

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JULY 20, 2011**

REGULAR MEETING

9:00 A.M.

JULY 20, 2011

PRESENT:

COMMISSIONERS:	Jim Bagley	Neil Derry, Alternate
	Robert Colven, Alternate	Brad Mitzelfelt, Chair
	Ginger Coleman	Janice Rutherford
	Kimberly Cox	Robert Smith, Alternate
	James Curatalo, Vice-Chair	Diane Williams, Alternate

STAFF:

- Kathleen Rollings-McDonald, Executive Officer**
- Clark Alsop, Legal Counsel**
- Samuel Martinez, Assistant Executive Officer**
- Michael Tuerpe, Project Manager**
- Anna Raef, Recording Secretary**
- Rebecca Lowery, Deputy Clerk to the Commission**

ABSENT:

COMMISSIONERS: **Larry McCallon**

**CONVENE REGULAR SESSION OF THE LOCAL AGENCY FORMATION
COMMISSION – CALL TO ORDER – 9:04 A.M. – SAN BERNARDINO CITY
COUNCIL CHAMBERS**

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

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.

CONSENT ITEMS – APPROVE STAFF RECOMMENDATIONS

1. Approval of Minutes for Regular Meeting of June 15, 2011
2. Approval of Executive Officer's Expense Report
3. Ratify Payments as Reconciled for Month of June 2011 and Note Cash Receipts
4. Unaudited Year-End Financial Report for Fiscal Year 2010-11
5. Approval of Fiscal Records Destruction Pursuant to Commission Policy

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 the unaudited year-end financial report and fiscal

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records destruction have been provided, copies of each are on file in the LAFCO office and are made a part of the record by their reference here.

Commissioner Cox moves approval of the consent calendar, second by Commissioner Coleman. 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, Mitzelfelt, Williams. Noes: None. Abstain: None. Absent: McCallon (Commissioner Williams voting in his stead), Rutherford (Commissioner Derry voting in her stead).

PUBLIC HEARING ITEMS

CONSENT ITEMS DEFERRED FOR DISCUSSION - None

CONSIDERATION OF CEQA STATUTORY EXEMPTION FOR LAFCO 3165; AND LAFCO 3165 - REORGANIZATION TO INCLUDE ANNEXATIONS TO THE CITY OF BARSTOW, BARSTOW FIRE PROTECTION DISTRICT AND ODESSA WATER DISTRICT, AND DETACHMENTS FROM SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT AND ITS NORTH DESERT SERVICE ZONE, COUNTY SERVICE AREA SL-1 AND COUNTY SERVICE AREA 70 (WEST LENWOOD ISLAND ANNEXATION) - APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider LAFCO 3165 - Reorganization to include Annexations to the City of Barstow, Barstow Fire Protection District and Odessa Water District, and Detachments from San Bernardino County Fire Protection District and its North Desert Service Zone, County Service Area SL-1 and County Service Area 70 (West Lenwood Island Annexation). Legal advertisement of the Commission's consideration has been provided through publication in the *Desert Dispatch*, a newspaper of general circulation in the area. As required by State law, individual notification was provided to affected and interested agencies, County departments and those agencies and individuals requesting mailed notice. Individual notice has been provided to registered voters and landowners within the annexation area (totaling 76 (32 registered voters and 44 landowners representing 50 parcels), and to all voters and landowners located within roughly 1,350 feet of the exterior boundaries of the annexation site (totaling 160) in accordance with State law and adopted Commission policies.

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 states that LAFCO 3165 is an island annexation initiated by the City of Barstow, including annexations to the City of Barstow, Barstow Fire Protection District and Odessa Water District, and detachments from the San Bernardino County Fire Protection District and its North Desert Service Zone, and County Service Area 70. She adds that staff proposes an amendment to include detachment from County Service Area SL-1. She points out on the overhead display that the island is substantially surrounded by the existing City of Barstow boundaries. She explains that the annexation of this island was as a result of an agreement with the City of Barstow

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related to an earlier annexation proposal, LAFCO 3085. Rather than making it a condition of approval, the City of Barstow committed that it would initiate the island annexation within one year of the approval of LAFCO 3085. She says that due to budget issues, staffing cutbacks, etc., the requirement is now being fulfilled three years later.

She notes that staff is unaware as to why this area was not included in the Barstow Fire Protection District, as it is the only agency that has served this territory for many years. She points out on the overhead display the portion of the site included in CSA SL-1 and says that staff recommends detachment from CSA SL-1 and transfer of existing street lights within the area. She points out the development patterns of the area on the overhead display and digital flyover. She notes that the Lenwood Road rail-crossing project has been in the works for a number of years and a memorandum of understanding exists between the San Bernardino County Transportation Commission, SANBAG, the County and the City of Barstow to fund the project.

Ms. McDonald summarizes the mandatory determinations the Commission is required to make. She says the area is substantially developed and has municipal level service needs based upon both the County's land use designation and City's general plan. Evidence of improvements exist, public services are available and there are physical improvements on many of the properties in the area. She adds that there are no agricultural lands and the area will benefit from services provided by the City. She states that the Commission's policy describes "substantially surrounded" to be in excess of 52 percent of the linear length of the boundary and this proposal is 89 percent surrounded. She says that in September 2010 the City conducted an outreach/education process with the residents and landowners to review land use and service delivery. Following that meeting, rezoning was modified to address existing concerns of the landowners within the area regarding the City's general plan and inclusion of a mixed-use category. The area is not within an established redevelopment area for the County.

She says that the Lenwood Grade Separation project agreements have been reached between SANBAG, the County, and the City of Barstow to provide for service delivery. Staff recommends that a finding be included in the resolution of approval identifying that agreement.

She says all developed properties are on septic systems for wastewater disposal. She notes that the staff report identifies the boundaries of CSA 70, Zone S-7, which provides sewer service through assessments and contracts with the City of Barstow; however, this territory was excluded so the area has no access to wastewater services except through out-of-agency service contracts. Approval of this proposal will not require connection; however, the ability to connect will exist without the encumbrance of an out-of-agency service contract. Water service remains unchanged, as the Golden State Water Company, a private utility, provides water service to the entirety of the City. She adds that the Odessa Water District was created by special legislation and is, in essence, a backup system should issues arise with Golden State's ability to provide service.

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She notes that the territory does not have trash pickup service. Residents pay \$85 per year to the County Solid Waste Services to allow residents to take their trash to the dump. The City of Barstow does have mandatory trash pickup and Burrtec Waste Industries, the City franchisee, has agreed to work with residents and landowners in the area to address any issue for waste disposal and utilization of their bins for service.

Ms. McDonald reports that staff has included the detachment from CSA SL-1, and has requested that the City sign documents to transfer the three street lights to the City upon successful completion of the proposal. Streetlights connected to the traffic signals at Lenwood Road and National Trails will need to be addressed through agreements between the County Department of Transportation and the City of Barstow.

She states that the Commission's environmental consultant has recommended that this proposal is statutorily exempt from environmental review because the Commission is required to approve the proposal.

Ms. McDonald summarizes the staff recommendations.

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. Michael Massimini, City Planner for the City of Barstow, states that the City staff has reviewed the staff report and recommendations and the City concurs.

Chairman Mitzelfelt closes the public hearing.

Commissioner Derry moves approval of the staff recommendation, 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, Mitzelfelt, Williams. Noes: None. Abstain: None. Absent: McCallon (Commissioner Williams voting in his stead), Rutherford (Commissioner Derry voting in her stead).

(It is noted that Commissioner Rutherford arrives at 9:22 a.m.)

DISCUSSION ITEMS:

**REVIEW AND APPROVAL OF AMENDMENTS TO POLICY AND PROCEDURE
MANUAL – APPROVE STAFF RECOMMENDATION TO CONTINUE TO THE
SEPTEMBER 28, 2011 HEARING**

**REVIEW AND POSSIBLE ACTION ON ISLAND ANNEXATION POLICIES AND
COMMISSION DIRECTIVES ON IMPLEMENTATION OF ISLAND POLICIES -**

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APPROVE STAFF RECOMMENDATION TO CONTINUE TO THE SEPTEMBER 28, 2011 HEARING

LAFCO conducts a public hearing to consider review and approval of amendments to Policy and Procedure Manual; and to consider review and possible action on island annexation policies and Commission directives on implementation of island policies.

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 the two items are being considered together and that staff recommends that the Commission continue consideration of the two items to the September 28, 2011 Hearing. She explains that in June LAFCO staff discussed efforts to revamp the Policy and Procedure Manual with legal counsel and the Commission's environmental consultant. That resulted in a recommendation that an environmental assessment of the Policy and Procedure Manual and Island Policies be conducted. As there was not sufficient time to do so, staff recommends continuance.

In addition, the County and SANBAG have adopted the Countywide Vision Statement. Staff believes that the Vision Statement should be included in the Commission's Mission Statement as part of the introduction to the Policy and Procedure Manual. She states that, most importantly, the Governor signed SB89, which did away with the supplemental VLF funding for City incorporations and inhabited annexations completed after 2004. It was introduced on June 27, was approved by both houses on June 28 and signed by the Governor effective July 1. The island annexation program, as well as other requirements and directives of the Commission, are affected, as it removes discretionary funding in the amount of \$57 per capita. Dramatic reductions are occurring within San Bernardino and Riverside Counties. For example, Fontana lost \$1.3 million in VLF funds and received in return \$298,000. She explains that the premise of SB89 was to sustain the COPS grants to local municipalities and the County. Ms. McDonald emphasizes that this will have a major impact on island annexations in the future. She requests continuance of this item in order for staff to provide a complete analysis of the impact of this action.

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.

Commissioner Bagley moves approval of the staff recommendation, 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, Mitzelfelt, Rutherford, Williams. Noes: None. Abstain: None. Absent: McCallon (Commissioner Williams voting in his stead).

The public hearing is left open until the September 28, 2011 Hearing.

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INFORMATION ITEMS:

**STATUS REPORT ON RIM OF THE WORLD RECREATION AND PARK DISTRICT
COMPLIANCE WITH LAFCO CONDITIONS**

Ms. McDonald presents the staff report on Rim of the World Recreation and Park District compliance with LAFCO conditions, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here.

Ms. McDonald states that specific conditions were required as a result of the Municipal Service Review for this agency. They include that for the next five years, the District is required to provide the Commission annually with a copy of its adopted proposed and final budget and its mid-year budget reviews, financial reports, copies of audits, etc., as well as an outline for completion of its outstanding audits; and the District is required to provide the County Auditor and the State Controller with copies of all its audits and budgets with an outline of how it anticipated to provide for management of the District. She says staff has been in contact with the District's administrative staff over the last year to request submission of the documents. Updates and proposed budgets have been submitted. She notes that of concern is whether or not the proposition, which passed an increase in assessment, also increased the appropriation limit to use the increased revenues. She says no audits have been completed this fiscal year; however, the District has contracted with Rogers, Anderson, Malody & Scott to complete the audits. The District budget materials state that it is anticipated that audits for 2006-2007 and 2007-2008 will be completed by December 31, 2011 and that audits for 2008-2009 and 2009-2010 will be completed by June 30, 2012.

The service review also included information on the substantial debt owed to the County for elections, payroll services, etc. She says that has been addressed by the District, with the assistance of Supervisor Derry, through a \$500,000 gap loan to provide funding to pay off the over \$300,000 owed to the County and to provide funding until the District received its first distribution of its new proceeds. The District is making payments and ended this fiscal year in a positive position.

As no audits were completed during this period, there is nothing to file with the County Auditor or with the State Controller. LAFCO staff has requested that the District provide the Commission with a copy of its State Controller's report.

With regard to management issues, the District has designated a finance officer, Dr. Hugh Bialecki. It has been determined that the District's insurance covers the required bond. Ms. McDonald notes that the District has terminated its contract with the County Special Districts Department and has hired a General Manager, Karen Reams.

She states that it is staff's recommendation that she be directed to continue to monitor the District and return in one year for the next status report.

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Commissioner Derry congratulates the District for the work it has done and says that the District is doing an outstanding job. Commissioner Bagley states that it is still of concern that the audits have not been done. He asks that an update be provided in six months. Ms. McDonald states staff will provide an update in January.

Chairman Mitzelfelt calls for comment from the public. Karen Reams, General Manager, comments that District staff has been working closely with Commissioner Derry's office, as well as Senator Dutton's, and Assemblyman Donnelly's offices. She assures the Commission that District staff is taking its responsibilities very seriously. She says she is very excited about the future of the District.

Commissioner Cox states that it speaks volumes that a parcel tax was passed in this economy. That is evidence that the community strongly supports the District.

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

PENDING LEGISLATION REPORT

Ms. McDonald provides the Commission with written information regarding legislative activity, including a description of actions taken prepared by Peter Detwiler with the Senate Committee on Governance and Finance. Also provided to the Commission is the CALAFCO Legislative Tracking Summary, which provides status of legislation of concern. She notes that AB1430, the LAFCO Omnibus Bill, is currently inactive on the basis that AB54 and SB244 affect some of the technical definitions. AB46 refers to the disincorporation of the City of Vernon and the legislative creation of a community services district to assume service responsibilities for the City of Vernon.

Ms. McDonald states a draft letter is provided to the Commission requesting veto of SB244, should that bill be sent to the Governor. Concerns exist regarding unfunded mandates. She notes that amended language states that, "for any change of organization a Commission shall not approve an annexation to a city of any territory greater than 10 acres, or as determined by Commission policy, where there exists a disadvantaged unincorporated community that is contiguous to the area of proposed annexation, unless an application to annex the disadvantaged community to the subject city has been filed with the Executive Officer." She says that inhabited disadvantaged communities are least able to provide funding for increased services. Removal of discretionary VLF funding, at \$57 per capita, makes the question of annexing or incorporating disadvantaged communities moot unless there are substantial changes to the distribution of property taxes.

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EXECUTIVE OFFICER'S ORAL REPORT

Ms. McDonald states the August 17 hearing will include the service reviews and sphere of influence updates for the entirety of the Big Bear community, a request for designation of the voting member for the CALAFCO Conference, a request for a vote on representatives for the Special Districts Risk Management Authority. The September hearing will include items continued to that hearing, including a discussion on the policy and procedure manual, and the completion of the Crestline Sanitation District service review and road report for the mountain communities. She reminds the Commission that the September hearing has been rescheduled to September 28.

Commissioner Curatalo asks about the status report notation stating that the Baker Community Services District has indicated that it will not provide information. Ms. McDonald explains that the General Manager of the Baker CSD believes the District is not required to do so unless it is paid through a public records request. Ms McDonald notes that Commissioner Smith and Policy Analyst Michael Tuerpe will be scheduling a meeting with the general manager regarding gathering some of the required materials. Chairman Mitzelfelt states that the General Manager told the Grand Jury that there is no problem with LAFCO. Commissioner Curatalo asks if this practice would set a precedent. Ms. McDonald states that state law requires that the District provide the information. Chairman Mitzelfelt comments that perhaps the new Grand Jury will take up the issue. Commissioner Bagley commends staff for attempting to approach the issue peaceably. Ms. McDonald comments that the requested information are all public documents which the agency is required to provide.

COMMISSIONER COMMENTS

Chairman Mitzelfelt calls for comments from the Commission. Commissioner Bagley comments that there was a disturbing letter from the San Bernardino County Employees' Retirement Association (SBCERA) regarding unfunded liabilities. He says there are ramifications for LAFCO and every organization participating in SBCERA and he would like a full accounting of LAFCO's participation with the agency and LAFCO's portion of the unfunded liability. He notes that CALPERS is half a trillion in the hole and is not sustainable. He says it is equally shocking that a local agency is operating under the same fiscal irresponsibility. He requests a full breakdown of how the retirement system is working and how it affects current LAFCO employees.

Ms. McDonald states that annually the Commission's audit identifies the Commission's liabilities. As a separate entity that participates in SBCERA, LAFCO's obligations for payment are at 100 percent. LAFCO does not have an unfunded liability and that is why LAFCO pays a substantially higher percentage for retirement purposes than does the County. Since 1985, when LAFCO became a contract participant in the retirement system, it has been required to fund 100 percent of its retirement obligation annually. Ms. McDonald can provide the actuarial reports from SBCERA to the Commission. Commissioner Bagley states that the system is more than broken and he is skeptical about the Association's ability to meet its obligation for LAFCO employees. Commissioner Rutherford adds that San Bernardino County is

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governed by the 1937 Act, so changes must be made by the State legislature and the County is now pursuing changes that it can make locally. Commissioner Bagley states that he believes the State could go into default over this issue.

COMMENTS FROM THE PUBLIC

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 9:55 A.M.**

ATTEST:

ANNA RAEF, Recording Secretary

LOCAL AGENCY FORMATION COMMISSION

BRAD MITZELFELT, Chairman