

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

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**DATE:** FEBRUARY 6, 2012   
**FROM:** KATHLEEN ROLLINGS-McDONALD, Executive Officer  
SAMUEL MARTINEZ, Assistant Executive Officer  
MICHAEL TUERPE, Project Manager  
**TO:** LOCAL AGENCY FORMATION COMMISSION

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**SUBJECT:** AGENDA ITEM #7 – LAFCO 3136 – Service Review and Sphere of Influence Update for the Bear Valley Community Healthcare District

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**RECOMMENDATION:**

Staff recommends that the Commission:

1. Receive and file the final determinations for the Bear Valley Community Healthcare District's service review, as amended at this hearing and through the opinion provided by LAFCO Legal Counsel, including the request to staff to seek an Attorney General opinion on the matter of a Gann Limit for Healthcare Districts;
2. Reaffirm its actions from the January 18, 2012 hearing related to LAFCO 3136, approving the Bear Valley Community Healthcare District's sphere of influence modifications (reductions) and the service description modifications to its authorized Healthcare function, which were certified to be statutorily exempt from environmental review; and,
3. Adopt Resolution No. 3150 reflecting its determinations for the Service Review and Sphere of Influence Update for the Bear Valley Community Healthcare District (LAFCO 3136)

**BACKGROUND:**

At the January hearing, the Commission reviewed and considered the Service Review and Sphere of Influence Update for the Bear Valley Community Healthcare District (BVCHD or District). At that hearing, LAFCO staff presented the service review and sphere of influence update related to LAFCO 3136. However, staff requested that the item be continued to the February 15, 2012 hearing in order to fully evaluate a response letter submitted by representatives of the District's Legal Counsel (Attachment #1 to this report), a day prior to the hearing, on the appropriation limit issues identified in the report.

Following the hearing, LAFCO Legal Counsel consulted with the District's Legal Counsel and provided his opinion and analysis of this situation, Attachment #2 to this report. After reviewing LAFCO and the District's Legal Counsel responses, staff has the following response/comment:

- Counsel Alsop's response is that there is no clear legal authority as to whether or not a Gann Limit applies to California's Healthcare Districts – in essence some annually adopt the limit and some don't as evidenced by the lack of appropriation limit for the District yet the annual establishment by the Palomar Pomerado Healthcare District in San Diego County (included as a part of Attachment #2). As identified, Legal Counsel has outlined in the memorandum the options for the Commission as follows:
  - It can take no action and let the District continue to operate without an appropriation limit; or,
  - The Commission can seek an Attorney General opinion on the matter in order to resolve the disagreement between LAFCO and the District over their differing interpretations.
- The District's Legal Counsel asserts that the State Controller has provided evidence that there is no requirement for providing a Gann Limit based upon its listing as an "enterprise activity". Staff would like to remind Commissioners that at the inception of the implementation of Prop. 13, the distinction of enterprise was significant in that those districts defined as "enterprise" were exclude from the receipt of ad valorem property taxes except for the continued payment of bonded indebtedness. Whether or not these Healthcare Districts have the more strict interpretation is not clearly identified in the materials.

Based upon Legal Counsel's determination that this is in essence a murky area of the law, without clear direction, staff is recommending that the Commission take the option of seeking an Attorney General opinion to clear up the matter. The Commission itself cannot request an Attorney General opinion, but can request a legislator or a member of a government body to do so. Therefore, LAFCO staff recommends that the Commission amend its determination within the service review for the BVCHCD to identify the differing opinions on the question of an appropriation limit, determine to seek an Attorney General opinion to resolve the question, and file the balance of the determinations.

In conclusion, staff is recommending that the Commission receive and file its final determinations as amended for the service review for BVCHD. Attached to this report is the draft resolution reflecting the Commission's determinations for the service review, as amended, and sphere of influence update for LAFCO 3136, as required by Government Code Sections 56430 and 56425.

SM/MT

Attachment:

1. [Letter from Ms. Julie Hayward Biggs, Burke, Williams and Sorensen, LLP \(representing BVCHD\) including attached letter from TCA Partners, LLP](#)

2. [Response from LAFCO Legal Counsel and copy of Palomar Pomerado Healthcare District Appropriation Limit Establishment for Fiscal Year 2012](#)
3. [January 9, 2012 Staff Report – Service Review and Sphere of Influence Update for the Mountain Healthcare Districts](#)
4. [Draft Resolution No. 3150](#)