

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

215 North D Street, Suite 204, San Bernardino, CA 92415-0490
(909) 383-9900 • Fax (909) 383-9901
E-MAIL: lafco@lafco.sbcounty.gov
www.sbclafco.org

DATE: OCTOBER 9, 2012 
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
SAMUEL MARTINEZ, Assistant Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #7 – LAFCO 3166 – REORGANIZATION TO INCLUDE ANNEXATIONS TO THE HESPERIA WATER DISTRICT AND DETACHMENTS FROM COUNTY SERVICE AREA 70 AND ZONE J (Water Service)

INITIATED BY:

Resolution, Hesperia Water District

RECOMMENDATION:

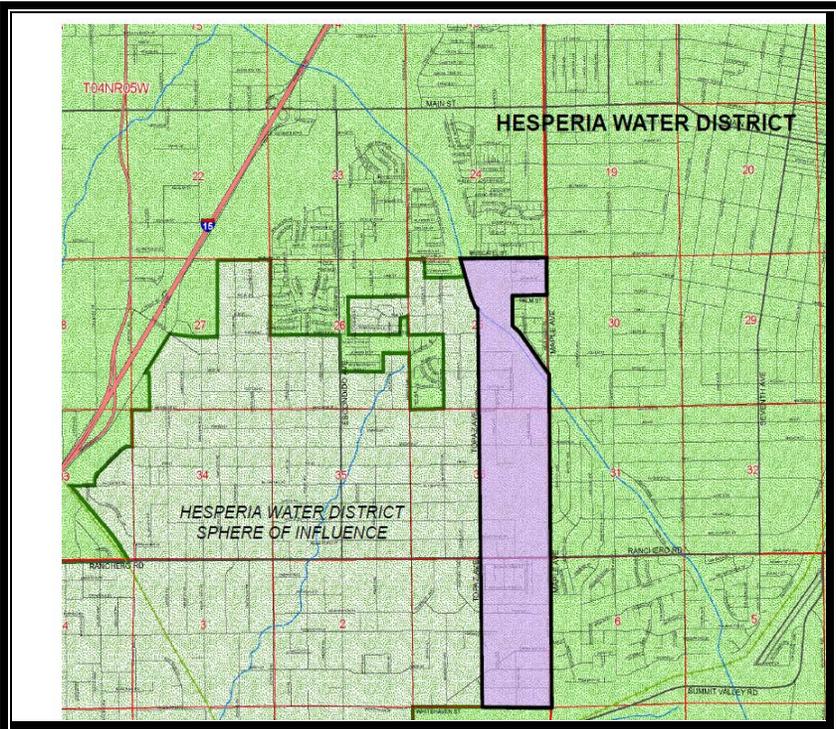
Staff recommends that the Commission take the following actions:

1. Modify LAFCO 3166 to include four additional areas: Area 2 requiring annexation to the Hesperia Water District and Detachment from County Service Area (CSA) 70 and its Zone J; and Areas 3, 4, and 5 to include detachment from CSA 70 and its Zone J within the boundaries of the City of Hesperia and its subsidiary Hesperia Water District;
2. For environmental review, certify that LAFCO 3166, as modified, is statutorily exempt from environmental review and direct the Clerk to file a Notice of Exemption within five days;
3. Approve LAFCO 3166, as modified, with the standard conditions related to completion date and indemnification and the following conditions:
 - a. The transmission pumping lanes identified by CSA 70 Zone J as essential to the continuing retail water service within the balance of Zone J and those transmission lines required to continue to serve connections within Area #1 shall remain with CSA 70 Zone J and no action of the Hesperia Water District shall compromise their effectiveness to serve the customers of CSA 70 Zone J within and outside the reorganization area;

- b. The existing water connections of CSA 70 Zone J within Area 1 proposed for reorganization shall continue to be operated by Zone J without impediment until such time as an agreement for service exchange is reached between CSA 70 Zone J and the Hesperia Water District; and,
 - c. In the event that a future action constitutes the “disposition of property constituting more than 10% of the value of the Zone J system” or “the removal of property resulting in a decrease in system revenues of more than 5%” as identified in Section 6.02 of the Installment Sale Agreement between the County of San Bernardino and the California Infrastructure and Economic Development Bank (IBank), a written confirmation from the County that the requirements of the IBank Installment Sales Agreement have been satisfied shall be required.
4. Adopt LAFCO Resolution #3169, setting forth the Commission’s findings, determinations, and conditions of approval concerning this proposal.

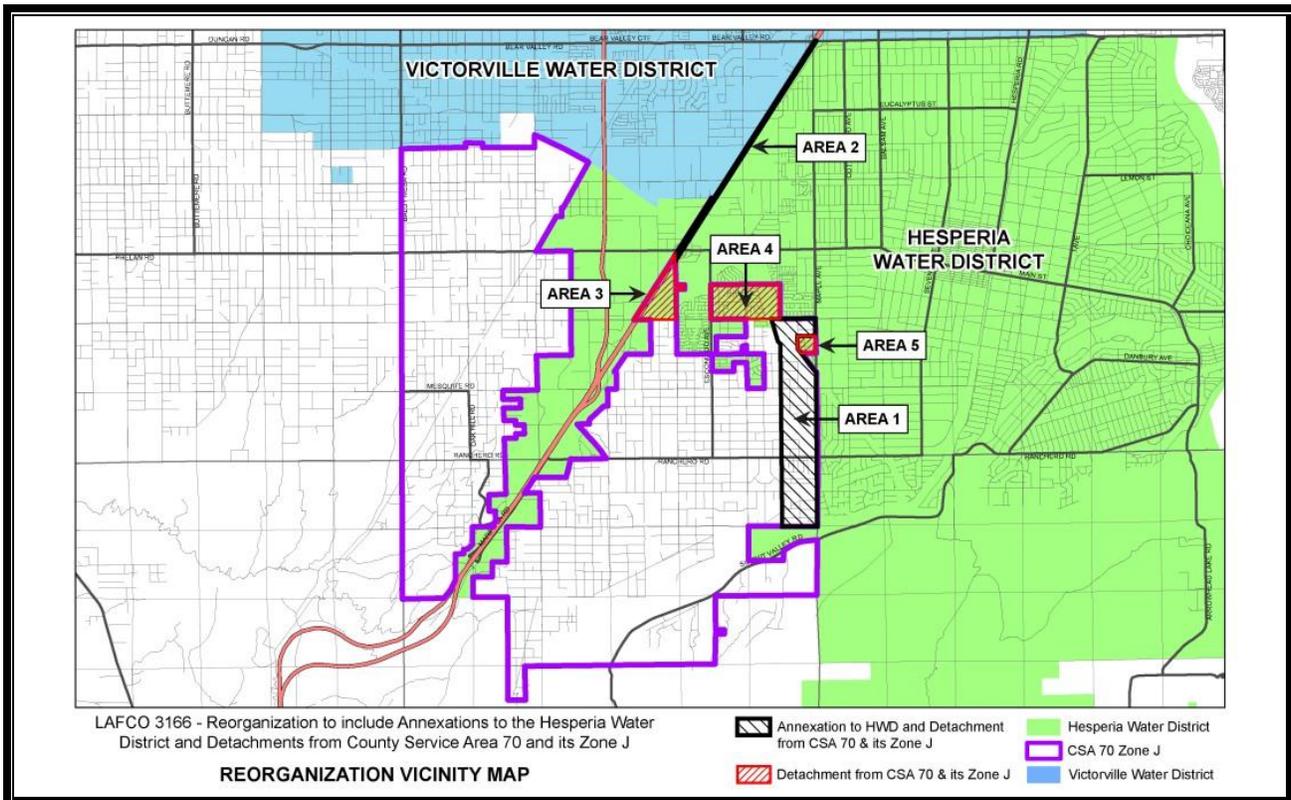
BACKGROUND:

In March of 2011, the Hesperia Water District (hereinafter shown as District) submitted an application for the detachment of County Service Area 70 (CSA 70) and it’s Zone J from within the boundaries of the City of Hesperia with concurrent annexation to the District. The area encompasses approximately 938 acres and is generally located within the southwestern portion of the City of Hesperia bordered by Maple Avenue on the east, Whitehaven Avenue on the south, Topaz Avenue on the west (existing City of Hesperia Boundary), and Muscatel Avenue on the north. The area is shown on the map below:



The purpose of the reorganization is to place properties which are currently receiving service from the District, but outside its boundaries, within the District. District and LAFCO staffs have identified approximately 10 developments which would require out-of-agency service agreements to resolve the conflict in jurisdiction and operation. Four contracts were reviewed and approved by the Commission for tracts still under the developer’s ownership. However, about three tracts have been sold and would require individual out-of-agency contracts. Following discussions initiated during the Hesperia Service Review, it was agreed that annexation to the District of this area would be the best alternative to resolve the jurisdictional problem and allow the City and District to provide for the coordinated development of municipal services for the area and detach it from CSA 70 Zone J, the residential water provider for the Oak Hills community.

LAFCO staff circulated the proposal, as is standard procedure for application processing, for review and comment and conducted the Departmental Review Committee to review technical issues regarding the proposal. As a part of the review process, staff reviewed the State Board of Equalization maps for tax rate area delineations to be sure it included the entirety of the areas to be detached. As staff reviewed this information, it was determined that a number of areas within the City and Hesperia Water District had not been detached from CSA 70 and its Zone J through other LAFCO processed applications. The map below identifies these additional areas, Areas 2 through 5:



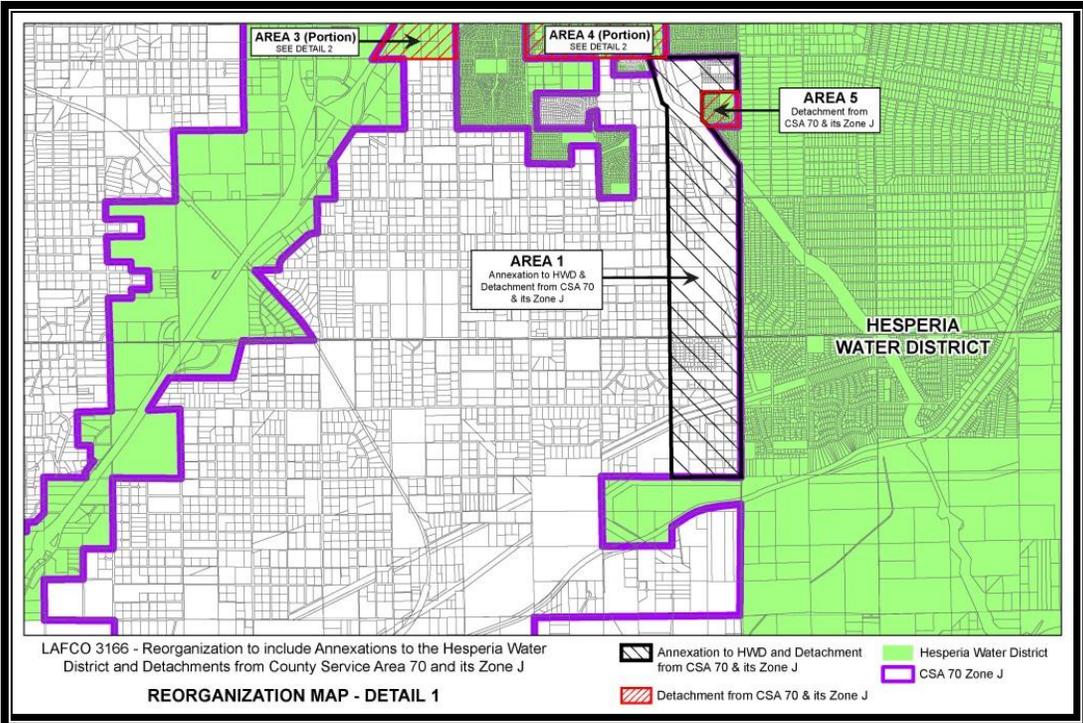
In order to clarify the boundaries between CSA 70 Zone J and the Hesperia Water District, LAFCO staff is recommending that the proposal be modified to include the detachment of these additional areas.

The narrative which follows addresses the four factors required for Commission consideration of any jurisdictional change – boundaries, land uses, service delivery and the effect on other local governments, and environmental considerations for the modified proposal.

BOUNDARIES:

The area proposed for reorganization, as modified by LAFCO staff to address the clarification of water responsibility in this area, includes five separate areas encompassing approximately 1,553 acres. All the areas proposed for detachment from CSA 70 and Zone J are located within the City of Hesperia’s boundaries. The areas are described as follows:

Area 1-- Annexation to Hesperia Water District and Detachment from CSA 70 and its Zone J: This is the original proposal submitted by the Hesperia Water District. This area was retained within CSA 70 and Zone J at the time of the incorporation of the City of Hesperia due to it containing the major well facilities and water transmission lanes for service to the larger Zone J service area. The area is described as follows: the area encompasses approximately 938 acres and is generally bordered by a combination of parcel lines and Muscatel Avenue (existing Hesperia Water District boundary) on the north, a combination of parcel lines, Palm Street, the California Aqueduct, Cedar Street, and Maple Avenue (existing Hesperia Water District boundaries) on the east, a combination of parcel lines and Whitehaven Street (existing Hesperia Water District boundary) on the south, and a combination of parcel lines, the California Aqueduct and Topaz Avenue on the west.



Area 2 – Annexation to the Hesperia Water District and Detachment from CSA 70 and its Zone J:

The proposal has been modified by LAFCO staff to include this area. At the time of the Commission's consideration of issues affecting the formation of the Hesperia Water District, subsequent annexations to the District including the "Golden Triangle" area between the City of Hesperia and the City of Victorville, created an exclusion area from the Hesperia Water District. Since that time, this island area has been outside the jurisdiction of the Hesperia Water District but within the City of Hesperia. Approval of this proposal will rectify this boundary issue.

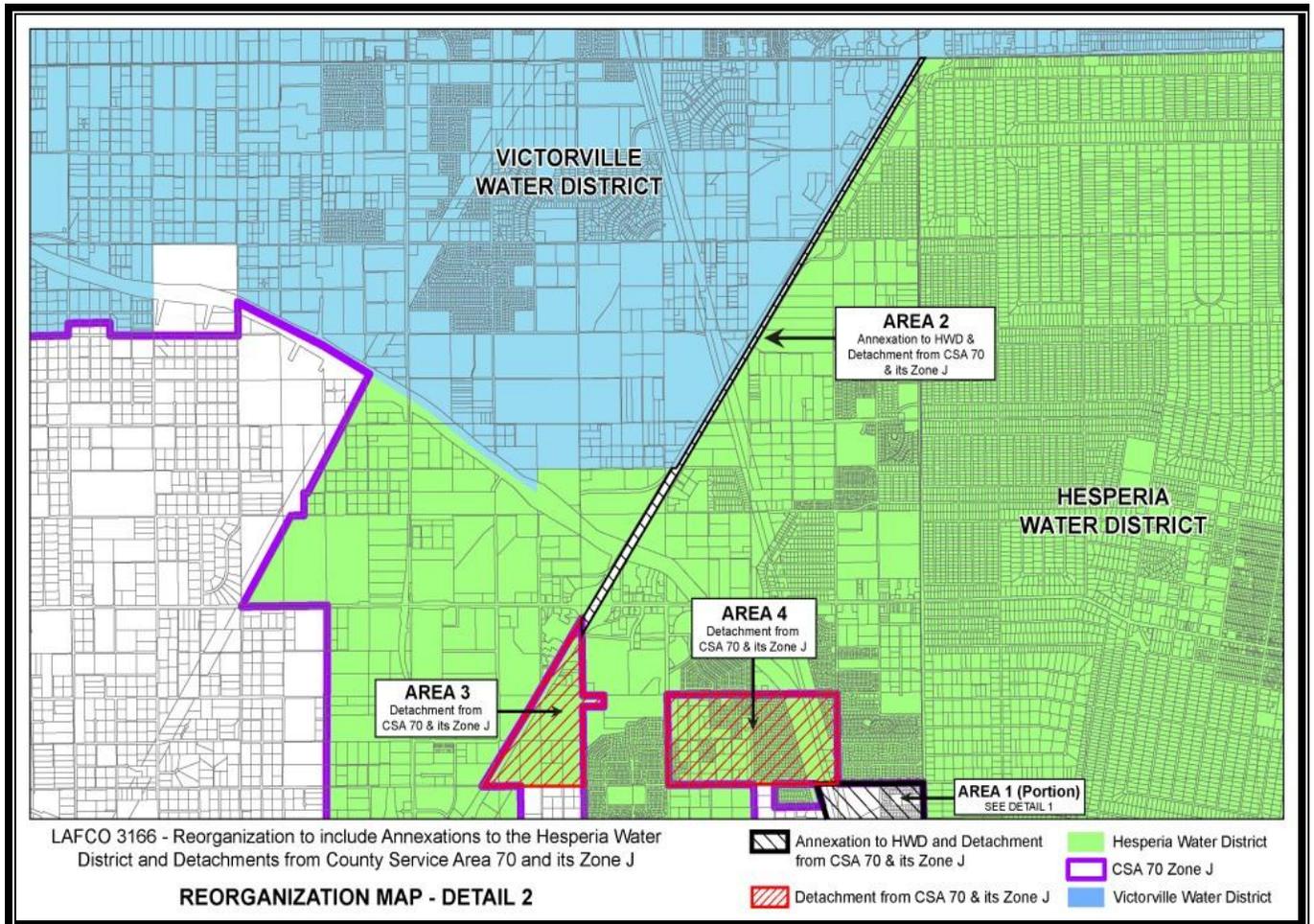
This area encompasses approximately 60 acres is generally located along the I-15 Freeway right-of-way area, between Main Street and Bear Valley Road. The island area is generally bordered by the Hesperia Water District boundary on the east, a combination of the Hesperia Water District and the Victorville Water District boundaries on the west and northwest, and the Victorville Water District on the north, all within the I-15 Freeway right-of-way area.

Area 3 -- Detachment from CSA 70 and its Zone J: The proposal has been modified by LAFCO staff to include this area. This area was annexed to the City of Hesperia and Hesperia Water District through LAFCO 2581 completed on July 24, 1990. A part of the reorganization approval required the detachment from CSA 70 and its Zone J; however, a review of TRA maps shows that this portion of the project was not completed by the State Board of Equalization or County Assessor as directed by the Certificate of Completion. Expansion of the proposal to include this area will rectify this jurisdictional issue:

The area encompasses approximately 185 acres and is generally bordered by a combination of parcel lines and the natural extension of Coyote Trail on the east, Muscatel Street (portion of existing Hesperia Water District) on the south, and the I-15 Freeway on the west.

Area 4 -- Detachment from CSA 70 and its Zone J: The proposal has been modified by LAFCO staff to include this area. A portion of Area 4 was annexed to the Hesperia Water District through LAFCO 2581 as described above and a portion was annexed to the Hesperia Water District several years before incorporation through LAFCO 1911. In both instances the detachment of CSA 70 Zone J was contemplated; LAFCO 2581 as a function of the reorganization and LAFCO 1911 through direction to the County of San Bernardino to take the actions necessary to detach Zone J. However, LAFCO 2581 was not finalized through the establishment of the Tax Rate Areas through the State and County levels and it appears that the follow-up action by the County Board of Supervisors was not taken. Approval of this portion of the reorganization will clear up this jurisdictional issue:

The area encompasses approximately 325 acres located within the City of Hesperia. Area 4 is generally bordered by a combination of parcel lines and Sultana Street on the north, Topaz Avenue on the east, a combination of parcel lines and Muscatel Street (portion of existing Hesperia Water District) on the south, and Escondido Avenue on the west.



Area 5 -- Detachment from CSA 70 and its Zone J: The proposal has been modified by LAFCO staff to include this area. Approval of LAFCO 1968, Annexation to the Hesperia Water District, included a condition of approval requiring the County to take a subsequent action to detach CSA 70 Zone J. The materials identified that the County and its Special Districts Department disputed the Commission’s authority to include the detachment of a Zone of CSA 70 when the parent district was being retained in the area. As with LAFCO 1911 described above for Area 4, this follow up action was not taken; therefore, LAFCO staff has included this area in the reorganization to clarify the jurisdictional boundary. Area 5 is shown on Detail 1 Map shown on page 4 of this report.

The area encompasses approximately 45 acres located within the City of Hesperia. Area 4 is generally bordered by Palm Street (existing Hesperia Water District boundary) on the north, Maple Avenue on the east, a combination of parcel lines and Cedar Street on the south, and parcel lines (existing Hesperia Water District boundary) on the west.

LAFCO staff is recommending that the Commission approve the modification in boundaries proposed by staff to clarify jurisdiction for water and sewer service in these areas.

LAND USES:

The reorganization area as modified by LAFCO staff is wholly within the City of Hesperia, which has an adopted General Plan identifying the land uses for the area. The reorganizations areas are comprised of lands primarily developed with residential uses. The current City of Hesperia General Plan generally assigns the area residential land designations of varying intensities from 0.25 units to the acre up to 4 units to the acre. Some areas of commercial and public uses are included overall.

The City of Hesperia approved three development projects within Area 1 for 152 single family residences which do not have out-of-agency services agreements with the District, while four other residential subdivisions have existing out-of-agency agreements for extension of service.

None of the areas within the modified reorganization are unincorporated so there is no effect on the County General Plan.

SERVICE DELIVERY AND THE EFFECT UPON OTHER LOCAL GOVERNMENT SERVICE PROVIDERS:

The Hesperia Water District has submitted a plan for the extension of its municipal service, as required by law and Commission policy (included as a part of Attachment #2). The Plan identifies the ability of the District to provide its range of services, water and sewer, within Area 1. LAFCO staff did not require the submission of a modified Plan for Service to address Areas 3, 4, and 5 as they have been a part of the District for many years, and for the most part receive water and sewer service from the District currently. Area 2 is wholly within the I-15 freeway corridor where transmission lines may ultimately be installed, but no direct service will be required; therefore, LAFCO staff did not require a supplemental Plan for Service.

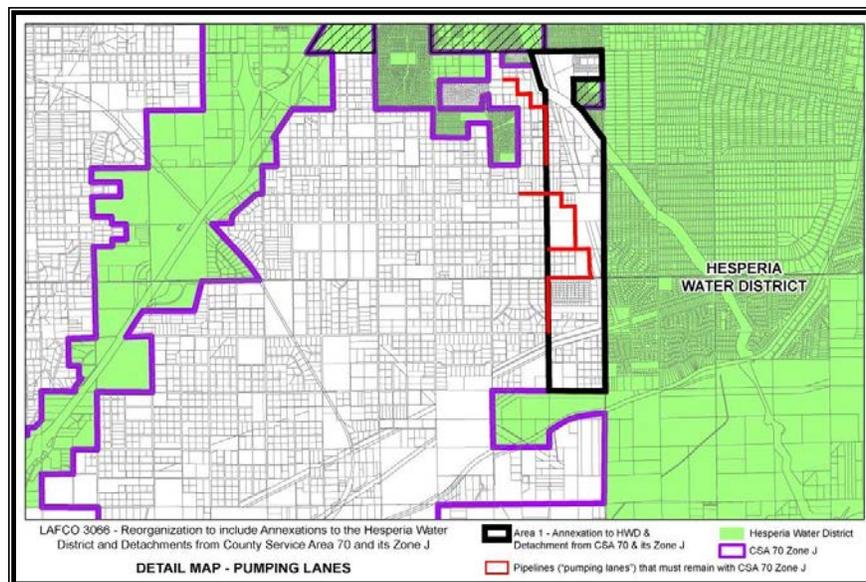
The District's resolution requested a condition requiring and the Plan for Service identified the District's position for the need to negotiate an agreement to transfer water rights within the area to the District. LAFCO staff disagrees with this request insofar as the District is not accepting any current Zone J service connections with corresponding water production needs. Water rights and adjudicated free production allowance were developed based upon water usage, not projected water requirements. With no transfer of existing water users from CSA 70 Zone J, there is no assigned water allowance or water rights to be transferred. Therefore, LAFCO staff has not included the requested condition of approval.

As LAFCO staff processed this review, one element arose which caused significant delay in its consideration. That issue relates to the existing County of San Bernardino I-Bank loan for water system improvements for CSA 70 Zone J. The County of San Bernardino has signed a loan, on behalf of CSA 70 Zone J, identified as the "Enterprise Fund Installment Sale Agreement" originally signed in November 2003, with two subsequent amendments, Amendment No. 1 dated September 1, 2006 and Amendment No. 2 dated October 2, 2011 (copy included as Attachment #3). The loan is for approximately \$2,150,000 for improvements to bring the Zone J system into compliance for minimum daily storage requirements and fire flow. As was noted in the Hesperia Community Service Review,

LAFCO staff was unaware of this agreement at the time of several large annexations to the City of Hesperia in 2003 and 2004. The terms of this loan require I-Bank approval for removal of property which constitutes more than 10% of the value of the system and/or the removal of property resulting in a decrease in system revenues of more than five percent.

LAFCO staff compiled a listing of all the service accounts that will be detached through LAFCO 3166 and those which have been detached in the past (included as a part of Attachment #3). Taking into account all these detachments along with the addition of new connections from 2003 to present, the change involves 91 properties or connections of the 3,055 connections reported in CSA 70 Zone J, or 3% of the users. This is below the 10% threshold requiring I-Bank approval. In addition, the covenants for pledged revenues identified in the loan documents are administered by the County Special Districts Department, annually reported to the I-Bank and no current question on this finding was provided. Following a conference call to review these matters with the I-Bank representatives and LAFCO, District and Zone J staffs on July 18, 2012, LAFCO staff received an e-mail confirmation, August 21, 2012, that the I-Bank would not oppose the reorganization nor require further documentation at this time (copy included with Attachment #3).

Finally, the County Special Districts Department has requested that its transmission lines and pumping lanes for service to the balance of the Zone J system be protected following completion of this reorganization. Those lanes are shown in red on the map below and a map is included as a part of Attachment #1:



In conclusion, the Plan for Service shows the ability of the Hesperia Water District to extend its services to the area upon need through future development and to acknowledge the existing services being provided currently at the time of reorganization. As a condition of approval for this reorganization, LAFCO staff is recommending that those existing Zone J service connections within Area 1 shall continue without impediment until such time as agreement for transfer of service is agreed to between CSA 70 Zone J and the District and

the retention of the pumping lanes and transmission lines identified as critical to the CSA 70 Zone J operations.

ENVIRONMENTAL CONSIDERATIONS:

As the CEQA Lead Agency, the Commission’s Environmental Consultant, Tom Dodson from Tom Dodson and Associates, has indicated that the review of LAFCO 3166, as modified, is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the Commission’s approval of the reorganization has no potential to cause any adverse effect on the environment; and therefore, the proposal is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061(b)(3) . If the Commission concurs in this recommendation, staff recommends that it 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 are required to be provided by Commission policy and Government Code Section 56668 for any change of organization/reorganization proposal.

1. The Registrar of Voters Office has certified that the reorganization area is legally inhabited, containing 931 registered voter as of September 29, 2012 identified as follows:

| | |
|--------|-----------------------|
| Area 1 | 215 Registered Voters |
| Area 2 | No voters |
| Area 3 | 1 Registered Voter |
| Area 4 | 590 Registered Voters |
| Area 5 | 125 Registered Voters |
2. The reorganization area is within the sphere of influence assigned the Hesperia Water District.
3. The County Assessor has determined that the total assessed value of land and improvements within the reorganization area is \$59,264,119.
4. Notice of the Commission’s review of this proposal has been advertised in *The Daily Press*, a newspaper of general circulation within the reorganization area. Individual notice has been provided to affected and interested agencies, County departments, and those individuals and agencies having requested such notification.
5. Pursuant to Commission policy, individual notice was not provided to registered voters and landowners for the reorganization as allowed under Government Code Section 56157. In keeping with the Commission’s policy, notice was provided by placing a display advertisement of at least one-eighth page in a newspaper of general circulation within the reorganization area. Comments from landowners, registered voters, and any affected local agency have been reviewed and

considered by the Commission in making its determination. To date, no opposition has been received by LAFCO staff.

6. The reorganization proposal has no direct effect on the City's General Plan or its land use designations.
7. As the CEQA lead agency, the Commission's Environmental Consultant, Tom Dodson and Associates, has indicated that the review of LAFCO 3166 is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the Commission's approval will not result in any physical changes to the environment or any adverse effect on the environment; and therefore, the proposal is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061 (b) (3) under the General Rule Statutory Exemption. A copy of Mr. Dodson's recommendation is included for the Commission's review as Attachment #4 to this report.
8. The area in question is presently served by the following local agencies:
 - County of San Bernardino
 - City of Hesperia
 - Hesperia Fire Protection District
 - Hesperia Recreation and Park District
 - Hesperia Water District (Areas 3, 4, and 5)
 - Mojave Desert Resource Conservation District
 - Mojave Water Agency (the State Water Contractor)
 - County Service Area 60 (Apple Valley Airport)
 - County Service Area 70 (multi-function entity)
 - County Service Area 70 Zone J (retail water provider)

As a function of the reorganization, the proposal will detach all areas from County Service Area 70 and its Zone J and annex Area 1 and 2 to the Hesperia Water District. None of the other agencies will be affected by this proposal since they are regional in nature.

9. The Hesperia Water District has submitted a "Plan for Service" as required by law and Commission policy. This plan is included as part of Attachment #2 to this report, which indicates that the District can, at a minimum, maintain the level of service delivery and can improve the level and range of service currently available in the area.
10. The reorganization area can benefit, and for some areas has benefited in the past, from water and/or sewer services from the Hesperia Water District.
11. This proposal will have no effect on the regional housing needs as defined by the regional housing allocation units (RHNA) process conducted by the Southern California Association of Governments (SCAG). This determination is based on the proposal making no change in the land use authority for the area.

12. With respect to environmental justice, the reorganization will not result in the unfair treatment of any person based on race, culture or income.
13. The County of San Bernardino (on behalf of the Hesperia Water District and County Service Area 70) on April 5, 2011 adopted a resolution indicating no transfer of property tax revenues would be required. The modification in boundaries proposed by LAFCO staff will necessitate a new property tax transfer resolution under the requirements of Section 99 of the Revenue and Taxation Code. This renegotiation process will be required to prior to completion of the LAFCO protest process.
14. The map and legal description are currently being revised for Area 1 by the Hesperia Water District and the maps and legal descriptions for Areas 2, 3, 4 and 5 are being prepared by the County Surveyor at LAFCO's request. These documents will need to be determined to be in substantial compliance with LAFCO and State standards through certification by the County Surveyor's Office prior to issuance of the resolution of approval.

CONCLUSION:

LAFCO staff supports the reorganization as presented for Commission consideration at this hearing. The process to resolve inconsistencies in the jurisdictional boundaries between the Hesperia Water District and CSA 70 Zone J at the outset appeared simple to both LAFCO and District staffs. However, as with many LAFCO considerations, the devil is in the details. Over the last year this application has been modified to address the boundary issues outlined in this staff report and staff supports the changes to clarify the service relationships in the area to allow for development of the area to proceed. For all the reasons outlined in this report, staff recommends that the Commission modify LAFCO 3166 to add Areas 2, 3, 4, and 5 and approve the reorganization.

KRM/

Attachments:

1. [Vicinity Maps and Reorganization Area Maps](#)
2. [Hesperia Water District Application](#)
3. [Email Response from California Infrastructure and Economic Development Bank Related to Transfer of Connections, LAFCO Letter Dated June 20, 2012 Outlining Issue Related to Transfer of Connections, Enterprise Fund Installment Sale Agreement – Original and Two Amendments](#)
4. [Response from Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates](#)
5. [Draft Resolution #3169](#)