

**LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO**

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DATE: OCTOBER 12, 2011 
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #7: LAFCO 3168 – Activation of Sewer Powers for the Victorville Water District

INITIATED BY:

Resolution of the Board of Directors of the Victorville Water District

RECOMMENDATION:

Staff recommends that the Commission make the following determinations:

1. With respect to environmental review certify that the proposed activation of sewer functions and services for the Victorville Water District are statutorily exempt from the provisions of the California Environmental Quality Act and instruct the Executive Officer to file a Notice of Exemption within five (5) days of this action;
2. Approve the activation of the sewer function and service for the Victorville Water District and amend the "Rules and Regulations Affecting Special Districts" to indicate the following as its authorized functions and services:

	<u>FUNCTION</u>	<u>SERVICES</u>
Victorville (Subsidiary District established 8/15/07)	Water	Retail, agricultural, domestic, replenishment, conservation, reclaimed water for irrigation/cooling towers for power plant
	Sewer	Collect, treat, and/or dispose of sewage, wastewater, recycled water, and storm water

3. Adopt LAFCO Resolution No. 3151 reflecting the Commission's findings and determinations.

BACKGROUND:

When Independent Special Districts were approved for seating on the San Bernardino LAFCO in 1976, the Commission was required by law to adopt "Rules and Regulations Affecting Special Districts" which established the "active" and "latent" powers for each of the special districts under its purview. Active powers were those defined as being actually provided by the special district at that time; latent power were those powers authorized the district by its respective principal act but which were not being actually provided at the time. The Rules and Regulations required a process to be undertaken thereafter to expand the "active" powers of an agency.

As a part of the approval of the consolidation of the former Victor Valley Water District and Baldy Mesa Water District (LAFCO 2991) the new Victorville Water District was reorganized effective August 15, 2007 and established as a subsidiary district of the City of Victorville. The new subsidiary Victorville Water District (hereafter shown as "VWD" or "Water District") was defined to have water as its only active function, with its services defined to include retail agricultural, domestic and replenishment under this function. All other functions allowable by County Water District law were considered to be "latent" functions which would require further LAFCO action for the District to pursue their provision as outlined above.

At the September 15, 2010 hearing in the City of Victorville the Commission reviewed and considered an application for sphere of influence expansions for the City of Victorville and its subsidiary VWD (LAFCO 3082). This consideration, as mandated by law, included a service review for both agencies and identified issues related to the financing by the Water District of the City owned and operated Southern California Logistics Airport Industrial Waste Water Treatment Plant (hereafter shown as "IWWTP") as well as other financing issues related to inter-fund transfers and loans. Therefore, LAFCO 3168 was submitted by the Water District in response to the concerns outlined in that report.

Attachment #1 to this report presents maps of the boundaries of the Water District, the City of Victorville and the anticipated sewer service area. Attachment #2 provides the Water District's Resolution VWD 11-001 initiating the application including its response to the Plan for Service requirements and amendments to that document, and its application requesting that its latent power for sewer service be activated including a copy of the City's Lease of its Wastewater system to the Victorville Water District. Attachment #3 provides a copy of the Commission's Rules and Regulation Affecting the Functions and Services of Special Districts. Attachment #4 is a copy of the September 2010 Staff Report related to LAFCO 3082 which outlines staff concerns regarding this service.

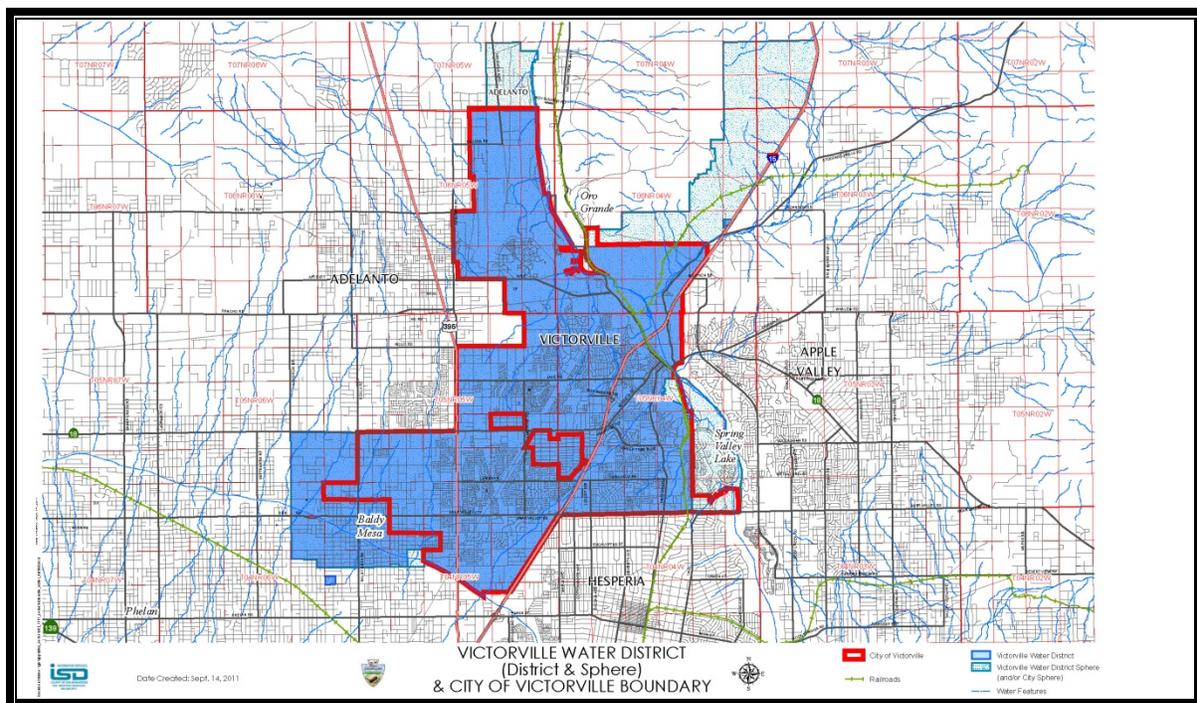
The foundation for this request is in response to questions and concerns expressed by LAFCO staff that in order for the Water District to finance, build and/or operate the IWWTP it would need to be authorized an active sewer function/service. The City and the Water District operated as if the sewer function was active when from March 2009 through the present it took actions to finance the IWWTP. Some of those actions are identified below and are more fully outlined in Attachment #4 to this staff report beginning on page 30:

1. April 7, 2009 – Action taken by City Council and Water District to lease the Wastewater Enterprise to the Water District. This enterprise included the existing wastewater collection and transportation facilities formerly operated by the Victorville Sanitary District and the future SCLA Industrial Wastewater Treatment Plant. While resolutions approving the lease were adopted, the lease agreement was neither finalized nor implemented by City and Water District personnel.
2. May 5, 2009 – Action taken by City Council and Water District Board of Directors to approve new lease agreement for the Wastewater System including the SCLA Industrial Wastewater Treatment Plant and Reclaimed Water System. Resolution No. 09-003 for the Water District and Resolution No. 09-036 for the City were adopted with the lease agreement attached as an Exhibit. Per Victorville staff the lease agreement was never signed, has not been implemented since the bonds have not been issued to date, and no action has been taken to rescind the resolutions approving the lease. It has been conveyed to LAFCO staff that upon the issuance of the Revenue Notes for the Wastewater Enterprise the lease will be consummated.
3. May 5, 2009 – Action taken by Victorville Water District Board of Directors to sign lease agreement with SCLA Authority (City) and Water District for Wastewater Treatment Plant and to receive a loan from the City of Victorville RDA Housing Funds to the Victorville Water District in the amount of \$20,000,000 for construction of the SCLA IWWTP with interest to be paid at the prevailing interest rate earned by the State's Local Agency Investment Fund (LAIF). The Water District has borrowed money to fund construction of a facility it does not own nor has any call on the fees which are paid for its services to provide for repayment of the outstanding balance.
4. May 19, 2009 – Action taken by Victorville Water District Board of Directors to approve Resolution No. VWD 09-006 establishing a promissory note between the Water District's Water Enterprise Fund and the Water District's "Wastewater Enterprise Fund" in an amount not to exceed \$45,000,000 pending sale of Revenue Notes. LAFCO staff understands that to date no Revenue Notes have been sold for this improvement and no further action to actually finalize the lease have taken place to date. LAFCO staff at the time of the September 2010 report questioned the establishment of a "Wastewater Enterprise Fund" for an agency not authorized sewer functions and services. The City and Water District have responded by submitting LAFCO 3168 to activate the Water District's latent sewer function and service to resolve this question.
5. On September 15, 2009 the City Council and Board of Directors of the Water District approve a promissory note in the amount of \$20,000,000 from the Water District to the Victorville Municipal Utility System to pay for administrative and operational expenditures. It remains LAFCO staff's opinion that this transfer negates the loan to the Water District from the RDA Housing funds in May 2009 (the prior fiscal year) for \$20,000,000. However, it does not remove the obligation for repayment with interest by the Water District to the RDA Housing Funds, but staff, to date, cannot find any documentation that the loan to the Victorville Municipal Utility System includes the same provision for payments with interest.

LAFCO 3168 proposes to provide the Victorville Water District with the full range of sewer function and service authorized by County Water District law, Water Code Section 31100, identified as:

“A district may acquire, construct, and operate facilities for the collection, treatment and disposal of sewage, waste and storm water of the district and its inhabitants and may contract with any public agency including but not limited to sanitation districts for sewer outfall facilities. A district also may acquire, construct, and operate facilities for the collection, treatment and disposal of sewage, waste and storm water of inhabitants outside its boundaries; provided that it shall not furnish any such service to the inhabitants of any other public agency without the consent of such other public agency expressed by resolution or ordinance. The term "public agency" as used in this section, shall include a city, county, city and county, public district, municipal or public corporation, state agency or other political subdivision of the state, but shall not include a public utility subject to the jurisdiction, control and regulation of the Public Utilities Commission under the provisions of Divisions 5 (commencing with Section 10001) and 6 (commencing with Section 11501) of the Public Utilities Code.”

LAFCO 3168 requests that the Commission authorize the Victorville Water District to provide this function and identify that the services to be provided are the operation of a wastewater treatment plant, the distribution of its reclaimed water for beneficial purposes, and the operation of a wastewater collection and transportation system within its boundaries. The red boundary on the map below identifies the existing City boundary and the area currently entitled to receive wastewater collection services.



Of importance in this discussion is that the activation of sewer powers for the Water District allows it the ability to provide sewer service to its territory outside the existing city limits. This is not a requirement for extension of service. This position is further amplified within the Commission's *Rules and Regulations for Special District*, Section 8 which identifies that rules and regulations will not apply to the extension or enlargement of service area within the existing boundaries of the Water District.

The Water District has provided a Plan for Service as required by Commission policy. That Plan identifies that it is the intent for the Water District to lease all sewer infrastructure located within the boundaries of the City and that all costs for operation will be billed to the City. In reference to the financing question, the Plan states that the City will continue to maintain and operate sewer infrastructure and services, will continue to bill and collect all revenues from the Water District's customers, both water and sewer. So, all revenues (including all reserve funds) will remain with the City but the costs for operation will be incurred by the Water District and billed back to the City. In addition, the lease agreement that is intended to be facilitated by this proposal will transfer the operation to the Water District.

The fiscal impact analysis included in the Plan shows that it is anticipated that \$3,600,000 will be paid annually to retire existing debt. LAFCO staff understands that this debt is the promissory note and other funding provided by the Victorville Water District to construct the IWWTP. The chart below has been taken from the financial impact analysis included with Plan for Service to illustrate how this service will be funded for the first three years assuming Commission approval:

	2011*	2012**	2013	2014
Operating Revenues				
Residential and Commercial (1% Escalator beginning FY 2013)	\$ 10,545,970	\$ 11,831,327	\$ 11,949,641	\$ 12,069,137
Industrial -- Dr. Pepper O&M	\$ 1,462,500	\$ 732,006	\$ 732,006	\$ 732,006
Industrial -- Dr. Peper Capital Contribution	\$ -	\$ 1,217,994	\$ 1,217,994	\$ 1,217,994
Net Sale of Reclaimed Water	\$ 100,000	\$ 400,000	\$ 400,000	\$ 400,000
TOTAL OPERATING REVENUES	\$ 12,108,470	\$ 14,181,327	\$ 14,299,641	\$ 14,419,137
OPERATING EXPENSES				
Personnel Services/Maintenance and Operations (3% Escalator)	\$ 1,987,905	\$ 2,047,542	\$ 2,108,968	\$ 2,172,237
Subcontract Treatment - VVWRA	\$ 6,424,000	\$ 6,168,500	\$ 6,168,500	\$ 6,168,500
Subcontract Plant Management (Woodard & Curran)	\$ 1,462,500	\$ 2,266,868	\$ 2,266,868	\$ 2,266,868
Cost of Sludge Treatment	\$ 80,077	\$ 80,077	\$ 80,077	\$ 80,077
TOTAL OPERATING EXPENSES	\$ 9,954,482	\$ 10,562,987	\$ 10,624,413	\$ 10,687,682
NET INCOME/LOSS	\$ 2,153,988	\$ 3,618,340	\$ 3,675,228	\$ 3,731,455
Estimated Debt Service				
Debt Service Coverage (repayment of Water District Promissory Note)	\$ -	\$ 3,600,000	\$ 3,600,000	\$ 3,600,000
NET INCOME/LOSS AFTER DEBT SERVICE	\$ 2,153,988	\$ 18,340	\$ 75,228	\$ 131,455
FUND BALANCE	\$ 2,153,988	\$ 2,172,328	\$ 2,247,556	\$ 2,379,011
*Based on base case of current rate and diversion for partial year of \$2,200/mgd.				
** Based on anticipated maximum approval rate increase and diversion for full year of \$2,600/mgd				

The Plan for Service identifies that there will be two separate service areas for the collection and ultimate treatment of wastewater (map included in Attachment #1). However, currently 90% of the wastewater collected in the City of Victorville (current wastewater collection entity) is transported to the Victor Valley Wastewater Reclamation Authority (VVWRA) a joint powers entity providing for the treatment and disposal of wastewater for the Victor Valley region. No change in territory for delivery of wastewater can be defined without the approval of VVWRA, as identified in the letter from the City of Victorville amending the Plan for Service dated July 26, 2011. However, it is anticipated that some division will take place in order to operate the IWWTP most efficiently and the map submitted does identify the preferred delineation for the Water District. The Plan for Service, while nebulous in this regard, shows the anticipated mechanism to provide wastewater collection and treatment within the Water District's boundaries. Thus it complies with the general requirements of the Commission for submission of this material.

Staff's position is that LAFCO 3168 is essentially an "ask forgiveness" effort after the discretionary actions have already been taken. This position is based on the fact that the referenced promissory note between the Water District's Water and Wastewater Enterprise funds allocated up to \$45,000,000 toward the construction of the IWWTP and staff understands that approximately \$39,000,000 of those funds have been expended to build the IWWTP which is currently owned and operated by the City. Additional loans and transfers related to the development, construction, and operation of the IWWTP have been provided by the Water District, identified as funds from Improvement District #1 of the Water District. In order to receive repayment of these funds, and potentially the others identified in the September 2010 staff report, it will be necessary at some point to secure bond financing, in the staff's opinion. If that financing is to be secured by the Water District, if it is intended to operate the facility through the lease already approved, then it will be necessary to have the range of services authorized that allows for that to occur. Thus, LAFCO staff indicated to the City that it would assist in clearing up this issue as a function of the approvals for LAFCO 3082 and LAFCO 3168 will do that. However, the previous staff concern regarding the operation of the Water District in reference to inter-fund transfers and loans has not been resolved. In addition, the issues about funding this facility from the proceeds of Improvement District #1, even though the majority of those residents and property owners will not benefit from its service, remain a concern. In a couple of years, when the next round of service reviews are initiated, LAFCO staff will need to assess whether or not these issues have been cleared up and the funds of Improvement District #1 of the Victorville Water District returned or a program for repayment established.

Based upon the information within this report, as well as LAFCO 3082, staff recommends that the Commission: (1) take the appropriate environmental action recommended for this proposal and (2) authorize the activation of the Victorville Water District's latent sewer functions with the stipulation that the services that can be offered within its boundaries are defined as follows:

	<u>FUNCTION</u>	<u>SERVICES</u>
Victorville (Subsidiary District established 8/15/07)	Water	Retail, agricultural, domestic, replenishment, conservation, reclaimed water for irrigation/cooling towers for power plant
	Sewer	Collect, treat, and/or dispose of sewage, wastewater, recycled water, and storm water

Approval of this recommendation will allow for the necessary actions to clear up what LAFCO staff believes are ambiguities in the actual financing, operation and contractual obligations for the IWWTP. Inherent in the previous concerns related to the actions taken regarding funding for the IWWTP was the lack of ongoing oversight of the activities and agencies involved. However, pursuant to the requirements of Government Code Section 56425 et seq. the Commission is required to conduct service reviews of municipal services

and their providers and sphere of influence updates on a five-year cycle for all agencies under its purview. Therefore, a future review of the specific operations of the Water District will be undertaken routinely by the Commission at which time the implementation of this action will be evaluated and the questions regarding the final accounting for the development of the IWWTP and its service provision will be evaluated. For all of these reasons, staff supports activation of the latent sewer function and services for the Victorville Water District.

If approved by the Commission, the proposal will move forward with a protest process which will determine the position of the landowners and registered voters within the boundaries of the Water District.

ENVIRONMENTAL CONSIDERATIONS:

The Commission's environmental consultant Tom Dodson of Tom Dodson and Associates has reviewed the action to activate the sewer function for the Victorville Water District and has indicated that it is his recommendation that the matter is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the Commission's approval of the activation of sewer service through the Victorville Water District does not change the territory in which the service is provided; therefore, the project has no potential to cause an adverse effect on the environment. Based upon this determination, the project is exempt from the requirements of CEQA as outlined in the State CEQA Guidelines, Section 15061(b)(3) and the Commission's Environmental Guidelines. It is recommended that the Commission adopt the Statutory Exemption for this project and direct the Executive Officer to file a Notice of Exemption with the appropriate agency within five days.

DETERMINATIONS:

The following determinations and finding are required to be provided by Commission policy and Government Code Section 56668 for applications considered:

1. The Registrar of Voters Office has determined that the study area contains 40,030 registered voters as of May 6, 2011.
2. The County Assessor's Office has determined that the assessed valuation of land and improvements within the study area is \$6,443,910,175 (\$2,102,331,451 – Land; 4,341,578,724 – Improvements). The territory includes 44,276 individual parcels.
3. In compliance with the requirements of Government Code Section 56157 and Commission Policy, LAFCO staff has provided for notice through publication of an 1/8th page legal advertisement in the *Daily Press* a newspaper of general circulation in-lieu of individual notice due to the number of landowners and voters exceeding 1,000. Comments from landowners, registered voters and any affected local agency have been reviewed and considered by the Commission in making its determination. No protest or expression of opposition to this service expansion has been received.

4. Legal advertisement of the Commission's consideration has been provided through publication in the *Daily Press*, newspaper of general circulation within the study area. Individual notice has been provided to affected and interested agencies, County departments, and those individuals and agencies having requested such notification.
5. The proposal does not conflict with the adopted City of Victorville General Plan or the County of San Bernardino General Plan.
6. The Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates has recommended that this proposal is statutorily exempt from environmental review. The basis for this recommendation is that the expansion of function and service authorized the Victorville Water District to include sewer service will not alter the area in which service is provided and can be implemented without causing any identifiable physical changes to the environment or any adverse environmental impacts. Without identifiable physical changes in the environment, approval of this proposal is exempt from environmental review under the provisions of the California Environmental Quality Act (CEQA), Section 21080(b), the State CEQA Guidelines, Section 15268, and the Commission's adopted CEQA Guidelines.
7. The area in question is presently served by the following local public agencies:

- County of San Bernardino
- City of Victorville (portion)
- San Bernardino County Fire Protection District and its North Desert Service Zone (portion)
- County Service Area 60 (Apple Valley Airport) (portion)
- County Service Area 70 (multi-function) (portion)
- Mojave Water Agency
- Mojave Desert Resource Conservation District (portion)

None of the agencies are directly affected by this application. The anticipated transfer of operation of wastewater collection and treatment systems from the City of Victorville to the Victorville Water District by lease agreement will not alter the area in which service is currently provided.

8. The Plan for Service submitted through adoption of Victorville Water District Resolution VWD 11-001, combined with the other documents and information submitted by the Water District as a part of the application, has been reviewed and compared with the standards established by the Commission and the factors contained within Government Code Section 56668 and 56824.12. The Commission finds that such plan and information combined conform to those adopted standards and requirements.
9. LAFCO 3168 complies with Commission policies and directives and State law that require that an entity providing a service shall be authorized to do so under the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and the County Water District Law, principle act of the Victorville Water District.

10. This application will have no effect on the ability of the County of San Bernardino or the City of Victorville to achieve their fair share of the regional housing needs.
11. With respect to environmental justice, the application study area will benefit from the clarification of service responsibilities and facility funding through the cooperative agreements between the City of Victorville and the Victorville Water District, at the same time, will not result in unfair treatment of any person based upon race, culture, or income.

CONCLUSION:

Approval of the expansion of function and services for the Victorville Water District will bring closure to an ongoing issue between the Local Agency Formation Commission, the City of Victorville, and its subsidiary Victorville Water District. Approval will not resolve some of the financing issues which LAFCO has identified but it does allow for the actions to be taken to clear up the morass of loans, promissory notes, inter-fund transfers and leases which have occurred. For all the reasons outlined in this report, staff supports the approval of LAFCO 3168 to lay this portion of the saga to rest.

KRM

Attachments:

1. [Location and Vicinity Maps for the Victorville Water District and City of Victorville](#)
2. [Victorville Water District Resolution VWD 11-001, Justification for Proposal and Supplement Form, Exhibits, Letter from Mr. Sean McGlade Dated July 26, 2011 amending Plan for Service, and copy of Lease Agreement entered into between City of Victorville and Victorville Water District for Operation of Wastewater Collection and Treatment Facilities but not yet implemented](#)
3. [Rules and Regulations of the San Bernardino LAFCO Affecting Functions and Services of Special Districts](#)
4. [LAFCO 3082 Staff Report for September 15 2010 Hearing](#)
5. [Letter from Tom Dodson and Associates Recommending Statutory Exemption for LAFCO 3168](#)
6. [Draft LAFCO Resolution No. 3151](#)