

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 18, 2012**

REGULAR MEETING

9:00 A.M.

JANUARY 18, 2012

PRESENT:

COMMISSIONERS:	Jim Bagley	Larry McCallon
	Ginger Coleman	Brad Mitzelfelt, Chairman
	Robert Colven, Alternate	Janice Rutherford
	James Curatalo, Vice-Chairman	Robert Smith, Alternate
	Kimberly Cox	Diane Williams, Alternate
	Neil Derry, 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: None

**CONVENE REGULAR SESSION OF THE LOCAL AGENCY FORMATION
COMMISSION – CALL TO ORDER – 9:05 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.

CONSENT ITEMS – APPROVE STAFF RECOMMENDATIONS

1. Approval of Minutes for Regular Meeting of November 16, 2011
2. Approval of Executive Officer's Expense Report
3. Ratify Payments as Reconciled for Months of November and December 2011 and Note Cash Receipts
4. Review and Accept Audit Report for Fiscal Year Ended June 30, 2011
5. Review and Adoption of Resolution No. 3152 For LAFCO 3160 – Service Review and Sphere of Influence Establishment for the Phelan Piñon Hills Community Services District

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 18, 2012**

A Visa Justification for the Executive Officer's expense report, as well as staff reports outlining the staff recommendations for the reconciled payments, the audit report and Resolution No. 3152 for LAFCO 3160, 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 McCallon moves approval of the consent calendar, 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, McCallon, Mitzelfelt, Rutherford. Noes: None. Abstain: None.

PUBLIC HEARING ITEMS

CONSENT ITEMS DEFERRED FOR DISCUSSION- NONE

SERVICE REVIEW FOR THE MOUNTAIN HEALTHCARE DISTRICTS:

**CONSIDERATION OF CEQA STATUTORY EXEMPTION FOR LAFCO 3106; AND
LAFCO 3106 - SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR SAN
BERNARDINO MOUNTAINS COMMUNITY HEALTHCARE DISTRICT – APPROVE
STAFF RECOMMENDATION**

**CONSIDERATION OF CEQA STATUTORY EXEMPTION FOR LAFCO 3136; AND
LAFCO 3136 - SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR BEAR
VALLEY HEALTHCARE DISTRICT – CONTINUED TO FEBRUARY 15, 2012 HEARING**

LAFCO conducts a public hearing to consider LAFCO 3106 - Service Review and Sphere of Influence Update for San Bernardino Mountains Community Healthcare District and LAFCO 3136 Service Review and Sphere of Influence Update for the Bear Valley Healthcare District. As required by State Law notice of the hearing was provided through publication in a newspaper of general circulation within each agency, the *Alpenhorn* for the San Bernardino Mountains Community Healthcare District representing the Crest Forest, Lake Arrowhead and Hilltop communities and the *Big Bear Grizzly* for the Bear Valley Community Healthcare District. Individual notice was not provided 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 notice of hearing publication was provided through an eighth page legal ad in each of the respective newspapers. As required by State law, individual notification was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.

Assistant Executive Officer 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. He says there are three healthcare districts within San Bernardino County, two of which are in the mountain region. He points out on the overhead display the boundaries and sphere of influence for the San Bernardino Mountains Community Healthcare District

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 18, 2012**

(SBMCHD) and says they are coterminous. He identifies the location of its facilities -- the hospital on the east end of Lake Arrowhead and two rural clinics, one adjacent to the hospital, and one in Running Springs. He points out the boundaries of the Bear Valley Community Healthcare District (BVCHD) and says its sphere includes the boundaries as well as portions outside the boundary. He also identifies the location of its facilities -- the hospital, a clinic adjacent to the hospital and a clinic in the community of Big Bear City.

Mr. Martinez summarizes the five mandatory factors required for a service review. Land uses and growth projections, services provided, and financial information for the districts have been identified. He notes that, for the period 2006-2010, net assets for SBMCHD have decreased and net assets for BVCHD have increased. Long-term debt and issues regarding appropriation limits, as well as shared facilities and equipment, and operational efficiencies have been identified.

For the sphere of influence update, Mr. Martinez states that LAFCO staff has identified scenarios as well as options, and staff recommends that each district remain as separate agencies with individually assigned spheres of influence, as well as modifications to the respective spheres. He says staff recommends modifications to SBMCHD to encompass the Lake Arrowhead and Hilltop Communities. He notes that about 27 percent of the business for the District comes from the Crest Forest area. At its inception, the Crest Forest community was within the boundaries proposed for SBMCHD. Due to opposition within the community, Crest Forest was removed from the boundary prior to the formation election. Mr. Martinez states that the staff is recommending expansion of the SBMCHD sphere to include the Crest Forest community. For BVMCHD, staff recommends modifications to encompass the Bear Valley community as defined by the Commission.

Mr. Martinez explains that the Commission is required to establish the nature, location and extent of the functions and classes of service provided by the District. For both districts, LAFCO staff recommends a title change to their function from "Hospital" to "Healthcare," to reflect the changes in its parent act and to broaden the service description to more accurately describe the services provided.

Mr. Martinez concludes by stating that the mountain region represents a unique healthcare service need, which is best served by the individual agencies. He notes that at each Commissioner's place is a letter from BVMCHD regarding the questions raised in the staff report related to the establishment of an appropriation limit. As the letter was submitted the day before the hearing, staff requests that the Commission continue this aspect of the review in order to allow staff to review the merits of the District's claims.

Executive Officer Kathleen Rollings-McDonald states that the staff reviewed a draft report with both Districts. In that report, staff reviewed the option of assigning a single sphere of influence for the agencies. During those discussions, staff learned that the economies of scale typically associated with a consolidation, such as purchasing, have already been achieved through their contracts with outside Government Purchasing Organizations. Consequently, staff has changed its recommendation to maintain the two agencies with stand alone spheres of influence. With regard to the appropriation limit, staff wishes to

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 18, 2012**

continue this matter to next month's discussion calendar to allow for a complete review of the District's claims.

Mr. Martinez states that the staff recommendation for Item 4 for SBMCHD remains unchanged. For Item #5 the staff recommendation is amended to continue the item to the February hearing for a response on the appropriation issue.

Chairman Mitzelfelt calls for questions from the Commission. Commissioner Bagley notes that the reductions in the spheres are significant. He says that today's letter includes information on ad valorem tax available to the Districts. He asks if there are any other private properties in the sphere reductions that would eliminate revenue sources. Mr. Martinez responds that there are not and explains that the communities were defined based on the current configuration. He says there was a portion in Bear Valley that included possessory interests and that was included in the definition of the Bear Valley community. He says all areas outside the perimeter are forest land. He says the same is true for SBMCHD. Mr. Martinez states the agencies have indicated concurrence in the sphere reductions.

Chairman Mitzelfelt opens the public hearing and asks if there are members of the public who wish to speak on this item. Commissioner Rutherford asks why the Crest Forest area was not included. Mr. Martinez states that, at the inception of the District, the boundaries encompassed the Crest Forest community. Due to the opposition by members of the Crestline community, it was removed from the District, although 27 percent of the District's business comes from the Crest Forest community. Commissioner Rutherford asks if statistics are available to show what percentage of the Crest Forest community uses the District. Mr. Martinez indicates that that information is not available. Commissioner Cox asks for clarification of the staff recommendation. Mr. Martinez explains that Items 1-4 are for approval of the staff recommendation relating to SBMCHD, and Item 5 relates to BVCHD, which staff recommends to be continued.

Penny Shubnell, resident of Crestline, states there is potential for three tax increases and questions what would be the fiscal impact to the residents of Crestline if the Crest Forest community is included in the sphere of influence. Mr. Martinez states there is no fiscal impact as the sphere is simply a planning boundary. Commissioner Rutherford asks Mr. Martinez to explain the process should the residents wish to annex to the District. Mr. Martinez states the community can request annexation and the annexation process would include the ability to protest annexation. Ms. Shubnell asks if it would be put to a vote. Mr. Martinez explains that if 50 percent of the residents protest the proposal, it would be terminated; however, if 25 percent protest, the proposal would go to a vote. Notice would be provided to the community through a 1/8-page newspaper ad; however, the Commission could direct staff to provide individual notice to the residents. At this time there is no annexation request. Ms. McDonald notes that the special tax for SBMCHD is a static number and cannot change unless there is another election with two-thirds of the voters in support.

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 18, 2012**

Chairman Mitzelfelt states the recommendation is to adopt Recommendations 1-4 for both Districts, and continue Recommendation 5 as it relates to BVCMD. Chairman Mitzelfelt closes the public hearing on Recommendations 1-4 and the public hearing for Recommendation 5 remains open through the February hearing.

Commissioner Bagley moves approval of the staff recommendation for Recommendations 1-4, and to continue Recommendation 5 to the February hearing, 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, McCallon, Mitzelfelt, Rutherford. Noes: None. Abstain: None. Absent: None.

DEFINITION OF COMMUNITY AND SERVICE REVIEW FOR HOMESTEAD VALLEY WHICH INCLUDES THE REVIEW OF COUNTY SERVICE AREA 70 ZONES R-15, R-20, TV-5 AND W-1; AND, CONSIDERATION OF CEQA STATUTORY EXEMPTION FOR LAFCO 3148; AND LAFCO 3148 - SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR BIGHORN DESERT VIEW WATER AGENCY – APPROVE AS AMENDED TO INCLUDE THE EXCLUSION OF AREA 1; EXPANSION FOR AREA 3 AND AFFIRMATION FOR THE BALANCE OF THE EXISTING SPHERE

LAFCO conducts a public hearing to consider definition of community and Service Review for Homestead Valley, which includes the review of County Service Area 70 Zones R-15, R-20, TV-5 and W-1; and LAFCO 3148 - Service Review and Sphere of Influence Update for Bighorn Desert View Water Agency. As required by State Law notice of the hearing was provided through publication in a newspaper of general circulation, the *Hi-Desert Star*. Individual notice was not provided 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 notice of hearing 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.

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. He says the Homestead Valley Community does not nor has it ever had a community definition by the Commission as required by Commission sphere of influence policies. Mr. Tuerpe notes that for a community definition, staff looked at the Bighorn Desert View Water Agency, as it is the main service provider in the area. Other agencies within the general community include CSA 70 W-1 providing water, and two road improvement districts and a television improvement district, also exist in the area. He points out on the overhead display the other known communities of Johnson Valley, Flamingo Heights, Landers, and the Town of Yucca Valley. He points out the boundary of the Bighorn Desert View Water Agency (hereinafter identified as "Agency") and its sphere. He says the Johnson Valley area does not have a pressurized water system. As development there is sparse, there is no tax base to generate funds to generate a pressurized water system. Therefore, the area receives bulk hauled water from the Agency's Well No. 10.

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 18, 2012**

He points out on the overhead display CSA 70 Zone W-1 and says that the Agency, in the mid 1990s, requested detachment of the area on the basis of duplication service providers. The Commission approved that application.

Mr. Tuerpe says the service review includes not only the mandatory factors, but the report is an educational tool, outlining additional information related to finances. The Agency is now aware of the breakdown of the general ad valorem tax levy and how it is generated within its boundaries.

Mr. Tuerpe states that the Agency is a consolidation of two predecessor agencies: Bighorn Mountains Water Agency and Desert View County Water District. When the Commission consolidated the two agencies a condition of the resolution stated that the separate appropriations limits would now become the combined appropriation limit, although the Agency never adopted one.

He states that complaints have been submitted to the District Attorney regarding alleged violations of the Brown Act by the Agency with regard to advertising, posting and how items are agendaized for the Board of Directors consideration. The Agency has responded that it believes that it was not in violation of the Brown Act and acted at the direction of its legal counsel. The District Attorney subsequently recommended that Board members take training in the Brown Act. Mr. Tuerpe notes that there is approximately a 70 percent turnover rate for board members as well as high turnover for the General Manager position. The Commission's policies include a suggestion for reviewing Board composition and adherence to the Brown Act. LAFCO staff recommends the Commission take a position that regular Brown Act training occurs.

Mr. Tuerpe states that the Agency is working toward getting supplemental water for recharge of the basins through the Morongo Pipeline through a pipeline extension to the area. If that occurs, water will be placed into a spreading ground, which would percolate into the groundwater basin, and those within the Ames Valley would be able to access it. Mr. Tuerpe notes that Pioneertown is severely impacted by its water quality and will benefit from this improvement to water quality allowing it to pipe water to its system.

Mr. Tuerpe points out the areas anticipated for changes on the overhead display: Area 1 is Bureau of Land Management land. Therefore, it is LAFCO staff's position that it does not need to be in the Agency's sphere of influence. Area 2, CSA 70 W-1, which was detached and the sphere reduced. The Agency has requested that this area be placed back in its sphere of influence for the purpose of future planning. LAFCO staff agrees because the sphere of influence is used as the community identifier, and this area is generally part of the Homestead Valley community. In addition, it would be best to have one less layer of government in the area in the future. He notes that Area 3 is part of CSA 70 W-1 and would also be included in the proposed sphere of influence expansion. Area 4 includes private land holdings, including an area of orchid cultivation. There is opposition from a landowner that holds multiple parcels in that area. That property owner wishes to protect his interests, however LAFCO staff believes this area should be included in the sphere of influence. Areas 5, 6, 7, 8 and 9 include private land holdings

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 18, 2012**

and three letters of opposition have been submitted from landowners within Area 8. He says that it is possible that this area receives water from the bulk hauled water.

Mr. Tuerpe states that neither LAFCO staff nor the Agency recommends modifications to the authorized powers of the Agency.

Mr. Tuerpe states that in regard to CSA 70, Zones W-1, R-15, R-20, and TV-5, budgets do not identify readily the receipt of taxes or the funding stream. LAFCO staff has requested that the flow of tax monies, assessments, and special charges be identified more clearly. In addition, it is recommended that the audit and budget be in concert. Mr. Tuerpe notes that County Special Districts is in opposition to expansion of the sphere to include CSA 70 W-1.

Mr. Tuerpe points out on the overhead display the staff recommendations for sphere of influence changes and actions and considerations by the Commission.

Chairman Mitzelfelt calls for questions from the Commission. Commissioner Cox asks what is Special Districts' objection. Mr. Tuerpe explains that CSA 70 W-1 was once part of the agency and the agency does serve 17 parcels within the area through contract with the County. Staff and the Agency recommend that the sphere encompass all of CSA 70 W-1. The County objects with the knowledge that sphere expansion could eventually result in annexation.

Executive Officer Kathleen Rollings-McDonald states that one of the most significant policies adopted by the Commission relates to its definition of community. She states that community takes on a much stronger position in the future, considering disadvantaged unincorporated communities, community definitions, and other planning issues. The Commission's philosophy and program have used the sphere of influence to define communities. A sphere of influence can only be assigned to an agency under the Commission's purview, noting that the Commission is not authorized to give a sphere of influence to an improvement zone. She says the map illustrates what LAFCO staff believes to be the Homestead Valley community, using the Bighorn Desert View Water Agency as the mechanism to define that community for the future. She says sphere expansion changes nothing as far as the actual jurisdiction of the agency. The expansion of the territory for the sphere of influence gives it no further jurisdiction and does not change the payment or obligation for service, as W-1 will retain its service, and will work in concert for the betterment of the water system in the overall area. She says that while staff acknowledges and understands the opposition to the sphere of influence changes based upon the history of the area, staff still believes that defining the territory that makes up Homestead Valley is of great benefit. Ms. Rollings-McDonald states that the Commission has the option to include or not include any area under consideration. With regard to Area 4, if the Commission chooses to uphold the opposition of Gubler's Orchids, she asks that the Commission exclude the entirety of the area, not just the Gubler property. She explains that if the area is included in the sphere, annexation could be stopped through the protest process.

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 18, 2012**

Commissioner Cox asks who owns the property next to Area 8. Mr. Tuerpe responds that it is all public land. Land adjacent to Areas 6 and 5 are also public land and public land is what helped define the boundary.

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

Court Prittie of Johnson Valley states that he is a Board member of the Johnson Valley Improvement Association. He states that he questions the results of the survey that said many people want pressurized water in Johnson Valley. He does not believe that is the case. He attended a committee meeting and asked an engineer how he would plumb the houses in the area. The map provided to him was dated 1966 and there were 539 houses at that time; however, currently there are only 237 houses in Johnson Valley. He says that the survey did not include information on bonds and hookup fees.

Catherine Janowicz of Johnson Valley states she is one of the three homeowners in Section 8. She says she has a well and maintains it very carefully. She says she understands the sphere of influence does not change the authority of Bighorn Desert View Water Agency; however, she does understand that it could lead to potential annexation, to which she is very much opposed. She appreciates staff's acknowledgement of the numerous Brown Act violations, and the District Attorney admonishments. She says the meetings are conducted in such a way that people are not willing to attend. Therefore, the Agency is unable to understand the desires of the people, whether it is for piped water or something else. She says in 2006 the Agency came to Johnson Valley and told the community how difficult it is to be responsible for Johnson Valley's Well No. 10 bulk station and that the community is a burden on neighboring communities. She says the Agency does not take into consideration the revenue received from property taxes. She says the Agency imposed a rate increase of close to \$3 or \$4 per unit. She asks that the sphere of influence not be expanded to include the Johnson Valley community.

Jim Harvey, on behalf of the Homestead Valley Community Council, and as a private resident of Area 8, says he is president of the Council. The Council formed in 1997 by the four communities in Homestead Valley to address matters of mutual interest. He says it is the feeling of the Council that the Commission consider defining the community by the four communities contained within Homestead Valley Community Plan as defined by San Bernardino County, including the area of Yucca Mesa. Mr. Harvey says he is now speaking as a resident and the following are his personal feelings. He says it is his understanding that Area 8 is not entirely private land, as at least half of the land is government land. He says he submitted that information to staff but the report was not corrected. Mr. Tuerpe responds by stating that the community plans of the County General Plan did not take into account service provision. LAFCO provides service reviews and sphere of influence updates which look at the services provided. He explains that the Yucca Valley community is defined by the Commission as that of the sphere of influence of the Hi-Desert Water District. He says that the community plan for the County includes Yucca Mesa, which encompasses the northernmost portion of the

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 18, 2012**

Hi-Desert Water District as well as the Bighorn Desert View Water Agency. For this report, staff is asking the Commission to define the community of Homestead Valley as that of the Bighorn Desert View Water Agency, which also makes up the study area. He says the Agency's letter regarding this is included as an attachment to the staff report. With regard to Area 8, Mr. Tuerpe states there is some private land in the area. He says it is staff's position that Area 8 would be best served within the boundaries of the sphere so that the private parcels are included. Mr. Harvey states he believes his comments should have been included in the packet submitted to the Commission. Commissioner Bagley states the Commission is in receipt of his letter with its attachments. Staff displays said letter on the presentation screen. Mr. Harvey states page 72 includes a bullet point stating, "Detachment of the Johnson Valley area from the Agency and formation of an independent Community Services District." The historical record reveals those within the Johnson Valley area expressing dissatisfaction with their water situation . . . " He says he has lived in Johnson Valley for 10 years and that statement could be taken several ways. The dissatisfaction in Johnson Valley is not with the water situation as it relates to pressurized water. The dissatisfaction is with Bighorn Desert View Water Agency. He concludes by stating all areas should be removed from the sphere, and asks that Area 8 be removed based upon the fact that the three property owners submitted objections. Commissioner Bagley states that in the Bureau of Land Management map provided it appears that there are nine or ten private properties in Area 8. He asks if Mr. Harvey has spoken with the other property owners. He says he has not.

Joanna Wright, resident of Johnson Valley, states she believes the Bighorn Desert View Water Agency has not treated the residents of Johnson Valley very well and the concerns of the residents are not taken seriously. The Agency recently sent out a survey and her envelope was empty. She says she spoke with Terry Burkhart who laughed at her. She questions if this happened to her how many others received empty envelopes. She says the Agency reports that they had a 30 percent return rate. She questions if this is a true accounting or just made up. On another occasion when their well was down, Marina West was asked if the well would be functioning, and her response was that they were not on the agenda and they had more important issues. She says the community depends on Well No. 10 and there are many things the residents do not know. She feels the Bighorn Desert View Water Agency treats everything secretly.

Jim Hanley, resident of Johnson Valley, commends the staff on a well-written report. He says he is in opposition to the sphere expansion because it is evident the Agency cannot handle their current responsibilities. He says the District Attorney was quite concerned about the Brown Act violations because he had a hard time convincing them that they did break the law. He notes that the Johnson Valley Association recently was provided a well by the County and publicly the Agency stated they were not opposed to the well; however, privately they underhandedly opposed the well. He believes expanding the sphere would make the Agency more dysfunctional than it already is. He asks the Commission to deny expansion of the sphere.

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 18, 2012**

Heidi Gubler Brodeur, representing the Gubler Family Trust, states the family business has been in the high desert for 38 years. She says Gubler Orchids is an asset to the community, not only as a taxpayer and employer, but as a landmark as well. Gubler Orchids hosts one of the largest charity events in the basin and Ms. Brodeur says the Morongo Basin Orchid Festival raising over \$110,000 for local Morongo Basin charities, attracting visitors from as far away as Los Angeles and Orange Counties. She says the Bighorn Desert View Water Agency is also an active participant in the festival. She requests that the Commission exclude Gubler properties from the sphere of influence. She notes that part of LAFCO's mission statement is to preserve agriculture. She claims that including the Gubler property into the sphere of influence would chase out the only viable agricultural entity in the Homestead Valley. She says that as the business has grown, water usage has remained constant. She states that changing the map boundary does not change the amount of water in the water table; however, inclusion would lead to an increase of water drawn from it and any overdraft of water would be detrimental to the business. In addition, the likelihood of annexation in the future would increase. She says the Agency has gone through many changes in Board members and direction changes, leading to instability and eventually forced annexation. She says inclusion would alter Gubler Orchids' business plan and would not allow future investments. She says the planned expansion of green energy projects would have to be discarded and future expansion would not occur in the Landers facility. She says using Gubler Orchids in an effort to give Homestead Valley an identity is not realistic and a change on the map would not make that happen. She says the nursery has already given the community great exposure due to its charity work. She says the Gubler family asks the Commission to amend the staff recommendations to exclude Area 4 from the Sphere of Influence. She notes that the Agency Board has unanimously approved the exclusion. She says Third District Supervisor Neil Derry and Commission Bagley support exclusion and understand the potential risks.

Debbie Gubler, Gubler Family Orchids, says she and her husband own nine of the land parcels in Area 4 to be included in the sphere of influence. She says she is concerned how LAFCO staff could make such bold recommendations that are in direct opposition to the local opinion and in contrast to LAFCO's own mission statement. She says there is no justification as to infrastructure or safety issues that warrant such a change. The parcel borders public lands, which lack the need for municipal services. She claims that including the property in the sphere opens the door for uncertainty and problems for the family business. She says she was told by LAFCO staff that the property would not be annexed into the Agency without requesting it, however, history indicates that is not true. She said the Commission might recall the problems with a sphere of influence change in San Bernardino when later the area was annexed into a District against the property owners' will and naturally a lawsuit ensued. For that reason, she asks that the Commission amend the map to exclude Area 4 before adopting the Homestead Valley plan. She says the Commission is aware of the instability of the Bighorn Desert View Water Agency. She states the Agency, the District Supervisor and Jim Bagley support the request to be excluded. She says the Executive Officer has stated that this expansion is designed to give Homestead Valley an identity, yet it is the orchid business that gives the area an identity and no lines on the map are required. She says the

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 18, 2012**

Executive Officer was unaware that the Gubler family hosts the largest charity event in the Homestead Valley and one of the largest in the entire Morongo Basin, the Orchid Festival. She says including Gubler Orchids in the sphere of influence would require Gubler Orchids to change its business plan and seek another location in a more agriculture-friendly area, causing loss of jobs, a point of interest and thousands of dollars donated to the desert community each year. She adds that Homestead Valley would lose an iconic landmark giving the community identity. She asks the Commission to exclude the Gubler Orchids property from annexation.

Terry Burkhart, president of Bighorn Desert View Water Agency Board of Directors, states that the Gubler property has its own wells and allows Bighorn Desert View Water Agency to monitor its wells. She sees no pressing reason why the Gubler property should be included in the Agency. With regard to Brown Act violations, she says the Brown Act tends to be vague. When asked a question regarding a specific violation, three separate water attorneys told her that the Act is vague and subject to interpretation. She says there exists within the agency a miniscule group of residents who find it amusing to disrupt Board meetings. She states that, with regard to turnover, since 2007 one General Manager has died and one has resigned to pursue personal business. The current General Manager, Marina West, is excellent and has renewed her contract for four years. Ms. West is educated, having received a Masters Degree in public administration. With regard to Board turnover, three directors left during the recall in 2007. Since then there have been two resignations due to illness and/or family problems. She says both seats were filled by appointment. Mr. Dossey was elected; however, immediately resigned by failure to take the oath of office. One of three applicants was appointed this week. She says she lives in Johnson Valley and has a well. She explains that the survey sent out asked if residents would like to have pressurized water with the option of three time frames. She states she is not in the habit of laughing at anyone. She notes that building permits cannot be issued on properties with hauled water, which devalues the property of every owner that does not have a well.

Betty Munsen states that page 17 includes discussion on the Johnson Valley Fire Station 43 and says the Board of Supervisors approved a lease agreement between JVIA, owner of the building, and the County for \$1.00 per year. She says there is an impression that that lease was not renewed. She explains that JVIA volunteers built the firehouse and supplied volunteers for years and the community has a vested interest in Fire Station 43. She says the efforts to site a well on JVIA property were spurred on by the fact that the well would supply water to the Fire Department. She says efforts made by Bighorn Desert View Water Agency to prevent this well showed their lack of concern for the property owners' fire safety and the fire insurance problems incurred by property owners. She says the prospect of availability of water on site encouraged the Fire Department to refurbish the building, raising hopes that one day the station could be manned. She says a recent fire caused the Fire Department to draw water from the JVIA community well, Well No. 10. Bighorn Desert View Water Agency, contrary to its policies in the past, charged County Fire for the water. She says it has taken over two years to complete the well from the time a complainant said he was deathly ill from hauled water used at the Community Center. Following that claim, the Health

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 18, 2012**

Department inspected the kitchen and noted that hauled water was a problem. After a grant was secured, she says Marina West insisted the money for the well should go to the Agency. County Special Districts handled the project with many delays. JVIA finally completed the project. She quotes from page 44 of the staff report: “. . . it informally attempted to assist the JVIA in finding an acceptable resolution to this issue, such as reverse osmosis treatment . . .” She says the Board of JVIA was not notified of any attempt to assist and the Board would not have accepted it as the Board’s experiences with the community well leaves the Board with no faith in the expertise of the Agency. She recommends that the sphere of influence not be expanded.

Chairman Mitzelfelt closes the public hearing and calls for further questions from the Commission. Chairman Curatalo asks for clarification from Ms. McDonald on exclusion of specific areas. Ms. McDonald explains that if the Commission chooses to exclude Area 4, staff asks that the Commission exclude the area in its entirety rather than piecemeal, as the existing boundary follows parcel lines. Commissioner Cox states the County Service Area objects to the expanded sphere, as well as several members of the public. She believes that from a public policy standpoint she does not believe it would serve the public interest to increase the sphere of influence at this time. She believes the Agency has made tremendous progress with a good general manager, but she would not support expansion of the sphere of influence. Commissioner Derry states that inclusion of areas in spheres of influence is controversial in this community in the Third District. He thanks the Bighorn Desert View Water Agency for its cooperation on the agreement, which will allow building a pipeline to Pioneertown. He says the County has worked with the Agency and environmental organizations to build this pipeline. He says he is thankful the well for the Johnson Valley Community Center is now running so that meals can now be served there. He requests the Commission take the position stated by Commissioner Cox and of the community to remove Area 4 and Area 8 from the sphere of influence. Commissioner McCallon concurs and would support decreasing the sphere of influence by Area 1.

Commissioner McCallon moves approval of the staff recommendation with the exception that all sphere of influence expansions be removed as well as removal of Area 1 from the sphere of influence, second by Commissioner Cox. Commissioner Bagley states that the sphere of influence defines the community identity and it is a future planning mechanism. He says the Yucca Mesa area is separate from this, but those in Yucca Mesa believe they have more in common with Landers than with the Town of Yucca Valley. He says the spheres of influence in this case identify the future access for utilities. He says that, in the case of Area 4, the Gublers have an agreement with the existing water agency, which symbolizes the sense of independence of the community. He is in favor of excluding Areas 4 and 8. Commissioner Curatalo also supports excluding Areas 4 and 8. Chairman Mitzelfelt explains that Commissioner McCallon’s motion is to exclude all expansion areas. Commissioner Smith supports Commissioner McCallon’s motion. Commissioner Coleman asks for clarification on Areas 3-A, B, and C. Ms. McDonald explains that they are developed parcels that are surrounded by Bighorn Desert View Water Agency. Those parcels are currently connected to the Agency system but not within the sphere. The parcels have a contractual relationship with the Agency through

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 18, 2012**

CSA 70, Zone W-1 to provide service. The sphere proposal would include those properties, which currently receive service by the Agency. Area 2 also includes territory that was the exclusion identified in both the Joshua Tree and Yucca Valley community discussions. Commissioner Coleman states that she believes the Agency has made strides in improving but it does have a ways to go. She says the community has spoken and she supports excluding all except Area 3, and recommends amending the motion to include Area 3. Commissioner McCallon amends the motion to include Area 3 in the expansion, second by Commissioner Cox. Commissioner Cox states this gives the Agency the opportunity to more effectively communicate with those residents. Commissioner Bagley clarifies that this motion excludes all staff recommended expansion areas except for Area 3 and retains the staff recommendation to reduce the Agency's sphere, Area 1, to which there is consensus. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, McCallon, Mitzelfelt, Rutherford. Noes: None. Abstain: None. Absent: None.

(Commissioner Derry leaves at 10:48 a.m.)

DISCUSSION ITEMS

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

Ms. McDonald reports that the District is working to rectify problems related to its audits. No audits have been done or are anticipated until the end of the fiscal year. She says the audit should bring the District current through the 2010-11 fiscal year. LAFCO staff continues to work with the District and it will provide that information upon receipt. She says that yesterday afternoon she received an email from the District stating that Rogers Anderson Malody and Scott, an accounting firm, has concluded its review of the appropriations limit issue. She says that the last time the District adopted an appropriation limit correctly was in Fiscal Year 1995-1996. The material submitted brings the District's appropriations limit forward and the anticipated appropriation limit is \$2.2 million for the current fiscal year. The District must adopt a resolution setting forth the appropriations limit. LAFCO staff continues to monitor the District and requests concurrence of the Commission to return in July or August to give an update on the completion of the audit issue.

Commissioner Rutherford moves approval of the staff recommendation, 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, McCallon, Mitzelfelt, Rutherford. Noes: None. Abstain: None.

**STATUS REPORT ON LAFCO 3133 – SERVICE REVIEW AND SPHERE OF
INFLUENCE UPDATE FOR CRESTLINE SANITATION DISTRICT – APPROVE STAFF
RECOMMENDATION**

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 18, 2012**

Ms. McDonald states the District has moved forward with the contracts necessary for the service review. She notes that staff will request cancellation of the March hearing. Therefore, staff requests that this matter be placed for full consideration on the April 18, 2012 hearing.

Commissioner McCallon moves approval of the staff recommendation as amended, 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, McCallon, Mitzelfelt, Rutherford. Noes: None. Abstain: None.

STATUS REPORT ON POLICY AND PROCEDURE MANUAL UPDATE AND ISLAND ANNEXATION POLICY DISCUSSION

Ms. McDonald states that, to date, staff has not received the Attorney General opinion requested by Senator Gloria Negrete-McLeod. At the September 28, 2011 hearing staff was of the understanding that that opinion would be issued imminently; however, there is still no opinion. Ms. Hultz, the litigant in the San Bernardino islands case, has indicated that she has had conversations with Mr. Nolan of the Attorney General's office and it is anticipated that it will be released with the next batch of opinions; however, it is unclear when that will be. LAFCO staff believes that the Commission needs to move forward to address the policy issues for islands as well as for other issues, and adopt updated forms. Staff requests that the Commission direct staff to place the review of the policy and procedure manual updates on the April hearing calendar. She notes that based upon the implementation of SB89, the Commission identified its intention to withdraw its position to require island annexations with development-related applications.

Commissioner Coleman moves approval of the staff recommendation, 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, McCallon, Mitzelfelt, Rutherford. Noes: None. Abstain: None.

INFORMATION ITEMS

LEGISLATIVE REPORT

Ms. McDonald reports that she has provided the Commission with legislative changes which took effect January 1, 2012. She says AB54 relates to additional requirements for mutual water companies and authorizes LAFCOs to include them in service reviews. San Bernardino LAFCO has always included mutual and private water companies in its service reviews because LAFCO adheres to the philosophy that water is a municipal service and all should be addressed in service reviews to keep the public informed. AB912 was approved effective January 1, 2012, and provides for an expedited dissolution process if an agency is recommended for that action as a part of a service review or other special study. AB1430 was the omnibus bill that made non-controversial non-substantive

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 18, 2012**

changes to LAFCO law. This year the definitions section of LAFCO has been updated and excludes such terms as “extinguishment.”

Ms. McDonald states that SB244 was signed by the Governor and became law as of January 1, 2012. She notes that it includes a change in the annexation policy stating that for any city annexation over 10 acres or as determined by Commission policy, which is contiguous to a disadvantaged unincorporated community, the proposal cannot be approved without a companion proposal for annexation of that disadvantaged community. She says this could change dramatically the annexation process within San Bernardino County. She says staff is working to develop maps showing disadvantaged unincorporated communities, the definition of which is, “a community with a median household income that is less than 80 percent of the statewide annual median household income. For San Bernardino County, that is about \$58,000 per year; therefore, any income of less than \$47,000 would define a disadvantaged unincorporated community. She says most of the desert would be included. For spheres of influence and service reviews, based upon SB244, LAFCO staff must review in depth issues regarding sewers, municipal and industrial water, structural fire protection, and whether or not there are deficiencies in disadvantaged communities. This will require that LAFCO address issues that cannot be resolved. It provides that LAFCOs may assess the feasibility of government reorganizations and where such are found to be feasible and would further the goals of orderly development and efficient affordable service delivery be identified for future action. She says a policy declaration by the Commission will be necessary as to how and when those questions would be addressed and in what depth.

Ms. McDonald reports that SB 244 also added a new factor to Government Code Section 56430 which requires the Commission to address the location and characteristics of any disadvantaged unincorporated community within or contiguous to the sphere of influence. The Section 56430 requirement became effective January 1, 2012 while sphere of influence update requirements take effect July 1, 2012. Service reviews for the communities of Needles and Twentynine will include these factors and both agencies have been advised. SB244 will require more work of staff and the Commission in its service reviews as well as annexation proposals, all of which are an unfunded mandates. She notes that the disadvantaged unincorporated community language does not require that the community be within the sphere of influence.

She reports that Brown Act amendments have changed requirements regarding agenda posting and posting of special meetings, including that provision of contracts for executives of public agencies and consideration of salary or contract extensions must be agendaized and heard in public sessions.

Commission Cox asks if she has any comments on the recent report from the LAO’s office indicating that, basically, all LAFCOs are not equal. She thanks the staff for San Bernardino LAFCO’s thorough service reviews. Ms. McDonald states she has not thoroughly reviewed the report but will provide a more definitive review next month. She believes it could have made a stronger statement about the financial burden that these types of reviews create. The Sustainable Community Strategy Council had grants

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF JANUARY 18, 2012**

available; however, LAFCOs were not included and could not participate in that process. She says that report will be discussed at the CALAFCO Legislative Committee. She has been reappointed and the committee will meet on Friday. Commissioner Cox says it sends the message to Special Districts that their story must be better told and more often so that the constituency understands the value of single-purpose agencies. Ms. McDonald comments that most citizens do not know that they are in a special district unless they pay a bill to the agency.

EXECUTIVE OFFICER'S REPORT

Ms. McDonald reports that the February hearing will include a Town of Apple Valley annexation and most items continued to February will likely be continued again. She requests that the March hearing be cancelled due to lack of material for the agenda.

COMMISSIONER COMMENTS

Commissioner Curatalo asks if staff could place page numbers on the visual staff reports to assist in finding the same material in the written report.

Commissioner Coleman thanks staff for providing the new format for electronic tablets.

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 11:07 A.M.**

ATTEST:

ANNA RAEF, Recording Secretary

LOCAL AGENCY FORMATION COMMISSION

BRAD MITZELFELT, Chairman