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January 20, 2009

VIA E-MAIL & FACSIMILE ONLY

Ms. Kathleen Rollings-McDonald
Executive Officer, LAFCO
215 North D Street, Suite 204
San Bernardino, CA 92415-0490

Re: LAFCO 3076 – Comments on Final EIR

Dear Ms. Rollings-McDonald:

We are special counsel to the San Bernardino Valley Water Conservation District (the "Conservation District"). The Conservation District appreciates the consideration of its comments to the Draft EIR for LAFCO 3076, although it does not agree with some of LAFCO's conclusions set forth in the Responses to Comments. In an effort to keep the January 21 hearing on the Final EIR as efficient as possible, and recognizing that at this point the primary disputed points primarily concern financially-related issues (which may, however, result in future environmental impacts if the consolidation were to be approved and take effect), the Conservation District desires to submit these written comments for LAFCO's consideration.

1. Financial Issues –The Conservation District has reviewed the comments to the Final EIR and the additional documents included as attachments to the Final EIR, including Valley District's "updated cash flow analysis." The Conservation District has preliminarily reviewed those figures and will be further reviewing and analyzing them. However, the Conservation District questions how those figures can be found to be "sound and justified" (see Section 4.1, page 6 of the Responses to Comments) when the Conservation District itself was not even consulted with respect to the expenses involved. A serious, in depth and impartial analysis, as the Conservation District has repeatedly suggested, would result in far different conclusions. Instead, the Responses to Comments, particularly regarding the financial issues, are rife with the "speculation, argument and opinion" for which LAFCO criticizes various commenters, and do not

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constitute the reasoned, good faith analysis required under CEQA Guidelines Section 15088(c).

2. Mining Revenue Dispute. At page 3 of its "updated cash flow analysis," Valley District states that the approximate \$1.15 million in uncollected mining revenues resulted from a "lack of oversight." Again, without even consulting the Conservation District regarding the background of the situation regarding those revenues, LAFCO, at Section 4.6, page 12 of its Responses to Comments, simply repeats Valley District's conclusion. However, instead of resulting from "a lack of oversight," the collection of those revenues actually resulted from the Conservation District's diligence in administering its mining leases and negotiating a successful resolution to a dispute, which resulted in significant additional monies that are now available to be used for water conservation purposes. Before such terms as "lack of oversight" should be used in a public document by a neutral administrative entity, more investigation should be conducted to confirm the true facts being addressed.

3. Failure to Respond to Comment 6.22. The Responses to Comments do not include any response to the Conservation District's comment enumerated as Comment 6.22 regarding the "no project" alternative. Public Resources Code Section 21091(d) requires the lead agency to consider and prepare written responses to each written comment received. Here, LAFCO has failed to address the specific issues raised in Conservation District Comment 6.22.

4. Recirculation of the Final EIR. Under Public Resources Code Section 21092.1, when "significant new information" is added to an EIR before certification, the lead agency must recirculate the EIR before certifying it. Section 15088.5 of the CEQA Guidelines provides interpretation of that statute.

As used in Guideline Section 15088.5, "information" includes not only changes in the project or environmental setting, but also "additional data or other information." Thus, data and analysis newly added to the Final EIR for LAFCO 3076 constitutes "new information." Section 15088.5 gives examples of the types of disclosures of information that would constitute "significant new information:" One of those examples is when, "The Draft EIR was so fundamentally and basically inadequate and conclusory that meaningful public review and comment were precluded." 14 Cal. Code of Regs. § 15088.5(a)(4).

In the present situation, the Draft EIR was fundamentally inadequate because of the stale financial information on which its analyses were based. Moreover, the public

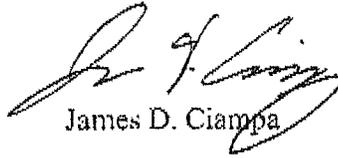
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now has not been given an opportunity to meaningfully review and comment on the updated financial information included in the Final EIR. Based on the "significant new information" that has been added to the Final EIR for LAFCO 3076 before it is certified, that EIR must be recirculated.

Thank you for your consideration of these additional comments.

Very truly yours,



James D. Ciampa

JDC/cc

cc: Mr. Robert Neufeld, General Manager, San Bernardino Valley
Water Conservation District (by e-mail only)
David Cosgrove, Esq., General Counsel, San Bernardino Valley
Water Conservation District (by e-mail only)

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