaries, and having competing interests sometimes helps in managing a basin. He says that there has to be an improvement to an agency when they have been so closely looked at. He says that during this process he has not heard from either an opposing or supporting voice that the SBVWCD is not performing their services, not handling their finances properly, or even providing accountability, and to move forward, the Commission is dependent on a number of assumptions. Currently the agency seems to be performing fine, although improvements can happen anytime, everything can improve, but is the Consolidation the improvement that is needed at this time, with all the uncertainties that have been presented. With all the assumption that have to be made in order to move forward, he says that he has reservations on the Consolidation and has no compelling reason to move the Consolidation forward.

Commissioner Bagley states that LAFCO's charge is to look at the consolidation of agencies, to look at their historic context and to see if they have served their useful time. If LAFCO were to take the geographic areas and create a water management agency right now, would they create two agencies-- one to conserve water and one to provide water to the people, or would they create one agency to conserve water that would mirror the area. He says that he doesn't believe that two entities would be created. He states that the LAFCO Commission is charged with the responsibility to recommend consolidations when appropriate. The Commission has an opportunity today to fulfill that responsibility and move forward with the Consolidation. He says that he understands that consolidation can be threatening to an existing agency to be consolidated out of existence, but he does not believe that the Commission would create the SBVWCD as it exists today. He says that it is time to move forward. That there are some complexities in combining the agencies, but he does not think that continuing the SBVWCD makes sense in the year 2009.

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Commissioner Mitzelfelt states that one of the findings that the LAFCO Commission would be required to make is a "public service cost 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." He states that he is not convinced by the independent financial analysis that there would be a savings, he has difficulty in making that finding, nor can he with confidence say that they would be substantially similar. He says that another finding that the Commission has to make is "the proposal that the Commission is approving provides public access and accountability for community services needs and financial resources." The part that concerns him is the part about public access and accountability. The focus of the mission of the SBVWCD is better served by a single purpose entity than becoming a collateral duty of a larger entity. And so I think that its mission could lose focus and it could also lose an outlet, a forum for the public to weigh in on.

Chairman Nuaimi states that he has a motion and a second to reject and asks if Commissioner Pearson has any comments.

Commissioner Pearson states that he has a few comments. First of all that Mr. Bagley said much of what he was going to say. He thanks those who have come to speak on the issue for taking time out of their busy lives. He states that the Commission had the opportunity, not to long ago while conducting the municipal service review, to be a part of something similar in the High Desert Area. The turmoil surrounding the proposal to form the Mojave Water Agency was similar to the turmoil surrounding the Consolidation that is before the Commission today. He says that fortunately, the assemblyman for the area at that time said that the agency was going to slip through the fingers of the Community and was able to get legislation passed that allowed the community to form the Mojave Water Agency, to assure that the community would have suitable water supplies in the future. He says that sometimes a Commission needs to look beyond the short term into the future and the longer term. He says that the Commission has been charged with making determinations on three issues, and the three issues have been well covered. The proposal that is in front of the Commission today has been well researched and presented by staff and gives the Commission a very good guide of what needs to occur. Clearly the challenge has been met by the information that has been presented and the Commission should move ahead with the staff recommendation.

Chairman Nuaimi states that he would like to address the comment that was made regarding the statement that there were no concerns raised on the subject of the SBVWCD. He says that on page 24 of the staff report that talks about the Wash Plan expenditures, it appears that the SBVWCD has costs of \$1,566,954 which were not apportioned to the participants over the term of 7/99 through 4/09. What that means is that they had expended dollars on the wash plan and didn't charge the people pursuant to the MOU that they had in place. He says that to him that is a management issue. He also points out that the issue of the differed income is also of concern to him. He says that there were other comments that cause him concerns, and as Mr. Bagley said, if they were to design it fresh, how would they have it? The Commission would assign one agency to conduct water conservation.

Chairman Nuaimi states once more that he has a motion and a second to deny LAFCO 3076 and asks the Commission for a roll call vote, which is as follows: AYES: Derry, Mitzelfelt, Curatalo, McCallon. NOES: Cox, Pearson, Nuaimi. Chairman Nuaimi states that the motion to deny LAFCO 3076 passes on a 4 -3 vote.

EXECUTIVE OFFICER'S ORAL REPORT

Ms. McDonald states that the Commission is dark in August and will reconvene in September.

COMMISSIONER COMMENTS

Chairman Nuaimi presents a Resolution of Appreciation to Ms. Raef commending her service to LAFCO and congratulating on her retirement. Ms. Raef thanks the Commission and states that she has enjoyed her time with the Commission.

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Chairman Nuaimi asks if there are any comments from the Commission. Mr. Curatalo states that it is an honor to serve on the Commission, it is a responsibility that he takes very seriously.

COMMENTS FROM THE PUBLIC

Chairman Nuaimi calls for comments from the public. Mr. Neufeld states that he would like to thank the Commission for their deliberations and their decision. The SBVWVD is very happy with the Commission's decision today and he wishes to go on record to say that they have made a commitment to address some of the concerns discussed at the hearing regarding the management of the District.

Melody McDonald states that she would like to reiterate the hard work that staff performed during this process and reaffirm the commitment that the General Manager made.

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS
ADJOURNED AT 12:35 P.M.**

ATTEST:

**REBECCA LOWERY,
Deputy Clerk to the Commission**

LOCAL AGENCY FORMATION COMMISSION

MARK NUAIMI, Chairman