

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF OCTOBER 19, 2011**

**REGULAR MEETING**

**9:00 A.M.**

**OCTOBER 19, 2011**

**PRESENT:**

**COMMISSIONERS:**     **Robert Colven, Alternate**                             **Brad Mitzelfelt, Chairman**  
                           **Kimberly Cox**   **Janice Rutherford**  
                           **James Curatalo, Vice-Chairman**                             **Robert Smith, Alternate**  
                           **Neil Derry, Alternate**   **Diane Williams, Alternate**  
                           **Larry McCallon**

**STAFF:**                     **Kathleen Rollings-McDonald, Executive Officer**  
                                   **Paula de Sousa, Acting Legal Counsel**  
                                   **Samuel Martinez, Assistant Executive Officer**  
                                   **Michael Tuerpe, Project Manager**  
                                   **Anna Raef, Recording Secretary**  
                                   **Rebecca Lowery, Deputy Clerk to the Commission**

**ABSENT:**

**COMMISSIONERS:**   **Jim Bagley**  
                                   **Ginger Coleman**

**STAFF:**                     **Clark Alsop, Legal Counsel**

**CONVENE REGULAR SESSION OF THE LOCAL AGENCY FORMATION COMMISSION  
– CALL TO ORDER – 9:08 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 September 28, 2011
2. Approval of Executive Officer's Expense Report
3. Ratify Payments as Reconciled for Month of September 2011 and Note Cash Receipts

A Visa Justification for the Executive Officer's expense report, as well as a staff report outlining the staff recommendation for the reconciled payments 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.

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF OCTOBER 19, 2011**

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

**PUBLIC HEARING ITEMS**

**CONSENT ITEMS DEFERRED FOR DISCUSSION - NONE**

**CONSIDERATION OF CEQA STATUTORY EXEMPTION FOR LAFCO 3160 AND LAFCO 3160 – SERVICE REVIEW AND SPHERE OF INFLUENCE ESTABLISHMENT FOR PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT**

**CONSIDERATION OF CEQA STATUTORY EXEMPTION FOR LAFCO 3167 AND LAFCO 3167 – ACTIVATION OF SOLID WASTE POWERS FOR THE PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT – APPROVE STAFF RECOMMENDATION TO CONTINUE TO NOVEMBER 16, 2011**

LAFCO conducts a public hearing to consider CEQA Statutory Exemption for LAFCO 3160 and (2) LAFCO 3160 – Service Review and Sphere of Influence Establishment for Phelan Piñon Hills Community Services District; and CEQA Statutory Exemption for LAFCO 3167 and LAFCO 3167 – Activation of Solid Waste Powers for the Phelan Piñon Hills Community Services District. Notice of the hearing was advertised as required by law 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 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.

Executive Officer Kathleen Rollings-McDonald states that staff has received a request for continuance from Chairman Mitzelfelt for LAFCO 3167. Staff is recommending that the Commission honor that request and continue both LAFCO 3160 and LAFCO 3167 to the November hearing. The Phelan Piñon Hills CSD has been notified of the staff's recommendation.

Commissioner McCallon moves to continue both matters to the November 16, 2011 hearing, second by Commissioner Cox. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Colven, Cox, Curatalo, McCallon, Mitzelfelt, Rutherford, Williams. Noes: None. Abstain: None. Absent: Bagley (Commissioner Colven voting in his stead), Coleman (Commissioner Williams voting in her stead).

**CONSIDERATION OF CEQA STATUTORY EXEMPTION FOR LAFCO 3168 AND LAFCO 3168 – ACTIVATION OF SEWER POWERS FOR THE VICTORVILLE WATER DISTRICT – APPROVE STAFF RECOMMENDATION**

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF OCTOBER 19, 2011**

LAFCO conducts a public hearing to consider a CEQA Statutory Exemption for LAFCO 3168 and LAFCO 3168 – Activation of Sewer Powers for the Victorville Water District. Notice of the hearing was advertised, as required by law, 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 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.

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 in September 2010 a very lengthy hearing was held in Victorville regarding the City's northern sphere of influence expansion proposal (LAFCO 3082). At that time, questions and concerns were expressed regarding the active services and functions for the Victorville Water District. The Commission, at the time of the consolidation of the Victor Valley and Baldy Mesa Water Districts, did not authorize sewer powers for the new subsidiary district. She explains that this proposal is the response to clear up the problems associated with the current operations of the district. LAFCO 3168 will authorize the Victorville Water District to provide sewer functions and services within its boundaries. She points out on the overhead display the existing boundary of the District and the existing City of Victorville boundary. She says the proposal activates the sewer function for the Water District and anticipates the provision of the service through a lease of city-owned collection and treatment facilities. She notes that the new Industrial Waste Water Treatment Plant has been funded through the Water District but is owned by the City of Victorville. The proposal states that the wastewater collection system will be leased to the Water District as well. She states that the proposal anticipates repayment of funds previously provided by the Water District for construction costs. The staff report includes an outline of the operations of the Water District and the City and states that the City has been operating as though sewer service was authorized to the District since about 2008. She notes that this is a cleanup action to clarify authorize provision of sewer service.

Ms. McDonald notes that an excerpt from the September 2010 staff report for LAFCO 3082 is provided as an attachment to the staff report. That excerpt identifies the actions taken by the City Council and Water District related to the Waste Water Treatment Plant. The first lease agreement was in April 2009, and amended in May 2009, for the Waste Water Treatment Plant, reclaimed water system, and collection systems. She says that also in May there was a \$20 million loan from the Redevelopment Housing Fund to the Water District for construction of the industrial wastewater treatment plant. In addition, in May, the Water District established a promissory note from its water district enterprise fund to its wastewater enterprise fund. She explains that this is the action that prompted LAFCO staff's and the Commission's concern that there was no ability to have a wastewater fund since sewer services were not activated. She states that at the time of these actions LAFCO staff was not contacted regarding authorized services.

She states that the Water District has provided an outline of its five-year plan for funding. She notes that the operation anticipates a \$3.6 million payment beginning this year to the Water District for repayment of the construction costs with only marginal income reported.

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF OCTOBER 19, 2011**

She states that it is important to note that the costs for operation will be billed to the City and the facilities will remain in the name of the City, as this is simply a lease arrangement with the District.

Ms. McDonald summarizes the staff recommendations and notes that the Commission's environmental consultant has reviewed this proposal and indicates that it is statutorily exempt from CEQA.

Chairman Mitzelfelt calls for questions from the Commission. Commissioner Colven asks what can be expected if this action is not followed. Ms. McDonald states that this concludes the review process until there is another application for change to the City or Water District boundaries.

Commissioner Cox states that residential and commercial revenue would be going to the industrial wastewater treatment plant. She asks what is the number of houses estimated to be treated by this plant. Ms. McDonald states that the collection and transportation system in its entirety will be leased to the Victorville Water District. The treatment plant is anticipated to serve a portion of the territory within the existing service area. She says the maps included in the original proposal identified a split and show some residential on the west side going to the Industrial Waste Water Treatment Plant. Correspondence from the Victorville Water District in support of this application identifies that Victorville Wastewater Reclamation Authority (VWRA) has not reviewed and approved such a transportation division and the City of Victorville's wastewater collection system, other than that for the Industrial Waste Water Treatment Plant, currently flows to VWRA by contract. Ms McDonald notes that there are still ongoing negotiation as to what those territories will be. Commissioner Cox notes that the reclaimed water program is a wonderful program and that getting the power plant and golf course using reclaimed water would be an excellent beneficial reuse of water in the desert. She questions the logistics of the Water District paying for construction of the plant and then leasing it back. Ms. McDonald explains that the Water District provided a promissory note and funding with a repayment plan. She says that question was raised at the hearing on the sphere of influence expansion. She says that approving this would neither sanction nor approve that transfer. Ms. McDonald clarifies that the staff report indicates that the Commission does not sanction what happened in the past, but simply acknowledges it.

Sean McGlade, City Engineer for the City of Victorville, explains that it is now anticipated that the Water District would take possession of the asset, as it has paid for the construction. The lease arrangement would be between the City and the Water District for the collection system.

Commissioner Rutherford states that staff seems to have arrived somewhat reluctantly at this recommendation because this is not an ideal circumstance. She asks if there are alternatives. Ms. McDonald states there are really no other alternatives. She says the only alternative would be for the City to continue to own and operate the facilities, which would leave a question regarding existing financing and loans. She says that the loan from the Redevelopment Housing Fund to the Water District will be repaid over a five-year period at seven percent interest. She says that her reluctance is only that it would have been a

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF OCTOBER 19, 2011**

cleaner process if it had been done five years ago. She does not believe that there is any other option. She reminds the Commission that it will conduct service reviews of the north desert in about two years, so that the Commission will have the opportunity to see if issues previously identified have been resolved.

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 and calls for further questions from the Commission. There are none.

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

**DISCUSSION ITEMS**

**FINANCIAL REPORT FOR PERIOD JULY 1 THROUGH SEPTEMBER 30, 2011:**

- a) **FIRST QUARTER FINANCIAL REVIEW**
- b) **AUTHORIZATION FOR REQUEST FOR PROPOSAL (RFP) TO PERFORM DIGITAL ARCHIVING OF PROPOSAL FILES**
- c) **CONSIDERATION OF REFUND PROCEDURE FOR LAFCO APPORTIONMENT PROCESS FY 2011-12 – APPROVE STAFF RECOMMENDATION AS AMENDED**

Project Manager 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 states that with regard to the first quarter financial review, expenditures and reserves are at 22 percent for the quarter, which is typical for the first quarter. Services and supplies would typically be at 32 to 35 percent for the first quarter because of annual payments made at the beginning of the year; however, it is unusually low at 20 percent because some of those payments have not yet occurred. The most significant payment not yet processed is the County's Countywide Cost Allocation Plan (COWCAP) payment, which is a lump sum for services provided by the County. The County has changed the methodology from one lump sum payment to four quarterly payments, the first payment of which has not yet taken place. He reports that the only activity in reserves and contingencies was the transfer of \$3,000 from contingencies to services and supplies for purchase of a new computer for the Executive Officer.

Mr. Tuerpe refers to revenues and states that 99.9 percent of the total apportionment has been received. One district historically does not pay and last month the Commission took action to request that the County Auditor withhold that amount from the first proceeds of taxes. With regard to proposal activity, staff has received one proposal during the first quarter, while to date staff has received two. He says the Commission's cash balance at the end of the fiscal year last year experienced higher amounts contributing to additional

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF OCTOBER 19, 2011**

carryover into this fiscal year. He notes on the overhead display that contingencies and reserves are committed funds and are not used. He states that staff will be recommending that the reserves fund be divided into two accounts for compensated absences and general reserve. He says staff believes it would be prudent to reserve money for the COWCAP expense for ISD charges for mapping and GIS activities in future years. This year's COWCAP charge is \$18,000 for GIS services, which is significantly lower than previous years. He notes that staff has implemented a procedure to track the County's mapping charges and it has been determined that the County has not billed LAFCO for several years worth of activity. Staff believes that next year's COWCAP expense will be significantly higher because of this.

With regard to the digital archiving project, Mr. Tuerpe states that scanning of files is backlogged. He explains that a software program is used to retrieve the files that have been scanned. As revenue is available, he asks that the Commission authorize bids for undertaking outsourcing of this project this year. He notes that a new procedure is now in effect whereby project files are being scanned as they develop. The staff recommendation is that \$35,462 be transferred into services and supplies from contingencies. He explains that a rough quote of \$23,000 has been obtained; however, staff believes it will be about \$30,000. Transfer of \$35,462 would balance the budget. Commissioner Cox asks if the digital archiving is done in color, to which Mr. Tuerpe responds that it is.

Mr. Tuerpe reports on the refund procedure for LAFCO apportionment and states that the budget adopted by the Commission included an additional \$30,000, because it was unclear whether or not the County would approve certain benefit reductions. Those reductions have now occurred; therefore, the \$30,000 is not necessary to remain. It is staff's position that the \$30,000 should be refunded to the agencies funding LAFCO. The methodology for the refund would be one-third to the County, the variance amount to the Cities and Special Districts as shown on the overhead display. He says some of the larger districts did not contribute additional amounts, so they would not receive a refund.

Chairman Mitzelfelt calls for questions from the Commission.

Commissioner Colven asks if other LAFCOs are digitizing files. Mr. Tuerpe states that a large number of LAFCOs digitize their files. He says the Commission is mandated to keep its records in perpetuity. Commissioner Colven notes that staff has obtained one bid and asks if staff intends to obtain more bids. Mr. Tuerpe states that a rough quote was obtained from the vendor that runs the Commission's software program. Part of the recommendation is for the Commission to authorize the Executive Officer to gather three quotes and choose from those quotes. The Commission would then be updated at the next milestone financial report. Commissioner Colven asks if a contract would be entered into. Mr. Tuerpe states that if there is an established relationship with the vendor, the vendor would then just invoice the Commission. If the company is new to the Commission, a contract would be entered into.

Commissioner Cox states that she believes refunding the agencies is a nice gesture, but she would prefer keeping the money and at the beginning of next fiscal year, if the excess still exists, and then offer a discount to the agencies. She comments that there is a cost for

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF OCTOBER 19, 2011**

every single check issued. Mr. Tuerpe explains that the LAFCO apportionment is a burden on the agencies and the refund could be made as a goodwill gesture.

Commissioner Curatalo states he agrees with Commissioner Cox.

Commissioner Smith comments that the Commission could be required to pay interest on that \$30,000. Legal Counsel de Sousa states that she does not believe that would be the case and the Commission could retain the funds.

Commissioner Williams states that a public announcement should be made so that when the time comes for the adjustment to be made it does not appear that the Commission acted after the fact.

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 and calls for further questions from the Commission. There are none.

Commissioner McCallon moves approval of staff recommendation, with the exception that Item 3 includes retention of the \$30,000, which would be refunded through the apportionment setting process next fiscal year, second by Commissioner Williams. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Colven, Cox, Curatalo, McCallon, Mitzelfelt, Rutherford, Williams. Noes: None. Abstain: None. Absent: Bagley (Commissioner Colven voting in his stead), Coleman (Commissioner Williams voting in her stead).

**LEGISLATIVE REPORT**

Ms. McDonald states that the legislative year is over and a new year begins in January. She says next month's report will include an outline of changes directly affecting LAFCO and outlining questions on policy. She notes that SB244, the Disadvantaged Communities provision from Senator Wolk, was approved and signed by the governor. City annexations will have requirements related to disadvantaged communities, so a process must be developed to address those.

AB91, relating to the expedited dissolution of Special Districts, has been chaptered, as have new requirements for operating mutual water companies, including the requirement that they file with the Executive Officer maps of the mutual water company. She says there are a number of engineering firms that will benefit, as there is significant work that is required to be done.

She notes that at each Commissioner's place is the "Top 10 Hits" from the Senate Governance and Finance Committee, as well as the CSDA Key Bill Status List. San Bernardino LAFCO is a member of CSDA, and it is important to review what it believes to be actions of general interest.

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF OCTOBER 19, 2011**

Ms. McDonald states that she anticipates being reappointed to the CALAFCO Legislative Committee and the first meeting will be in November. She states that with regard to spheres of influence for multi-county districts, Riverside, Los Angeles and Orange Counties have approved the MOU. Kern and Inyo have not yet taken action.

**EXECUTIVE OFFICER'S REPORT**

Ms. McDonald reports that the November hearing will include the continuation of the City of Big Bear Lake Service Review. She has been notified that the City will request continuance of that matter until the February hearing. Other items for the November hearing will include the Phelan Piñon Hills CSD sphere establishment and activation of solid waste services.

Ms. McDonald notes that she will be a moderator for a CALAFCO University course October 28 for regional perspectives and working through the sustainable communities strategies in a cooperative matter.

Chairman Mitzelfelt comments that Phelan Piñon Hills CSD will be holding an election in November, as well as a measure related to establishment of its appropriation limit. Ms. McDonald will include a report at the November hearing.

**COMMISSIONER COMMENTS**

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

**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 9:50 A.M.**

**ATTEST:**

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**ANNA RAEF, Recording Secretary**

**LOCAL AGENCY FORMATION COMMISSION**

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**BRAD MITZELFELT, Chairman**