

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF SEPTEMBER 15, 2010**

REGULAR MEETING

5:00 P.M.

SEPTEMBER 15, 2010

PRESENT:

COMMISSIONERS:	Jim Bagley	Neil Derry, Alternate
	Ginger Coleman	Larry McCallon
	Robert Colven, Alternate	Brad Mitzelfelt, Chairman
	Kimberly Cox	Robert Smith, Alternate
	James Curatalo, Vice-Chairman	Diane Williams, Alternate

STAFF:

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

ABSENT:

COMMISSIONERS: **Paul Biane**

CONVENE REGULAR SESSION OF THE LOCAL AGENCY FORMATION COMMISSION – CALL TO ORDER – 5:05 P.M. – VICTORVILLE CITY COUNCIL CHAMBERS

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

Commissioners and LAFCO staff introduce themselves.

SWEAR IN REGULAR CITY MEMBER

Recording Secretary Anna Raef administers the oath of office to Regular City Member Ginger Coleman. Ms. Coleman states it is an honor to be selected by the mayors of the County.

PRESENTATION OF RESOLUTIONS OF APPRECIATION TO EXECUTIVE OFFICER KATHLEEN ROLLINGS-MCDONALD UPON HER RETIREMENT FROM LAFCO

Chairman Mitzelfelt states it is his pleasure to recognize Executive Officer Kathleen Rollings-McDonald's 31 years of service to LAFCO.

Rick Gomez, representing the City of Adelanto, presents a resolution congratulating Ms. McDonald on her retirement.

Mike Rothschild, Mayor Pro Tem of the City of Victorville, presents a resolution to Ms. McDonald from the City and thanks her for her years of service.

Commissioner Curatalo presents a resolution from the Cucamonga Valley Water District to Ms. McDonald and expresses his appreciation for all her good work.

Commissioner McCallon states Ms. McDonald will be sorely missed and is happy that she will be continuing with LAFCO on a part-time basis.

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Ms. McDonald states it has been her honor to be a part of LAFCO.

Chairman Mitzelfelt asks if there are any changes of organization for today's meeting, to which Ms. McDonald responds in the affirmative. Ms. McDonald asks that Item 7 be deferred from the Consent calendar for discussion.

CONSENT ITEMS – APPROVE STAFF RECOMMENDATIONS

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

3. Approval of Minutes for Continued Meeting of July 7, 2010, Regular Meeting of July 21, 2010 and Commission Retreat August 18, 2010
4. Approval of Executive Officer's Expense Report
5. Ratify Payments as Reconciled for Months of July and August 2010 and Note Cash Receipts
6. Review and Approve Request to County Auditor-Controller/Recorder/Treasurer/Tax Collector to collect Outstanding City and/or District Apportionment Amounts from First Proceeds of Tax Revenues for Fiscal Year 2010-11
8. Amendment #1 to Contract for Executive Officer Allowing Participation in LAFCO's Deferred Compensation Program

A Visa Justification for the Executive Officer's expense report, as well as a staff report outlining the staff recommendation for the reconciled payments and the staff reports outlining the recommendations on Items 6 and 8 have been provided, and copies of each are on file in the LAFCO office and are made a part of the record by their reference here.

Commissioner Cox moves approval of the consent calendar as amended, second by Commissioner McCallon. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, Derry, McCallon, Mitzelfelt. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead).

**REVIEW AND APPROVE RESPONSE TO SAN BERNARDINO COUNTY GRAND JURY REPORT
RELATED TO THE BARSTOW CEMETERY DISTRICT – APPROVE STAFF RECOMMENDATION**

LAFCO considers review and approval of response to San Bernardino County Grand Jury report related to the Barstow Cemetery District. The item was deferred from the consent calendar for discussion. LAFCO Analyst Michael Tuerpe presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here.

Mr. Tuerpe reports that in October 2008 the Commission considered the service review and sphere of influence update for the Barstow Cemetery District. As a result of that service review, the Commission directed the Executive Officer to file a formal complaint with the Grand Jury. The Grand Jury issued its response in July 2010 and LAFCO staff has responded to the Grand Jury findings as required by law. Mr. Tuerpe states that the Grand Jury recommended that that the staffs of the Special Districts Department, LAFCO and the County Auditor/Controller meet with the District to review requirements it must meet. LAFCO staff has arranged to meet with the District staff at its November 10 meeting in Barstow; however, Auditor/Controller staff has indicated it will not attend and will adhere to its own meeting schedule.

Chairman Mitzelfelt calls for questions from the Commission.

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Commissioner Cox refers to Item 10-33, which includes a recommendation from the Grand Jury that County Special Districts consider taking over the cemetery, and asks if there has been any interest in that regard. Mr. Tuerpe states that the District wishes to remain independent and Special Districts staff has discussed the possibility but has not provided a formal response. Ms. Cox asks if Special Districts manages any other cemetery districts. Mr. Tuerpe states that both CSA 29 and CSA 82 have cemetery powers.

Commissioner McCallon moves approval of staff recommendation as amended, second by Commissioner Cox. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, Derry, McCallon, Mitzelfelt. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead).

ANNOUNCEMENT

Chairman Mitzelfelt asks Ms. McDonald to name the agenda items that are changes of organization. Ms. McDonald says that Items 9B, 10C, 11 and 12 are changes of organization. Chairman Mitzelfelt 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.

A. CONSIDERATION OF REVIEW OF NEGATIVE DECLARATION PREPARED BY THE CITY OF YUCAIPA FOR ANNEXATION NO. 5, AND GENERAL PLAN/DEVELOPMENT CODE AMENDMENTS (09-140/GPA/DCA), AS CEQA RESPONSIBLE AGENCY FOR LAFCO 3153; AND LAFCO 3153 – SPHERE OF INFLUENCE REVIEW (EXPANSION) FOR CITY OF YUCAIPA; AND

B. CONSIDERATION OF: REVIEW OF NEGATIVE DECLARATION PREPARED BY THE CITY OF YUCAIPA FOR ANNEXATION NO. 5, AND GENERAL PLAN/DEVELOPMENT CODE AMENDMENTS (09-140/GPA/DCA), AS CEQA RESPONSIBLE AGENCY FOR LAFCO 3154; AND LAFCO 3154 – REORGANIZATION TO INCLUDE ANNEXATIONS TO CITY OF YUCAIPA, YUCAIPA VALLEY WATER DISTRICT AND SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT, AND DETACHMENTS FROM THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT, ITS VALLEY SERVICE ZONE AND SERVICE ZONE PM-3 (YUCAIPA PARAMEDIC), COUNTY SERVICE AREA 63, AND COUNTY SERVICE AREA 70 (ANNEXATION NO. 5) – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing for LAFCO 3153 – Sphere of Influence Review (Expansion) for City of Yucaipa; and LAFCO 3154 – Reorganization to Include Annexations to City of Yucaipa, Yucaipa Valley Water District and San Bernardino Valley Municipal Water District, and Detachments from the San Bernardino County Fire Protection District, its Valley Service Zone and Service Zone PM-3 (Yucaipa Paramedic), County Service Area 63, and County Service Area 70 (Annexation No. 5). Notice of the hearing was provided through publication in *The Sun*, a newspaper of general circulation within the reorganization area. Individual notice has been provided to affected and interested agencies, County departments, and those individuals and agencies having requested such notification. LAFCO staff has provided individual notice to landowners and registered voters within the reorganization area and to landowners and registered voters surrounding the reorganization area in compliance with state law and adopted Commission policies.

Senior LAFCO Analyst Sam Martinez presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. Mr. Martinez states the study area encompasses 335 acres generally located on the eastern edge of the City of Yucaipa. He says the City owns two of the three parcels, which are proposed to be used as a passive recreational park, and the

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remaining property is a privately-owned 10-acre parcel with an existing single-family residence. He explains that in order for the City to not pay taxes on the properties the parcels must be declared tax-exempt which can only be done if the parcels are within the City's boundaries. He says that the City's purpose in submitting LAFCO 3153 and 3154 is to annex City-owned territory to the City and to provide municipal services to the area through the City and its related service providers. Mr. Martinez notes that originally the City wished to annex only the two properties it owns; however, this would have left the privately-owned parcel surrounded by the City's boundaries creating a peninsula of unincorporated territory. LAFCO staff advised the City of the Commission's ongoing concern regarding piecemeal annexations. Therefore, by including the privately-owned parcel, it is LAFCO staff's position that the area provides a logical service boundary being bounded by Carter Street on the north and Oak Glen Road on the south, which are easily-identifiable boundaries for service delivery. Staff's responses to the four factors of consideration for LAFCO 3153, as required by State law, are identified in the staff report, with the notation that a service review is not required for this minor sphere of influence amendment.

Mr. Martinez refers to LAFCO 3154 and states that, with regard to land use, the reorganization area is mostly vacant, with the exception of the single-family residence on one parcel. Surrounding land uses include vacant land on the north and east, residential development on the south and vacant land to the west. He says the City of Yucaipa has rezoned the area to OS (open space) and RL-10 (rural living, one unit per 10 acres minimum). He notes that two of the parcels in the reorganization area have an AG-AP designation, which means the two parcels are in a County Agricultural Preserve. He explains that the law requires that the agricultural preserve continue in full effect after annexation; therefore, LAFCO is conditioning the approval of LAFCO 3154 upon the assumption of administration of the agricultural preserve, as a result, the City will succeed to the rights, duties and power of the County in regard to the administration of these two parcels. He notes further that the City has opted to remove these parcels as an agricultural preserve following completion of the reorganization as outlined in the City's resolution, attached to the staff report. With regard to the land use, the rezoning of the area will become effective upon completion of the reorganization and shall remain in effect for at least two years following annexation. He says the City of Yucaipa prepared a Plan for Service and individual Plans were submitted by the Yucaipa Valley Water District and the San Bernardino Valley Municipal Water District, as required by law and Commission policy. It is the position of LAFCO staff that LAFCO 3154 is a straightforward and logical extension of the City of Yucaipa and the Yucaipa Valley Water District, as well as the San Bernardino Valley Municipal Water District. Plans for service provided by these agencies indicate the extension of services through the reorganization area will maintain or exceed current service levels provided by the County.

Mr. Martinez states that the City of Yucaipa prepared an initial study and a negative declaration for environmental considerations related to its pre-zoning of the study area. The City's environmental assessment has been reviewed by the Commission's environmental consultant, Tom Dodson & Associates, who has determined that the City's documents are adequate for the Commission's use as a responsible agency for both LAFCO 3153 and LAFCO 3154. He explains that the sphere of influence expansion will make the area part of the City of Yucaipa's sphere of influence, which is a requirement for annexation. He says that through approval of LAFCO 3154 the City of Yucaipa and all other agencies proposed for annexation will extend services as required to the area.

Mr. Martinez summarizes the recommendations for consideration by the Commission.

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

Chairman Mitzelfelt opens the public hearing and asks if there are members of the public who wish to speak on this item. There is no one. Chairman Mitzelfelt closes the public hearing.

Commissioner Bagley moves approval of staff recommendation, second by Commissioner McCallon. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with

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the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, Derry, McCallon, Mitzelfelt. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead).

CONSIDERATION OF CEQA STATUTORY EXEMPTION FOR LAFCO SC#355; AND LAFCO SC#355 – COUNTY SERVICE AREA 42 OUT-OF-AGENCY SERVICE AGREEMENT FOR WATER AND SEWER SERVICES (APN 468-241-01) – APPROVE STAFF RECOMMENDATION

LAFCO considers CEQA Statutory Exemption for LAFCO SC#355; and LAFCO SC#355 – County Service Area 42 Out-of-Agency Service Agreement for Water and Sewer Services (APN 468-241-01). Notice of the hearing was provided through publication in the *Daily Press*, a newspaper of general circulation in the area. Individual notice has been provided to affected and interested agencies, County departments, and those individuals and agencies having requested such notification.

Senior LAFCO Analyst Sam Martinez presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. Mr. Martinez states that the Oro Grande Unified School District is constructing a junior high and high school on this parcel that requires water and sewer service from CSA 42 in the Oro Grande community. This parcel is one of two parcels being considered for sphere expansion and reorganization. In order for the school district to open the school on August 2, 2010, the district was required to install temporary modular buildings on the site and connect to CSA 42's sewer and water facilities. He notes that until recently LAFCO staff was unaware that CSA 42 was already serving the parcel. Upon learning of this situation, LAFCO staff informed the school district that extension of sewer and water service prior to the approval of the sphere expansion and annexation was inappropriate. Therefore, in order to correct the issue, CSA 42, at the request of LAFCO staff, submitted an out-of-agency service agreement that relates to the water and sewer service extension to the school site. Ms. McDonald points out that at each Commissioner's place is a copy of a San Bernardino County Board of Supervisors agenda item relating to this project.

Mr. Martinez says that CSA 42 has submitted this out-of-agency service request for a single parcel comprised of 56.36 acres. Since the parcel is not currently within CSA 42's existing boundaries or sphere the Commission's only option to address the service delivery issue is through a provision in state law identified as Government Code Section 56133 (c) outlined in the staff report. This section states that the provision of water and sewer service to the parcel is necessary for the school to continue operation and represents a health and safety concern. He explains that there is a threat to the health and safety of the public since the operation of the school is contingent upon the provision of potable water and sewer service and there is no public or private water or sewer provider in the area other than CSA 42. Based upon these findings, LAFCO staff recommends that the Commission determine that the provision of water and sewer service to the parcel is necessary to alleviate any threat to the health and safety of the school, and that the Commission take the recommended actions outlined in the staff report.

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

Chairman Mitzelfelt opens the public hearing and asks if there are members of the public who wish to speak on this item. There is no one. Chairman Mitzelfelt closes the public hearing.

Commissioner Cox moves approval of staff recommendation, second by Commissioner Derry. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, Derry, McCallon, Mitzelfelt. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead).

CEQA STATUTORY EXEMPTION FOR LAFCO 3146; AND LAFCO 3146 – SPHERE OF INFLUENCE AMENDMENT (EXPANSION) FOR COUNTY SERVICE AREA 42 (ORO GRANDE); AND,

CEQA STATUTORY EXEMPTION FOR LAFCO 3147; AND LAFCO 3147 – REORGANIZATION TO

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INCLUDE ANNEXATIONS TO COUNTY SERVICE AREA 42 (ORO GRANDE SCHOOL DISTRICT – RIVERSIDE PREPARATORY SCHOOL)

LAFCO conducts a public hearing to consider LAFCO 3146 – Sphere of Influence Amendment (expansion) for County Service Area 42 (Oro Grande); and LAFCO 3147 – Reorganization to include Annexations to County Service Area 42 (Oro Grande School District – Riverside Preparatory School). Commission review of this proposal has been advertised in *The Daily Press*, a newspaper of general circulation within the reorganization area. Individual notice has been provided to affected and interested agencies, County departments, and those individuals and agencies having requested such notification. LAFCO staff has provided individual notices to landowners and registered voters surrounding the reorganization area in compliance with state law and adopted Commission policies.

Senior LAFCO Analyst Samuel Martinez presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. Mr. Martinez indicates that the staff recommendation is for approval of both items as outlined in the staff report.

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

Chairman Mitzelfelt opens the public hearing and asks if there are members of the public who wish to speak on the items. There is no one. Chairman Mitzelfelt closes the public hearing.

Chairman Mitzelfelt moves approval of the staff recommendations for LAFCO 3146 and LAFCO 3147, second by Commissioner Cox. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, Derry, McCallon, Mitzelfelt. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead).

CONSIDERATION OF CEQA STATUTORY EXEMPTION FOR LAFCO 3161 AND LAFCO 3161 – ESTABLISHMENT OF THE BARSTOW FIRE PROTECTION DISTRICT AS A SUBSIDIARY DISTRICT OF THE CITY OF BARSTOW – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider LAFCO 3161 – Establishment of the Barstow Fire Protection District as a Subsidiary District of the City of Barstow. Notice of Commission review of this proposal has been advertised in *The Desert Dispatch*, newspaper of general circulation within the dissolution area through publication of a 1/8th page legal ad, as required by law. As required by state law, individual notice has been provided to affected and interested agencies, County departments, and those individuals and agencies having requested such notification.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. She says LAFCO 3161 is a joint application submitted by the City of Barstow and the Barstow Fire Protection District to establish the District as a subsidiary district of the City. She says that the Commission does not have the ability to deny this proposal as it was submitted by resolution of both affected agencies. However, she notes that the Commission does have the authority to modify the terms and conditions. She points out on the overhead display the boundaries of the City of Barstow and the Fire Protection District. She says the territory to the southeast is the Marine Corps base and it is not a part of the Fire Protection District as it provides its own fire protection. .

Ms. McDonald notes that the Commission has designated a number of subsidiary districts recently. She explains that a subsidiary district continues to be a special district. It is a district of limited powers in which the City Council is designated as and empowered to act as the ex official board of directors of the district. No jurisdictional change occurs. She points out that there are two specific criteria that the Commission must determine: 1) whether the territory within the district which is a part of the city represents 70 percent or more of the land area of the district; and 2) whether or not the territory of the district within the city

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contains 70 percent or more of the registered voters of the district. She says that LAFCO staff has requested that the County Registrar of Voters and the County Information Services Department provide for a determination on those specific items. She points out on the overhead display that 76 percent of the land area of the District is within the City of Barstow. The District has 11,609 voters and 8,072 represents those voters are within the City, representing 70 percent of the voters. Therefore, the District does qualify and the Government Code requires that the Commission approve this establishment.

Ms. McDonald states the City and District have provided a number of conditions and terms for review by the Commission. The first is that the City will continue to provide the services of the District at the same level to those areas outside the City and within the District as those services provided for territory within the City limits. She says staff has proposed a condition of approval which provides that the Fire Protection District, if the City Council becomes the ex official board of directors, shall maintain continuity of service across the District's jurisdiction regardless of whether the territory served is a part of the City of Barstow. She says this makes clear the intent of the Commission in reviewing the provision of fire service in the future within the entirety of the boundaries of the Fire Protection District. She notes that the City and District have identified a condition for the City to assume responsibility for all assets and liabilities of the District. Ms. McDonald notes that establishment of a subsidiary district does not change the status as a special district and the City will not assume the assets of the District and those assets will remain intact under the jurisdiction of the District. The District will continue as a separate legal entity operated under fire protection district law. She notes that, specific to this instance, fire protection district law does allow in the future that should the constituents within the District wish to look at taking back the governance of the District, there is a petition and resolution method that can be pursued to create an elected board again. She says that staff recommends the removal of this condition and the City and Fire District have no objection to removal of the condition. She says the liabilities of the District will remain with the District. The condition relating to fire district law was modified to indicate that the District shall continue to function under and carry out all authorized duties and responsibilities assigned to a fire protection district as outlined in Fire Protection District Law, Health and Safety Code Section 13800, et seq.

With regard to ad valorem taxes, it is indicated that the City shall assume all ad valorem taxes, accounts receivable and revenues. She emphasizes that the District will have its own share of the general property tax and it will still accrue to the District as will all of its receivables and other revenues. She says the key statement is that there is no change to the legal entity of a District. It is a matter of economy of scale for cost savings to have the City Council operate as the board of directors. Ms. McDonald states that the recommended language as a condition of approval clearly states that all tax revenue attributable to the Barstow Fire Protection District and all assets, collections, etc. shall continue to accrue and be transferred to the Barstow Fire Protection District unimpeded by the approval and completion of LAFCO 3161.

She says that the conditions of approval state that all full-time safety employees of the Barstow Fire Protection District shall be retained by the District following the change; however, all non-safety employees will transfer to the City and will be guaranteed all rights and benefits. A letter from the City Manager is included in the staff report indicating that the Fire Protection District safety employees will be retained in the San Bernardino County Employees Retirement Association and will retain their existing health benefit provider.

Ms. McDonald summarizes the staff recommendations listed in the staff report, including the condition stating that as of the date of approval of this action through the effective date, the Barstow Fire Protection District is prohibited from taking any action, unless it finds an emergency situation exists, to increase compensation or benefits or appropriating, encumbering, expending or otherwise obligating any revenue of the Barstow District beyond that provided in the 2010-2011 Budget. Exceptions to this would be the planned merit and/or range increase for employees of the District.

Chairman Mitzelfelt calls for questions from the Commission. Commissioner Colven asks about the status of the proposed Lenwood annexation. Ms. McDonald replies that the City is moving forward with the

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proposed annexation. A hearing with the Planning Commission is scheduled for October 11 with submission is expected by the end of the year.

Commissioner Smith asks if this action is being requested because of a lack of funding due the defeat of a ballot initiative. Ms. McDonald states that over the last 18 months to two years the District and the City have been working to resolve funding issues related to the ongoing service delivery for the Fire Protection District. The District will receive some cost benefit through economies of scale, such as purchasing, through the City and use of the City's human resources staff. Commissioner Smith asks if the City has made the commitment to provide additional funding if necessary. Ms. McDonald replies that the need for additional revenue was discussed and the City and District would be better able to provide information on any such commitment.

Commissioner Cox asks for an explanation of the breadth of authority of the Commission. Legal Counsel Clark Alsop states that the Executive Officer has explained that the Commission is obligated to approve this establishment because of the way it was presented; however, modifications can be made to the terms and conditions that do not change the substantive nature of the proposal. Commissioner Cox asks if it was a unanimous vote on the part of the Fire District Board of Directors and the Barstow City Council. Ms. McDonald says she does not believe it was; however, a unanimous vote was not required.

Commissioner Bagley asks for clarification that the Fire District has a dedicated property tax. Ms. McDonald states that it receives a share of the general ad valorem tax. He asks if the Fire District incorporation preceded the incorporation of the City. Ms. McDonald states that the City was incorporated before the Fire District. She explains that in the past the Commission had a longstanding policy that the City and District maintain coterminous boundaries. However, until recently the territories that were being annexed to the Fire District had no existing fire provider; therefore, received no share of the 1% ad valorem tax. Currently, with the County Fire Reorganization and transfer of CSA 70 revenues to the San Bernardino County Fire Protection District, in future annexations there will be a share of fire revenues going to the Fire Protection District. Commissioner Bagley says he is a proponent of dedicated tax allocations and oftentimes tax revenues go into the General Fund and become convoluted in political agendas. He believes the voters have a right to be angry about how money gets misused. He hopes never to hear in the future that any property taxes dedicated to fire protection are misused.

Commissioner McCallon states that he agrees with Commissioner Bagley and says that when the City of Highland took over fire protection for the City, the transfer that was made was separated in the General Fund and the City is very careful to make sure that all of that money is used for fire protection.

Commissioner Curatalo asks if this is a condition and if it is how it would be monitored. Ms. McDonald states that it is a condition and the way to review it is for the constituents to look at a separate budget for the Fire Protection District next year to make sure that the District is a separate Board agenda item, that the City Council meets as the board of directors for the District and that there is a separate audit. That is a responsibility of the citizens of the Fire Protection District as a whole. From the LAFCO perspective, the future service reviews will include a review of the budget to determine that it is being managed properly.

Chairman Mitzelfelt explains that LAFCO is not an enforcement body and enforcement is made by the Auditor/Controller of the County, the Public Integrity Unit of the District Attorney's Office, or the Grand Jury. Chairman Mitzelfelt thanks everyone from Barstow for making the trip to Victorville. He points out that normally the Commission meets in San Bernardino so the Commission is appreciative of the Barstow constituents for meeting the Commission halfway.

Chairman Mitzelfelt opens the public hearing and asks if there are members of the public who wish to speak on this item. He asks that all comments be limited to three minutes. Additional time may be granted to organizations if requested.

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Darrell Jauss, Fire Chief, representing the Fire District, states Board member Barbara Hackbarth and Fire Captain Jamie Williams, president of the Barstow Firefighters Association, are also present tonight. He says both support this item. On behalf of Chairman Ruben Arredondo he passes on his support also. He says that at the five-year service review of the Fire District he was asked to explain to the Commission why the District has not partnered with the County Fire District or the City of Barstow. Following that service review, the District obtained a quote from the County Fire District and approached the City to ask about partnering with the City. He conveys to the Commission that the District supports this partnership and believes that this will help find ways to improve service delivery. He does not believe that a stand-alone special district with its funding limitations can keep up with growth in the community. He wants to make sure that the City Council, when approving development in the City, assures that fire protection is considered. He thanks the Commission for its consideration.

Councilmember Willie Hailey, City of Barstow, states the Council supported the idea of taking the Fire District under the wing of the City for several reasons. He says his father provided safety and security for his family when the family moved to Barstow in 1947 and he believes it is the City Council's duty to do so for the citizens. He is concerned for the community and its citizens. He says the City Council will protect the City as it is the Council's moral and ethical obligation to protect the community. He says the staff of the Fire District is excellent and dedicated.

Terri Willoughby, Acting City Manager, City of Barstow, states the City will not comingle the Fire District funds with the City's General Fund. The Fire District will be a separate legal entity with its own separate financial statements and audits. She says any supplemental funding will be brought to the City Council in a public forum. She looks forward to working with LAFCO staff on the future service reviews.

Carmen Hernandez states she is a resident of Barstow and is in opposition to this proposal. She says the voters of Barstow were not informed that this establishment would affect City residents and others in the District. She says no public meeting was held to explain the process or financial issues and that on 4/5/10 the City Council approved the resolution which included direction to staff to hold a community meeting or LAFCO meeting in Barstow prior to the action. Funds were allocated and no meeting was held. She says there is a process for the meeting to be held. She says the LAFCO recommendation states that the contract for the employees is for one year only. She says that the recommendation also states that the change would occur without an election unless 25 to 50 percent of the registered voters submit protest in writing. She says the voters are not aware of this provision. She says the assumption that the elimination of the Board and transfer of non-safety employees to the City is cost effective has not been shown to the voters. Legal counsel can be a huge expense, so she questions how savings can occur. She asks how the City can justify adding an entity in these economic times when other cities have financial problems with their fire districts. She says that, based on LAFCO's assessment, it is obvious that neither the Fire Board nor the City really understood what the proposal consisted of in regard to finances. The City says it will assume all assets of the District; however LAFCO says the assets will remain with the District. The City and Fire District state that fire protection law allows for a process to return the District to non-subsidary status by petition of the residents. She says she was told it could not revert. She says the District will not transfer the liabilities, yet that is what the City and Fire Board believe. She notes that the City's confusion is demonstrated because the City does not understand what a subsidiary district consists of because it is important that the revenues and receivables will stay with the District. She requests that this item be postponed until these issues are clarified.

Mike Hernandez, resident of Barstow, states that several years ago the City took over the Park District. At that time it was stated that the \$500,000 in revenue would take care of it. He says that cost has gone up to over \$1.5 million and the General Fund now is supporting the Park District for over \$1 million per year. He questions how much the City and taxpayers can afford to take a burden when there is a legislative body not telling the public what is happening. When a joint meeting was held between the Fire District and City Council, two board members from the Fire District wanted more information and two City Council members wanted more information, yet the application was approved. It was announced that those questions would

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be answered at another meeting and that has not happened. He is concerned that if the City has to subsidize the Fire District and 70 percent of the taxpayers are in the District and the other 30 percent are outside the District, but the whole fund is taken by the taxpayers, he questions how that money is recovered.

Eddie Garcia, Director-Elect of Barstow Fire Protection District, states he is concerned about the process. He says the process was flawed in the respect that there are attachments to the agenda item, but the actual minutes of the meeting are not included. He says discussion by several entities took place before the item came into play and that discussion was included in the minutes; however discussion by the public was not included other than the individual's name. He says the public is being excluded from the process. He states the minutes were approved by the City, but not the Fire District. He says the minutes were not included in the minute book of the Fire District.

Dale Milligan, retired Fire Chief, thanks Ms. McDonald for her dedicated service to the County. He says he was against the proposal, but now is in favor. He says the Fire District was formed in 1928 and the City was incorporated in 1957. He notes that the District receives property taxes; however, the District does not generate enough property taxes so funds are provided by the County. He says the Fire District has asked the City in the past for funds to install a new squad, and a ballot measure failed for an increase in sales tax to fund the Fire District and Police Department. A benefit assessment district also failed. He questions if monies would be deducted from the pass-through from the County if the subsidiary district takes place and the city establishes a fire response enterprise zone. Chairman Mitzelfelt asks if LAFCO staff or the City wish to address that question. Ms. McDonald states that supplemental funding is provided at various times for various purposes, probably from the individual County Supervisors. She says there is no County redevelopment area in the unincorporated territory so there would be no funding. She explains that existing revenue streams dedicated to the District would continue, and the bulk of the revenue does come from property tax.

Chairman Mitzelfelt closes the public hearing and asks if there are further questions or comments from the Commission.

Commissioner Smith states he has received phone calls from constituents in the area and he would like the City to better inform those constituents how the money stream is going to be provided to the Fire District.

Acting City Manager Willoughby provides her telephone number, (760) 255-5115, and says she would be happy to address the concerns of any constituents.

Commissioner McCallon asks what outreach the City made to the citizens. Ms. Willoughby states a joint public hearing was held with the Fire District and City Council in April and today's hearing was noticed in the Desert Dispatch and on the City's website with a link to all the agenda items. She notes that two City Council members who were previously opposed are now in support, Tim Saenz and Tim Silva.

Ms. McDonald states that it needs to be clear regarding the nomenclature of the action. She clarifies that "merger" means something very different from the establishment of a subsidiary district. She emphasizes that a merger really would change the existence of the District, but that is not what is happening.

Commissioner Mitzelfelt asks if Councilmen Saenz and Silva wish to comment.

Tim Silva, City Council member, City of Barstow, states that when the City considered this proposal, he voted against it. He says that he supports the Council decision; however he still has some questions and concerns about the City being able to afford taking on the District.

Tim Saenz, City Council member, City of Barstow, states that he also opposed this proposal, as the City Council was not provided actual costs, but only budgeted funds. He echoes Councilman Silva's statement

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and supports the Council. He agrees that a true economic analysis must be done.

Commissioner Bagley says this is an unusual situation and it is an opportunity for other financing opportunities. He questions if there are possibilities of annexation of the subsidiary district outside the boundaries for purposes of services. Ms. McDonald states that there are as it does not change the ability to expand the boundaries of the District, but there is a concurrent annexation policy, so where the City goes, the Fire District goes. Depending on the location, the reverse would also be evaluated. With regard to the Lenwood island annexation, she points out territory that is neither in the Fire District nor the City. She says that territory will be annexed to the City and Fire District when the Lenwood Island is considered.

Commissioner McCallon moves approval of the staff recommendation, second by Commissioner Curatalo. Commissioner Curatalo comments that he is a Fire Battalion Chief in Rancho Cucamonga and 20 years ago the Fire District became a subsidiary district. There were many questions at that time, but it has been very positive for the Fire District and the City, but especially for the community. He adds that it is a reasonable step to take for provision of these vital services. Commissioner Williams, City Council member for the City of Rancho Cucamonga, adds that the City and District have been very successful in obtaining grants by working together. Pieces of equipment and educational programs for public safety equipment have been secured with those funds. She assures the citizens of Barstow that the Fire District meets separate from the City Council, budgets are separate and budget hearings are held on separate nights. She says that oftentimes the City has secured a loan to the Fire District when the ad valorem taxes have not been deposited in a timely manner. She urges the City Council to share information with its constituents. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, Derry, McCallon, Mitzelfelt. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead).

CONSIDERATION OF CEQA STATUTORY EXEMPTION FOR LAFCO 3156 AND LAFCO 3156 – DISSOLUTION OF COUNTY SERVICE AREA 17 AND DESIGNATION OF THE TOWN OF APPLE VALLEY AS THE SUCCESSOR AGENCY – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider LAFCO 3156 – Dissolution of County Service Area 17 and Designation of the Town of Apple Valley as the Successor Agency. Notice of this hearing has been provided by publication of a 1/8th page legal ad in *The Daily Press*, a newspaper of general circulation in lieu of individual notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. She says that CSA 17 was formed in January 1964 to provide streetlighting to the unincorporated community of Apple Valley. She says that at the time the Town of Apple Valley incorporated, much of the territory of CSA 17 was removed from that agency and the responsibility for streetlights transferred to the Town. The service review for the Town of Apple Valley included information on CSA 17. She points out the four separate areas comprising CSA 17 on the overhead display and says that Areas 1 and 2 are at the southeastern portion of the eastern unincorporated sphere of the Town of Apple Valley, Area 3 is a small tract area and Area 4 encompasses the Thunderbird County Water District. She says the County worked with LAFCO staff during the service review when it became apparent that the joint position was that CSA 17 should be dissolved and the Town of Apple Valley succeeds to its operation and responsibility. That responsibility currently is for 49 streetlights in the four separate areas. She notes that the County and the Town have worked to develop a contract for continuation of service.

Ms. McDonald states that the financial implications include transfer of its responsibilities and assets to the Town of Apple Valley. The contract entered into between the Town and the County specifies that the Town will continue to provide streetlighting services within the boundary of CSA 17 at the same or higher level in the future. In addition, in exchange, funding from CSA 17 will go to the Town, including its existing fund balance. Progression of the fund balance over the last 10 years is illustrated in the staff report. The fund

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balance as of June 30, 2010 is \$1.5 million, and the ongoing property tax revenue is estimated at \$166,000 per year.

As part of the property tax transfer the Town and the County have agreed to a process for the exchange of revenue over a period time. She says 80 percent of the fund balance revenue is to be transferred to the Town not more than 90 days after the certificate of completion is recorded. She says the County will retain the other 20 percent to complete the financial audit for the prior fiscal year. She notes that by the end of the fiscal year the balance of the funds will be transferred to the Town and the Town will receive a full accounting of any expenditure from the revenue. She notes that the District provides payment for funding of the 49 streetlights. She explains that Edison owns the light fixtures and CSA 17 pays for the electricity costs. She says that six of the 49 lights paid for CSA 17 are outside the boundaries of CSA 17. The contract specifies that the Town will provide streetlighting within the entirety of its unincorporated sphere of influence in exchange for the revenues; therefore, the Town will succeed to and will pay for the six lights currently the obligation of the District. The Town has signed the necessary documents to transfer the responsibility through Southern California Edison. She notes that an additional item in the contract identifies that in the future the County land use review process will insure that a mechanism to provide funds for streetlights when they are required is provided. She points out that there is a night sky ordinance in effect for the unincorporated areas of the desert and streetlights are used for health and safety purposes, in order to keep sky pollution at a minimum. She says that both current and future streetlighting needs will be taken care of through this process.

Ms. McDonald summarizes the recommendations and says that this action would implement one of the recommendations of a service review.

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

Chairman Mitzelfelt opens the public hearing and asks if there are members of the public who wish to speak on this item.

Ronald Dodge, 35-year resident of Apple Valley, states he was surprised to find out that there is a huge amount of money set aside for streetlights. Rather than dissolve the District he asks that LAFCO reorganize CSA 17 so that those funds can be used for roads in the area. He says that, for the most part, the roads in the area are horrendous. He thanks the Commission for its time.

Ms. McDonald notes for the record that a letter was received and presented to the Commission tonight from the president of the Board of Directors of Mariano Ranchos County Water District, Dick Fortyune, asking for a continuance to investigate the impact of the dissolution. Ms. McDonald reads the paragraph stating that at the Board of Directors meeting the District Board expressed concern about the prospect of dissolving a special district and transferring all authority to the Town of Apple Valley. The letter further states that the Board is concerned that funds generated as a result of the transfer may be used by the Town of Apple Valley in whole or in part for purposes other than maintaining the street light system. Ms. McDonald explains that through the process of dissolution the Town would absorb the responsibility for street lighting in the whole of the unincorporated area and the Town would be able to use the funds for other purposes, so long as it maintains and/or exceeds the existing streetlighting responsibility.

Commissioner McCallon asks if CSA 17 is only allowed the streetlighting function. Ms. McDonald states that is correct and that has been the case since 1964. He asks if the District can use the funds for any other purpose. Ms. McDonald states there would have to be a LAFCO review process requesting the expansion for a new function and services. Commissioner McCallon states this action might benefit roads, in essence, because the funds are going to the City. Ms. McDonald states that, unfortunately, the areas within CSA 17 are not part of the Town. Chairman Mitzelfelt notes that the roads are, however, within the sphere of influence, so potentially the land could be annexed to the Town. Chairman Mitzelfelt states that, through SANBAG, there are regional improvements done by agreement of the cities and the County.

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Those improvements are limited to sphere areas where the County collects fees but the Town and the County could agree on regional improvements to be funded.

Mr. Dodge states that, at one point, some of the residents asked the Town about annexation and the Town of Apple Valley made the statement, "We don't want you. We can't afford you because of your roads."

Commissioner Bagley states he is shocked at the surplus being generated in this small district. He says the function of LAFCO is to look at agencies and consolidate for efficiencies when LAFCO finds inefficiency. He says this is certainly a glaring example. These parcels are within the sphere of influence of the Town of Apple Valley and the destiny of these parcels will probably be with the Town of Apple Valley for municipal services. He notes that it is unusual to have isolated areas going back 60-70 years to create a streetlighting district, so it is appropriate that the district be consolidated into a municipal service provider and let the future work itself out. He says the fund balance is a misuse of the property tax and is something best resolved at a local government level.

Chairman Mitzelfelt closes the public hearing and calls for further questions or comments from the Commission. There are none.

Commissioner McCallon moves approval of staff recommendation, second by Commissioner Bagley. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, Derry, McCallon, Mitzelfelt. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead).

SERVICE REVIEW FOR COUNTY SERVICE AREA 70 ZONE D-1 (LAKE ARROWHEAD DAM); AND, CONSIDERATION OF: (A) CEQA STATUTORY EXEMPTION FOR LAFCO 3144; AND (B) LAFCO 3144 – ACTIVATION OF FLOOD CONTROL AND PARK AND RECREATION POWERS FOR LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT (to be continued to the November 17, 2010 hearing) □

LAFCO conducts a public hearing for LAFCO 3144 – Activation of Flood Control and Park and Recreation Powers for Lake Arrowhead Community Services District. Ms. McDonald requests that this matter be continued to the next Commission hearing.

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

Chairman Mitzelfelt opens the public hearing and asks if there are members of the public who wish to speak on this item. There is no one. Chairman Mitzelfelt closes the public hearing.

Commissioner Derry moves approval of staff recommendation, second by Chairman Mitzelfelt. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, Derry, McCallon, Mitzelfelt. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead).

THE HEARING IS RECESSED AT 6:57 P.M. AND RECONVENES AT 7:10 P.M WITH NO CHANGE IN COMMISSION ATTENDANCE.

CONSIDERATION OF FINAL ENVIRONMENTAL IMPACT REPORT ADOPTED BY THE CITY OF VICTORVILLE FOR THE GENERAL PLAN UPDATED (SCH NO. 2008021086), AS A CEQA RESPONSIBLE AGENCY FOR LAFCO 3082; (2) ADOPTION OF FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS; CEQA STATUTORY EXEMPTION RELATED TO THE SPHERE OF INFLUENCE REDUCTION FOR THE CITY OF ADELANTO AND THE ADDITIONAL SPHERE OF INFLUENCE MODIFICATIONS (EXPANSIONS/REDUCTIONS) FOR THE CITY OF VICTORVILLE AND VICTORVILLE WATER DISTRICT; AND LAFCO 3082 – SPHERE OF INFLUENCE

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AMENDMENT (EXPANSIONS/REDUCTIONS) FOR THE CITY OF VICTORVILLE AND VICTORVILLE WATER DISTRICT AND SPHERE OF INFLUENCE AMENDMENT (REDUCTION) FOR THE CITY OF ADELANTO (Continued from the June 16, 2010 hearing)

LAFCO conducts a continued public hearing to consider LAFCO 3082 – Sphere of Influence Amendment (Expansions/Reductions) for the City of Victorville and Victorville Water District and Sphere of Influence Amendment (Reduction) for the City of Adelanto, which was continued from the June 16, 2010 hearing. As required by State Law notice of the hearing was provided through publication in a newspaper of general circulation, *The Daily Press*. The modified proposal was not provided individual notice as allowed under Government Code Section 56157 as such mailing would include more than 1,000 individual notices. As outlined in Commission Policy #27, in-lieu of individual notice the publication was provided through an eighth- page legal ad. As required by State Law, individual notification was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. She says that at the June 16, 2010 hearing, the Commission made determinations regarding the area of consideration for LAFCO 3082 and the Helendale Community Services District sphere establishment. At that meeting the Commission removed the mineral resource lands, reduced the territory for the City of Victorville sphere and approved and completed the sphere establishment for the Helendale CSD. She points out on the overhead display the territory retained within LAFCO 3082. Staff, at that hearing, was requested to review and determine what area comprises the community of Oro Grande. Ms. McDonald states that the sphere of influence for CSA 42 had been LAFCO's definition of the community of Oro Grande for many years. She says that staff was unaware of the larger area that residents and property owners identified as the community of Oro Grande. She notes that the Commission modified the areas of consideration to exclude the mineral resources, signaled its support for the modified sphere proposal for the City of Victorville, and continued this matter to tonight's hearing.

Ms. McDonald states that a committee was established to determine the community of Oro Grande and the staff report identifies the membership of that committee. The committee met on two separate occasions, discussed the protest, the service area and the community orientation for the community of Oro Grande and developed a revised boundary. She refers to the overhead display, which shows what has been retained in the Victorville sphere expansion. It retains the entirety of the Desert Gateway Specific Plan area along the eastern edge, an expansion on the north end (Area One), and additional territory outside the Desert Gateway for slopes and topography and exclusion of mineral resources. It also includes expansion on the western edge which includes the removal of the City of Adelanto sphere and adding additional territory north of it. She says the territory has been taken back on the west as close as possible to the flood plain and the Bluffs area, excluding those in opposition. Finally, the community includes a reduction to the Victorville sphere in the south for properties opposed to inclusion in the City's sphere of influence and additional TXI properties. She points out on the overhead display what remains for the City of Victorville, the existing boundary of CSA 42 and the expansion area of the sphere of influence to define the larger community of Oro Grande.

Ms. McDonald states that the additional element presented to staff was to request that the City of Victorville work with the James Hardy Products Company, which owns mineral and mining claims in Section 21, to address issues regarding compatibility of land uses within the Desert Gateway Specific Plan. Ms. McDonald states she is happy to report that changes to the Desert Gateway Specific Plan were finalized yesterday and points out changes to be considered by the City Council on October 5, 2010, to include a resource recovery overlay within the plan, understandings regarding the development, conditional use permits, allowed uses and notification to prospective residents. She says no residential dwelling unit will be located closer than one-quarter mile to the mining claims. These changes are supported by the City of Victorville and the James Hardy Company.

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Ms. McDonald states LAFCO staff requests the Commission take action to modify the compromise boundary for LAFCO 3082 to exclude territory agreed to, initiate a sphere of influence amendment and service review for County Service Area 42 to officially address the community of Oro Grande, direct staff to solicit information and financial participation necessary to conduct that service review, and direct staff to place the matter of the sphere of influence amendment on the January 19, 2011 Commission hearing. Ms. McDonald summarizes the staff recommendation for action related to the overall community.

Chairman Mitzelfelt calls for questions from the Commission. Commissioner Cox asks if the Victorville City Council has taken a position on what LAFCO staff is proposing. Ms. McDonald says that has not been conveyed to her other than support for the change.

Chairman Mitzelfelt opens the public hearing and asks if there are members of the public who wish to speak on this item.

Bill Webb, Development Director, City of Victorville, states the City supports all recommendations made by LAFCO staff, including the formation of the Oro Grande community as well as the boundaries for expansion of the sphere.

Commissioner Cox moves approval of the following staff recommendations, seconded by Commissioner Coleman:

1. Modify the compromise boundary presented for LAFCO 3082 -- Sphere of Influence Amendments for the Cities of Victorville and Adelanto and the Victorville Water District to exclude the territory agreed to be the community of Oro Grande as outlined by staff;
2. Initiate a sphere of influence amendment and service review for County Service Area 42 to address the community of Oro Grande, direct staff to solicit the information necessary to conduct the review from the County and community and to request financial participation in conducting the review from CSA 42; and
3. Direct staff to place the matter of the sphere of influence amendment for CSA 42 for further consideration on the January 19, 2011 Commission hearing agenda.

Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, Derry, McCallon, Mitzelfelt. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead).

Ms. McDonald refers to the service review and amendments necessary to complete the modifications. She says that inclusion of the condition in the City of Adelanto's resolution for support for placing its territory in the sphere of influence of the City of Victorville has confused a number of people. She reminds everyone that a sphere of influence is a planning tool, and it reflects the Commission's position for the future and how future reorganizations should take place. By placing this territory in the Victorville sphere, although currently part of the City of Adelanto, the Commission is signaling that it believes that for planning purposes and future allocations for services, this is appropriately a part of the City of Victorville. She says that when the City of Adelanto moved forward with its resolution initiating its sphere reduction and transfer to Victorville, it included a condition that placing the detached area in the sphere of influence of the City of Victorville would be in exchange for financial assistance for intersection improvements at major intersections along Highway 395, etc. Ms. McDonald emphasizes that LAFCO staff does not support this as a condition of approval for this proposal. Staff believes that such a study of conditions of approval is appropriate in any future jurisdictional change, and, in fact, this exchange of territory cannot move forward unless the City of Adelanto consents to the detachment. She says that staff has identified concerns that the future exchange must include a clear distinction as to the areas to be improved and the direct benefit to the citizens of the City of Victorville. She says it is not a condition of approval that is appropriate for a sphere of influence.

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Ms. McDonald reports that minor changes have occurred through discussions and approvals on other communities in the area. During the service review for the Town of Apple Valley and the community of Apple Valley, the Town's sphere of influence was expanded to include the area depicted on the overhead display. This created a better configuration for service delivery, so it is proposed that the sphere of influence for the City of Victorville and the Victorville Water District be reduced to remove that territory.

She says that when the community of Hesperia's service review was done, the Commission was informed that there were problems with the realignment of Bear Valley Road and the placement of the boundaries between the two jurisdictions along the section line. Reconfiguration of Bear Valley Road has caused boundaries to shift between Victorville and Hesperia along that road. Staff, therefore, is proposing that the sphere of influence boundary be placed along the centerline of the realigned Bear Valley Road.

With regard to the City of Adelanto sphere of influence review, the Commission and City of Adelanto were made aware of the need to remove a center parcel from the City of Adelanto's boundaries. It was placed in the City as a non-contiguous municipally-owned property; however, the center section was sold to a utility. That would automatically return it to the unincorporated territory and remove it from the City's boundaries. This property would now be placed in the Victorville sphere of influence and the Victorville Water District's sphere of influence. She says that those cleanup items are not fully discussed in the report as they do not include residential development and have limited development potential. The service review materials presented concentrate on the sphere expansions to the north.

Ms. McDonald explains that Government Code Section 56430 requires six factors to be included in every sphere of influence update. She adds that Commission policy requires that a service review be conducted for a sphere amendment given certain circumstances; all of these conditions apply.

With regard to growth and population projections for the sphere amendment territory, the territory has been identified in the City's General Plan and through the Desert Gateway Specific Plan. The Desert Gateway Specific Plan was provided to the Commission on the CD included with the staff report. She refers to the City's General Plan Update 2030 and says the anticipated build-out population is 440,802 for the City and the City's existing population is 112,097, as determined by the Department of Finance as of 1/1/2010. She says the entire Desert Gateway Specific Plan anticipates a population of nearly 83,000 on 4,200 acres. There is additional territory in the balance of the sphere expansion to the north, which is anticipated for low density and light industrial, predominantly along the I-15 corridor. These uses will require urban levels of municipal services in order to come to fruition. She points out on the overhead display the Desert Gateway Specific Plan territory. Additional territory to the north is proposed to be included in the Victorville sphere of influence. LAFCO staff received an inquiry from another development company, Lansing Development, which indicated its support for inclusion in the Victorville sphere. She points out the mixed use town center, mixed use village corridors and centers, utility corridors, and notes that the full range of urban services will be needed. She says land use designations include low density residential, commercial, and light industrial. Territory currently part of the City of Adelanto has no land use designation within the City of Victorville General and any future annexation will require rezoning. It is presumed that this territory would be light industrial, as it is north of the Southern California Logistics Airport (SCLA) area.

She points out the County landfill on the overhead display and says it is part of the Desert Gateway Specific Plan area. She says the City has identified the need for additional police, fire, park services, streets and drainage. The most infrastructure-intensive services required are water and sewer. A need exists in the northern sphere expansion for wastewater service. A listing of the average cost of sewer service in the area is provided in the staff report. She notes that the City of Victorville's sewer connection and average monthly cost are amongst the lowest in the County with CSA 42 at the highest. Chairman Mitzelfelt asks if only residents of CSA 42 who receive sewer service would pay a sewer bill. Ms. McDonald states that is correct as it is an enterprise function and no one pays for sewer service which is not connected to the sewer line. She says CSA 42 does receive a share of property tax from the existing area, as did the prior City of Victorville subsidiary district, the Victorville Sanitary District. She says the

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Sanitary District was the collection and transportation entity that transported to the VVWRA plan. A while back that agency was dissolved and authority was transferred to the City in its entirety. She says the City is now the responsible entity for providing sewer service. The City has taken action to transfer or lease the wastewater operations of the City to the Water District for not only the collection and transportation, but for reclaimed water, and the development of the SCLA Industrial Wastewater Treatment Plant. She notes that LAFCO staff is concerned that the lease has been approved by both the City Council and Victorville Water District Board of Directors; however, it has not been implemented since May 2009. The Victorville Water District has accepted a loan from the City's RDA to build the SCLA Industrial Wastewater Treatment Plant; however, she notes the Victorville Water District does not have active sewer powers. The question of accepting a loan without having authority to provide the service was reviewed with City staff and Victorville Water District staff. When the consolidated district was formed, the consolidation was done under water district law, which does allow a water district to perform a vast array of services, including water, sewer, fire protection, park and recreation, sanitation, etc., but the Commission's approval and discussion leading up to it isolated that consolidated district to have a single service for water. The dissolution of the Victorville Sanitary District included discussion by staff about extending that service to the Water District and it was decided that the City would absorb all of those services. LAFCO law requires a process to be conducted in order to activate any latent function and that process has been outlined in law through the consolidation of the District Reorganization Act into a single act for Cortese-Knox. She says this Commission, since 1976, has had implementation policies which require certain actions to be taken and applications to be made in order to have a new service activated. She says LAFCO staff was not part of the discussion regarding what the Water District could and could not do. It moved forward with the full understanding that it could do water and sewer; however that service was never authorized by this Commission for that water district.

Ms. McDonald points out on the overhead display the functions and services assigned to the Victorville Water District. The Victorville Water District is the retail water provider for the entirety of the City of Victorville. She emphasizes that the lifeblood of the desert is water. Information was provided in the staff report regarding the State Water Project allocations, which have been ramped up to 50 percent of the full allocation. She says that at the time the two water districts were consolidated two improvement districts were created. Improvement District 1 is the Victor Valley Water District portion, which is the historic water provider for the area. Regarding residential rates for water service, upon the consolidation, there were two separate rate structures for the improvement districts to address the former Baldy Mesa and Victor Valley Water Districts. Ms. McDonald notes that the Victorville Water District has a single rate structure at the present time.

Ms. McDonald provides an outline of the financial issues in response to requirements under Government Code Section 56430. She says Victorville's financial predicament is no surprise, as the City has suffered from the economic downturn as have many entities all of the country. However, of primary concern to LAFCO staff, is that in the City's audits, the auditors have stated that the City has suffered from recurring losses and substantial doubt exists about the City's ability to continue. She emphasizes that this is unprecedented and is of paramount concern primarily because of the substantial debt that has accrued over the years. She says that over the past few years assessed valuations have taken a substantial drop and that is now translating into permanent reductions in property tax revenues based on values. She explains that a foreclosed home that sells for 30 cents on the dollar permanently reduces the property tax revenue stream for all entities receiving support from it. In the case of the City of Victorville, the County Assessor's recap of assessed valuations shows that dramatic increases occurred in Victorville followed by substantial reduction over the last few years.

Ms. McDonald states staff has identified several areas of concern, including interfund transfers and advances provided to the City from the Water District, a separate legal entity. She refers to a letter from Doug Robertson, Deputy City Manager and Director of Administrative Services and City Treasurer, who has indicated that the City has a legal ability to do interfund transfers between the City's funds. Ms. McDonald states LAFCO staff does not disagree; however, the Water District was created under County Water District law which falls under the Water Code and the restrictions on that entity are identified in the

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Water Code. If there are loans they should be addressed by the Water Board, identified and agreed to in a public setting.

Regarding actions to fund the construction of the Industrial Wastewater Treatment Plant through funds from Improvement District No. 1, the former Victor Valley Water District, the facility is owned by the City and the lease was entered into by the City Council and the District Board, but it has never culminated. The loan from the RDA to the Water District for the Wastewater Treatment Plant and the subsequent loan from the Water District to the City's municipal utility system are a wash, so that all the funds for the development of the Wastewater Treatment Plant are coming from the Water District's funds.

Ms McDonald states that there is a promissory note adopted by the Water District for the District's Wastewater Enterprise Fund, noting again that there are no wastewater or sewer authorities given, but this was a continuing process assuming it can provide this service. District staff has now indicated that it will be submitting an application to request that sewer service is activated for the District and LAFCO staff has committed not only to the Water District and to the City of Victorville staff, but also through this report to the Commission, that it will provide all assistance to process it as quickly as possible to resolve the concerns; however, concerns regarding the process itself from 2008-2009 on still apply. In August, the City of Victorville adopted its appropriation limit; however, no appropriation limit was adopted for the separate Victorville Water District. Adoption of an appropriation limit is a requirement of the California Constitution. While conducting the City's service review, of concern was the operation of the Victorville Park, Fire and Sanitary Districts in essence as departments of the City rather than as separate legal entities. There was no separate appropriation limit or budget and the City indicated at that time that it would correct that practice. She reports that the City has corrected that practice and it sits as the Board of Directors and takes separate actions for the Victorville Water District. The final element is establishing a separate appropriation limit.

Ms. McDonald states that the sphere territory proposing to be included is predominantly for completion of the Desert Gateway Specific Plan, an effort to be the transportation area for the Desert Express, the high speed train to Las Vegas. It will require the full range of municipal services. General plan efforts on other territories outside that have also been identified. She says it is clear and self-evident that a present and probable need for public facilities exists. These land uses will require the full range of municipal-level services at urban intensities and the best source for those is the City of Victorville and the Victorville Water District.

Present capacity of public facilities and adequacy of public services have been clearly identified within the staff report.

Regarding social and economic communities of interest, the area is part of the Victor Valley. When the Commission was asked to modify the boundaries, the topography, drainage and exclusion of mineral resources were used to define those areas of the community. The community of Oro Grande has been defined for future protection through a sphere of influence. The remaining territory however is clearly part of the City of Victorville and its economic community of interest.

As part of this review, LAFCO staff reviewed with the Victorville Water District its current water operations and it has identified that it has historically provided for water conservation and have made great efforts to expand water conservation for this portion of the desert. Reclaimed water is also provided for irrigation and will be, as part of the overall SCLA industrial wastewater treatment plant, providing reclaimed wastewater for the cooling towers at the power plant. LAFCO staff recommends that the Commission recognize these additional services under the District's existing water function

Ms. McDonald notes that the City and County are to conduct a review regarding the potential for land use designations and coordination efforts within the sphere of influence. The City and County met to discuss

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those issues; however, no new information has been presented to LAFCO staff regarding agreements on land use within this proposed sphere.

She reported at the last hearing that the Commission that was precluded from taking action on the sphere because of pending litigation on the City's General Plan Update Environmental Impact Report. That litigation has been resolved, so the Commission has full authority to make a decision. She refers to the Environmental Impact Report and says that the Commission, staff and environmental consultant have independently reviewed the materials and they are adequate for use in making a decision regarding environmental concerns and that the other matters identified in the report are statutorily exempt from environmental review.

Ms. McDonald summarizes the recommendations from the staff report and asks the Commission to take the actions therein. She thanks the staff of the City of Victorville and the staff of the James Hardy Company for their work to resolve the concerns associated with the sphere modifications.

Chairman Mitzelfelt calls for questions from the Commission. Commissioner Cox states she would be remiss if she did not address the section on regional water. She says it is an oversimplification of a very complex subject. She has requested that Mojave Water Agency staff make themselves available to provide information on an extremely complex subject. She believes that if one were to read only this document relative to water supply they may get a completely different characterization of where the basin is relative to overdraft and the production safe yield of the basin, which is implemented through the adjudicated process. The Mojave Water Agency issues such regional water documents and she encourages staff to take advantage of these resources. Ms. McDonald notes that in the commencement of any service review or sphere of influence amendment, the Notice of Commencement or Notice of Filing is circulated broadly and widely and always includes the regional water agency. Whether or not comments are supplied varies greatly. She notes that the 2010 Water Management Plan and Integrated Regional Water Documents will address issues related to water supply and the State Water Project. As indicated in the staff report, any annexation for any of these territories would include the requirement for a plan for service which would address the new 2010 Urban Water Management Plan documents.

Chairman Mitzelfelt asks if someone wants to review the record on this item in the future, and the Urban Water Management Plan has substantially changed, would it be included in the file. Ms. McDonald states that the current file is not changed; however, within about three years a new service review and sphere update will be held and would include the most current documents.

Commissioner Coleman asks what staff's recommendation would be if the City submitted a proposal for annexation and these problems remain. Ms. McDonald states that if the plan for service shows a shortfall in the City's ability to serve, it is the Commission's vital role to make sure that the proposed changes are sustainable. That is why the plan for services must include a 10-year projection for costs and services. She assures the Commission that if those were in the negative LAFCO staff would recommend denial. She refers to an Adelanto annexation request where this was the case and staff recommended denial. It is incumbent upon this Commission to address long-term sustainability as best it can.

Chairman Mitzelfelt refers to the road improvements in Adelanto and states he wishes to be cooperative with the cities; however, he does not necessarily agree with the statement that there is not a clear public benefit. If Victorville needs the area for development and can provide a benefit to Adelanto, he does not believe it is for him to decide. He notes, however, that there have been arrangements between Victorville and Adelanto in the past and some have been beneficial. He says that he supports the goals of the Desert Gateway Specific Plan and sees opportunity with the development of the Desert Express. He notes that the Commission has a responsibility to protect the aviation mission of SCLA. He remarks that during the General Plan update the County did identify some concerns about disagreement over zoning, for example, residential zoning adjacent to the County landfill. He agrees that there must be an agreement between the City and County before annexation takes place. He believes a more rural designation for the area of SCLA

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is more appropriate than an urban intensity would be. He asks if staff has recommendations regarding moving forward with a Helendale and/or Oro Grande expansion into the western area relative to protecting the aviation mission of SCLA. He asks if there is anything that can or should be done. Ms. McDonald responds that those are land-use questions and it is not LAFCO's role to make those decisions. Staff would be willing to help by providing background on other airports and their protection and what mechanisms are used to protect airports. She says the Airport Land Use Commission has some background in preserving and requires that a pilot or aviation specialist be included. Commissioner Mitzelfelt states he is cognizant of the concerns regarding land use around SCLA.

Chairman Mitzelfelt asks if the next service review in three years would be the appropriate time to make a condition that Victorville demonstrate its ability to provide services to urban densities. Ms. McDonald responds that the arrangements between Victorville and Adelanto would be reviewed in three years, and the ability to provide service is a requirement for an annexation. The plan for services is required to show that the City can provide the level of service to the planned land use, including roads, sheriff, fire, water, sewer, etc. A fiscal impact analysis is also required to show that revenues exist to support the annexation. She says the Commission would not normally know about the special circumstance regarding the proposed agreements between Adelanto and Victorville, except that the condition was included in the resolution from the City of Adelanto, so it might be appropriate for inclusion in the sphere of influence resolution.

Chairman Mitzelfelt opens the public hearing and asks if there are members of the public who wish to speak on this item.

Bill Webb, Development Director, City of Victorville, states there have been ongoing discussions with the City of Adelanto. Because of the date of the hearing there were rush discussions recently; however, nothing has been finalized. The resolution was Adelanto's request from Victorville, but there has been no finalized agreement between the cities. The cities are aware of what is required and will work with LAFCO staff in the future. Chairman Mitzelfelt asks Ms. McDonald to comment. Ms. McDonald states that a statement could be included that the Commission requests that the cities submit any agreement reached regarding the exchange of the Adelanto territory and whatever financial arrangements, if any, are included in that transaction. Mr. Webb states both City Councils have agreed to the negotiation. It is just the specifics of the negotiation that have not yet been agreed upon. Ms. McDonald reiterates that the only notification to LAFCO staff was the condition included in the Adelanto resolution. In adopting the Commission's resolution, it might be best to require when negotiations are completed that a copy of the agreement is filed with LAFCO and presented to the Commission at the next available hearing. Chairman Mitzelfelt asks if that could occur by the next hearing. Ms. McDonald responds that it probably would not, as it would be part of an annexation proposal for the property. Commissioner Cox asks Mr. Webb to comment. He says he does not believe it would happen by December; however, he does believe an annexation proposal would be submitted before the next service review in three years.

David Mueller, a member of highdesertpolitics.org, thanks Ms. McDonald for the staff report, and states he likens this to turning a junkie loose in a police evidence room. He says Victorville's finances are in a shambles and he believes that, as soon as the sphere of influence is granted by the Commission, the City will move to annex that property to get the Desert Gateway developed. His main concern is water and refers to a MWA report, which does not include the \$600,000 that Victorville Water District owes in replacement water fees. He says Ms. McDonald would not have known about that prior to August 4, 2010. The City Council has agreed not to pursue a lien against that Water District. He says Adelanto and Victorville like to make deals and the Daily Press reported that there was a special arrangement outside the courts over water and now they are fighting over it. He says the details of that arrangement are unclear. He echoes his concern that the Desert Gateway is going to be another 82,900 people. He refers the Commission to a recent article in the Fresno Bee by Mark Grossi called "Chinatown II." He says future water supply relies on a water bank owned by Stuart Resnick who is being sued because wells are going dry. He believes that as soon as Victorville gets the sphere of influence it will annex and start building. He is concerned about running out of water.

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T. Gormley states he opposes any annexation whatsoever. He says Victorville will give nothing but red ink and two-timing stories. He says that the City is broke. He asked 10 years ago that his property be annexed into the City, and since then the City has done away with 15 businesses because they didn't appreciate the grandfather clause. He says giving the City carte blanche is a bad decision and it must be stopped. He offers to give the Commission a tour of what the Commission has gifted to the City.

Gary Thrasher, a farmer in the Oro Grande area, refers to the area that juts into the riparian area of the Mojave River, and states a designation of light industrial is inappropriate. Ms. McDonald states the sphere of influence was drawn as close to the centerline of the Mojave River as possible using parcel boundaries. Lines were drawn to exclude those in opposition. She points out on the overhead display the parcel boundaries and because parcels cannot be split, it is not as clean as it could be. Chairman Mitzelfelt asks if this is an acceptable boundary. Ms. McDonald states staff believes it is. Chairman Mitzelfelt asks if it precludes or supersedes any requirements of any of the laws enforced by the Department of Fish and Game. The Mojave River is an area of extreme concern and the Commission is very careful about what it approves adjacent to the river. Ms. McDonald states it does not change the County Flood Control District's jurisdiction in the area. Commissioner Cox states the City would have the flexibility to change the designation to open space or habitat and she hopes Mr. Webb would speak to that. It is obviously not suitable for light industrial at all. Mr. Webb states the City would agree and environmentally that area could never be developed. He says that will be changed and preserved in the future.

Chairman Mitzelfelt closes the public hearing and calls for further questions from the Commission. There are none.

Commissioner Coleman moves approval of staff recommendation, second by Commissioner Derry.

Commissioner Coleman comments that Victorville is very well aware of the concerns of LAFCO staff and the Commission and the City understand that if it requests annexation it will have to have resolved those issues. Ms. McDonald asks if the Commission wishes to include information as request about Adelanto and Victorville's financial arrangements for the sphere of influence exchange. Chairman Mitzelfelt states those can be submitted with the annexation proposal. He asks what is the practical effect of not having appropriation limits for the separate entities. Ms. McDonald states the California State Constitution states an entity must have an appropriation limit in order to use the proceeds of its property taxes. With no appropriation limit, the question is how the entity can expend the revenues it receives. An appropriation limit was identified for the consolidated agency when the Commission approved it. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, Derry, McCallon, Mitzelfelt. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead).

Ms. McDonald states adoption of the resolution will be a consent item at the next hearing.

Commissioner McCallon thanks staff for all its hard work, especially in resolving the Oro Grande issue. Ms. McDonald thanks the Victorville staff and everyone on the committee who came together to resolve that issue.

**DISCUSSION AND POSSIBLE ACTION FOR CHANGING DATE FOR NOVEMBER 17, 2010
COMMISSION HEARING TO DECEMBER 8, 2010 – APPROVE STAFF RECOMMENDATION**

Ms. McDonald states that in order to prepare for the next hearing, and partly because she will be away the month of October, she asks for the Commission to consider moving the November hearing to December 8, 2010.

Commissioner Cox moves approval of staff recommendation, second by Commissioner Derry. Chairman

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Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, Derry, McCallon, Mitzelfelt. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead).

PENDING LEGISLATION REPORT

Ms. McDonald reports that AB853 has been sent to the Governor. CCL and the Commission have sent letters of opposition. She adds that the other disadvantage community bill died in session.

EXECUTIVE OFFICER'S ORAL REPORT

None.

COMMISSIONER COMMENTS

Commissioner Cox welcomes the Commission's newest member, Commissioner Ginger Coleman, and states she looks forward to working with her. Chairman Mitzelfelt states Ms. Coleman is very highly qualified and knows the high desert very well. He joins his colleagues in welcoming her. Commissioner McCallon states Ms. Coleman serves with him on the SCAG Regional Council and it is a pleasure working with her.

PUBLIC COMMENTS

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

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS ADJOURNED AT 8:30 P.M.

ATTEST:

ANNA RAEF, Recording Secretary

LOCAL AGENCY FORMATION COMMISSION

BRAD MITZELFELT, Chairman