

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

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

PROPOSAL NO.: LAFCO 2999

HEARING DATE: October 15, 2008

RESOLUTION NO. 3023

A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION OF THE COUNTY OF SAN BERNARDINO MAKING DETERMINATIONS ON LAFCO 2999 – A SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR APPLE VALLEY HEIGHTS COUNTY WATER DISTRICT (sphere of influence expansion to encompass the combined existing spheres of influence of the Apple Valley Foothill, Apple Valley Heights and Mariana Ranchos County Water Districts excluding the territory southerly of Tussing Ranch Road currently served by the Golden State Water District creating a single sphere for all three agencies).

On motion of Commissioner _____, duly seconded by Commissioner _____, and carried, the Local Agency Formation Commission adopts the following resolution:

WHEREAS, a service review mandated by Government Code 56430 and a sphere of influence update mandated by Government Code Section 56425 have been conducted by the Local Agency Formation Commission of the County of San Bernardino (hereinafter referred to as “the Commission”) in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Sections 56000 et seq.); and

WHEREAS, at the times and in the form and manner provided by law, the Executive Officer has given notice of the public hearing by the Commission on this matter; and,

WHEREAS, the Executive Officer has reviewed available information and prepared a report including her recommendations thereon, the filings and report and related information having been presented to and considered by this Commission; and,

WHEREAS, a public hearing by this Commission was called for August 20, 2008 and continued to September 17, 2008 at the time and place specified in the notice of public hearing and in an order or orders continuing the hearing; and,

WHEREAS, at the hearing, this Commission heard and received all oral and written protests; the Commission considered all plans and proposed changes of organization, objections and evidence which were made, presented, or filed; it received evidence as to whether the territory is inhabited or uninhabited, improved or unimproved; and all persons present were given an opportunity to hear and be heard in respect to any matter relating to the application, in evidence presented at the hearing;

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WHEREAS, a statutory exemption has been issued pursuant to the provisions of the California Environmental Quality Act (CEQA) indicating that this service review and sphere of influence update are statutorily exempt from CEQA and such exemption was adopted by this Commission on September 17, 2008. The Clerk was directed to file a Notice of Exemption within five working days of its adoption;

WHEREAS, based on presently existing evidence, facts, and circumstances filed with the Local Agency Formation Commission and considered by this Commission, it is determined that the following sphere of influence determination is made: that the sphere of influence for the Apple Valley Heights County Water District shall be expanded to include the territory within its existing sphere of influence and that of the Mariana Ranchos County Water District and the Apple Valley Foothill County Water District as depicted on the maps attached hereto as Exhibit "A" and "B"; and,

is reduced to zero for Apple Valley Heights County Water District, as depicted on the maps attached hereto as Exhibit "A" and "B"; and,

WHEREAS, the determinations required by Government Code Section 56430 and local Commission policy are included in the report prepared and submitted to the Commission dated September 8, 2008 and received and filed by the Commission on September 17, 2008, a complete copy of which is on file in the LAFCO office. The determinations of the Commission are:

1. Growth and population projections for the affected area:

The 2006 estimated population for the District was 650 with an estimated 279 connections. Growth within the District's boundaries is anticipated to continue; however, it is not anticipated to keep pace with the Town's anticipated growth rate. The territory within the boundaries of the district and sphere are designated by the County General Plan for Residential Single (RS) which requires a minimum one-acre parcel size and the District has identified that there are 375 parcels within its boundaries.

2. Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies:

Currently, the District provides water to 279 active connections. It has two wells and reservoir capacity of 260,000 gallons.

The District drilled a new well in 2003 and has no immediate plans for major capital improvements. It does not have a water master plan or studies. The basic infrastructure was constructed in 1958 while pumps, motors, hydrants, and other appurtenances (such as the housing for District equipment) are between 2 and 25 years old. Old pipes are replaced with PVC piping as needed. The District describes the overall condition of the system as being very good. The District states that it meets or exceeds the local and state regulations for fire prevention. However, no supporting data has been provided regarding reserve or fire flow capacities.

Apple Valley Heights CWD has water production rights (also known as Base Annual Production) to assure 125 acre-feet (AF) annually. The District is within the Alto sub-region, and Free Production Allowance (FPA) is currently at 60% of Base Annual Production, which permits the district 75 AF of FPA for FY 2008-09. As noted in the most recent Watermaster Annual Report, "further rampdown is not warranted in Alto at this time". Producers are required to replace any water pumped above their FPA by paying the Mojave Basin Area Watermaster to purchase supplemental water or by purchasing unused production rights from another party. As indicated in the table below, the historical trend for the District's water production indicates that it produces more than its FPA.

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Thus, it has to purchase water from other agencies within the sub-basin to avoid paying the higher replacement water and make-up water rates charged by the Watermaster.

Apple Valley Heights CWD Water Production and Water Obligations

(units in acre feet unless otherwise noted)

Water Year	Free Production Allowance (FPA)	Carryover from Prior Year	Transfers from Other Water Agencies	Verified Production	Unused FPA or (Water Production in Excess of FPA)	Replacement Water Obligation (Agency overdraft)	Makeup Water Obligation (Watermaster replacement to the sub-basin)
2002-03	94	44	0	(138)	0	\$0	\$0
2003-04	88	0	68	(152)	0	\$0	\$0
2004-05	82	0	56	(137)	0	\$0	\$0
2005-06	75	0	57	(132)	0	\$0	\$0
2006-07*	75	0	n/a	(146)	(71)	n/a	n/a
2007-08**	75	0	n/a	n/a	n/a	n/a	n/a
2008-09	75	--	--	--	--	--	--

sources: Mojave Basin Area Watermaster, Annual Reports of the Mojave Basin Area Watermaster for Water Years 2003/04 through 2006/07, (April 1, 2005 through April 1, 2008).

Mojave Basin Area Watermaster, Request for Assignment of Carryover Right in Lieu of Payment of Replacement Water Assessments Recommended for Filing, For Water Years 2002/03 through 2006/07.

* Subject to amendment in Appendix I in Fifteenth Annual Report of the Watermaster due April 2009.

** Draft data (Appendix B) not available until January 2009.

3. Financial ability of agencies to provide services:

The District's main sources of revenue are water consumption sales, meter installation charges, a \$25 standby fee charge, and bond revenue collections. According to the District's most recent audit for Years 2005 and 2006, it has net assets of \$549,840 and its cash flow increased by \$71,374.

The District indicates that it will generate the funds necessary for improvements through meter sales and that loans or an increase in water rates would be anticipated to meet capital improvement needs in the future. At this time its bond debt for the drilling of a well in 1968 has matured (July 1, 2008) therefore, it carries no debt.

4. Status of, and opportunities for, shared facilities:

There are no facilities that the District shares and it states that it does not foresee sharing facilities due to geographic differences from other entities. These differences are that the District is located in the foothills of southern Apple Valley versus the other surrounding districts which are on the flatlands. The District has identified that its district office is located on property owned by a member of the Board of Directors. At the Board meeting scheduled to adopt its proposed budget,

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the Directors will consider the adoption of an agreement setting forth the payments and obligations of the parties associated with the rental of this facility for district use.

5. **Accountability for community service needs, including governmental structure and operational efficiencies:**

The District is governed by a five-member board of directors elected at-large and has two full time employees and two part time employees. The District holds its regular meetings on the second Wednesday of the month at the District office and is open to the public, Monday through Friday during the morning hours. All budgetary and rate structures are open to public comment for suggestions and improvements. Additionally, the District does not participate in joint financing projects and has no joint powers agreements. To save on equipment costs, the District utilizes outside contractors to complete major repairs and install meters.

The last two elections held for the District were in 2005 and 1999. All other board member positions have been appointed in lieu of election.

Government Structure Options

There are two types of government structure options:

- Out-of-agency service agreements where an agency provides service outside its boundaries; or,
- Other potential government structure options such as consolidation, reorganization, or dissolution.

Out-of-Agency Service Agreements:

The District has identified that it does not currently provide service outside its boundaries. It does not have an inter-tie with the surrounding districts for emergency service.

Other Government Structure Options:

While the discussion of some government structure options may be theoretical, a service review should address all possible options. The options would be:

1. Assignment of a zero sphere of influence for the District. This option would send a signal that the Commission anticipates a future consolidation of the public water districts within the Town's southern sphere.
2. A second option also sends a signal that the Commission anticipates a future consolidation of the three county water districts within the Town's southern sphere a part of the Alto sub-basin of the Mojave River adjudication. This option would assign the same sphere of influence to all three water districts within the southern Apple Valley sphere of influence a part of the Alto sub-basin. This would signal that these County Water Districts should meet to discuss a potential consolidation.
3. Retain the status quo; this would maintain a coterminous sphere and boundary. As mentioned within the staff report, numerous inefficiencies exist by having three separate

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yet contiguous county water districts in one portion of the area. Maintenance of the status quo would continue such inefficiencies.

As indicated in the discussion of water issues, the Commission has indicated, since 1973, that the public water agencies in the Apple Valley area should consolidate for efficiencies in service delivery, economies of scale for purchasing the services necessary to operate the district – well testing, meter installation, etc., and to address the service needs for potential development in the area. Failure to address the issue at this juncture, will mean that the private water companies in the area will expand to surround the four public water districts within the Alto sub-basin limiting their future options. Based upon these determinations, it is the position of the Commission that the three County Water District will have the same sphere of influence designation pointing towards a consolidation. However, the Municipal Service Review materials submitted by the District indicate that they oppose any effort to consolidate with the surrounding agencies even if conditions of approval to the consolidation would protect its revenues for use within its system.

Local Accountability and Governance

The AVHWD is governed by a five-member Board of Directors elected at-large to four-year staggered terms. The figure below lists the current Board of Directors, their titles, and terms of office:

Board Member	Title	Term
Larry Hunter	President	2009
Dana P. Morse	Vice President	2007
Shirley Barra	Director	2007
John Kunz	Director	2009
Glenn A. Lincoln Jr.	Director	2009

The information identified above was taken from documents available on the Registrar of Voters website. No information related to an extension of the term of office from 2007 has been provided. In addition the District maintains a routine hearing schedule of the second Wednesday of the month. In addition, it provides for office hours Monday and Wednesday from 8:00 a.m. to noon.

WHEREAS, the following determinations are made in conformance with Government Code Section 56425 and local Commission policy:

1. Present and Planned Uses:

Present and planned uses within the District include vacant lands and residential lots that are rural in nature. There will be no change in land use as a result of a zero sphere designation.

Present and planned uses within the staff modified area includes vacant lands, residential lots that vary from one-half acre to 5 acres for a rural residential land use occupied by single family residences.

The County General Plan land use designations for the area include: Single Family Residential land use designations (RS-1) with a one-acre minimum lot size, Rural Living (RL) which requires a 2.5 acre minimum parcel size, Resource Conservation (RC) which allows one unit per 40 acres, and

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Special Development (SD-PD) for approximately 50 acres. There are no commercial, industrial, or urban intensity land use designations assigned within the area.

The Town of Apple Valley overlays approximately 960 acres within the area southerly of Tussing Ranch Road and its General Plan identifies residential lands for the majority of the area, which includes Single Family Residential, Low Density Residential and Estate Residential uses, and approximately 12 acres of General Commercial.

The sphere of influence designation will have no direct impact on the land use designations of the County or Town.

2. Present and Probable Need for Public Facilities and Services:

The districts taken together currently meet the water operational demands of their customers. As mentioned, development in the Town's sphere is anticipated to continue and all three districts are within the Town's sphere. As the population increases and the uses of the land intensify, the area will require additional water production.

Individual service needs for the districts are identified under each of their municipal service reviews. The District currently meets the water demands of its customers within its boundaries. As mentioned above, development in the Town's sphere is anticipated to continue and the District is within the Town's sphere. However, the land use designation within this area does not contemplate an urban intensity use; therefore service needs will be based upon its rural residential nature. As the population increases, the District will require additional water production and supply facilities.

3. Present Capacity of Public Facilities and Adequacy of Public Services:

Staffing levels meet the needs of the area. The District states current facilities and services delivered are adequate to meet operational demands for the next ten years. The District indicates that it will generate the funds necessary for improvements through meter sales and that loans or an increase in water rates are anticipated to meet capital improvement needs. However, there is no water plan to indicate what improvements are needed.

4. Social and Economic Communities of Interest:

The area proposed for inclusion within the AVFWD sphere of influence representing the consolidation of the three districts is entirely within the Apple Valley community sphere as well as the current sphere of influence assigned the Town of Apple Valley. The areas of the modified sphere of influence are identified as being in Apple Valley, but the residents in the area do not believe they share social or economic ties with the Town. However, the Town is the economic hub for the area and provides for the shopping, organized recreational activities, and employment for the area. The Community of Interest for the Water Districts notes that the territory is within the same sub-basin of the Mojave River adjudication, its wells and facilities are in close proximity to one another, and they share a common land use direction, rural residential.

5. Additional Determinations

- The Commission's Environmental Consultant, Tom Dodson and Associates, has determined the changes outlined for the Apple Valley Heights County Water District sphere of influence are statutorily exempt from environmental review

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- Legal advertisement of the Commission’s consideration has been provided through publication in *The Daily Press* through publication of a 1/8 page legal ad and in *The Apple Valley News*, as required by law. In accordance with Commission Policy #27, a 1/8th page legal ad was provided in lieu of individual notice because the service review sphere of influence update for the community of Apple Valley would have exceeded 1,000 notices.
- As required by State law, individual notification was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.
- Comments from landowners/registered voters and any affected agency will need to be reviewed and considered by the Commission in making its determinations.

WHEREAS, having reviewed and considered the findings as outlined above, the Commission determines to expand the sphere of influence to encompass:

- 1) The District’s existing sphere of influence;
- 2) The entirety of the sphere of influence for the Mariana Ranchos and Apple Valley Foothill County Water Districts, excluding the territory currently served by the Golden State Water Company south of Tussing Ranch Road; and,
- 3) Expansion of the sphere to include the territory southerly of the Apple Valley Heights County Water District boundary which is private land to the southern section line.

NOW, THEREFORE, BE IT RESOLVED by the Local Agency Formation Commission of the County of San Bernardino, State of California, that this Commission shall consider this to be the sphere of influence for Apple Valley Heights County Water District; it being fully understood that establishment of such a sphere of influence is a policy declaration of this Commission based on existing facts and circumstances which, although not readily changed, may be subject to review and change in the event a future significant change of circumstances so warrants;

BE IT FURTHER RESOLVED that the Local Agency Formation Commission of the County of San Bernardino, State of California, does hereby determine that Apple Valley Heights County Water District shall indemnify, defend, and hold harmless the Local Agency Formation Commission of the County of San Bernardino from any legal expense, legal action, or judgment arising out of the Commission’s designation of the modified sphere of influence, including any reimbursement of legal fees and costs incurred by the Commission.

THIS ACTION APPROVED AND ADOPTED by the Local Agency Formation Commission of the County of San Bernardino by the following vote:

AYES:	COMMISSIONERS:
NOES:	COMMISSIONERS:
ABSENT:	COMMISSIONERS:

STATE OF CALIFORNIA)

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COUNTY OF SAN BERNARDINO)
) ss.

I, KATHLEEN ROLLINGS-McDONALD, Executive Officer of the Local Agency Formation Commission of the County of San Bernardino, California, do hereby certify this record to be a full, true, and correct copy of the action taken by said Commission, by vote of the members present, as the same appears in the Official Minutes of said Commission at its meeting of October 15, 2008.

DATED:

KATHLEEN ROLLINGS-McDONALD
Executive Officer

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