MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF APRIL 15, 2009

REGULAR MEETING **9:00 A.M.** **APRIL 15, 2009**

PRESENT:

COMMISSIONERS:
Jim Bagley, Alternate
James V. Curatalo
Neil Derry
Larry McCallon
Brad Mitzelfelt, Vice-Chairman
Mark Nuaimi, Chairman
Richard P. Pearson
Diane Williams, Alternate

STAFF:
Kathleen Rollings-McDonald, Executive Officer
Clark Alsop, Legal Counsel
Samuel Martinez, Senior LAFCO Analyst
Michael Tuerpe, LAFCO Analyst
Anna Raef, Clerk to the Commission
Rebecca Lowery, Deputy Clerk to the Commission
Angela Schell, Deputy Clerk to the Commission

ABSENT:

COMMISSIONERS:
Paul Biane
Kimberly Cox

CONVENE REGULAR SESSION OF THE LOCAL AGENCY FORMATION COMMISSION – CALL TO ORDER – 9:06 A.M.

Chairman Mark Nuaimi calls the regular session of the Local Agency Formation Commission to order and leads the flag salute.

Chairman Nuaimi requests those present who are involved with any of the changes of organization to be considered today by the Commission and have made a contribution of more than $250 within the past twelve months to any member of the Commission to come forward and state for the record their name, the member to whom the contribution has been made, and the matter of consideration with which they are involved. There are none.

APPROVAL OF MINUTES FOR REGULAR MEETING OF MARCH 18, 2009 – APPROVE STAFF RECOMMENDATION

Chairman Nuaimi calls for any corrections, additions, or deletions to the minutes. There are none. Commissioner McCallon moves approval of the minutes as presented, second by Commissioner Mitzelfelt. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Curatalo, McCallon, Mitzelfelt, Nuaimi. Noes: None. Abstain: None. Absent: Biane, Cox, Pearson.

CONSENT ITEMS – APPROVE STAFF RECOMMENDATIONS

LAFCO considers the items listed under its consent calendar. The consent calendar consists of:

ITEM 3. Approval of Executive Officer's Expense Report

ITEM 4. Ratify Payments as Reconciled for Month of March 2009 and Note Cash Receipts

A Visa Justification for the Executive Officer’s expense report, as well as a staff report outlining

the staff recommendation for the reconciled payments, have been prepared and copies of each are on file in the LAFCO office and are made a part of the record by their reference here.

Commissioner Curatalo moves approval of the consent calendar, second by Commissioner McCallon. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Curatalo, McCallon, Mitzelfelt, Nuaimi. Noes: None. Abstain: None. Absent: Biane, Cox, Pearson.

CONTINUED/DISCUSSION ITEMS:

CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3128; AND (2) LAFCO 3128 – REORGANIZATION TO INCLUDE CITY OF FONTANA ANNEXATION NO. 172 AND DETACHMENT FROM COUNTY SERVICE AREAS 70 AND SL-1 – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider LAFCO 3128 – Reorganization to Include City of Fontana Annexation No. 172 and Detachment from County Service Areas 70 and SL-1. Notice of the original hearing was advertised as required by law through publication in *The Sun,* a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, landowners and registered voters within and surrounding LAFCO 3128, and those individuals and agencies requesting mailed notice.

Senior LAFCO Analyst Samuel Martinez presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by reference herein. Mr. Martinez states that the reorganization area encompasses approximately five acres and is generally east of Calabash Avenue and south of Foothill Boulevard. He states that in 2005 the Commission considered and approved LAFCO 2968, an annexation proposal submitted by the City of Fontana to annex the south side of Foothill Boulevard between Cherry Avenue on the east and the City of Rancho Cucamonga corporate boundaries on the west. He says that the southern boundary for that proposal ran along parcel lines along Chestnut Avenue and its natural extension easterly. Neither LAFCO staff nor the City noticed that the annexation boundary had divided an existing mobile home park. Mr. Martinez explains that today's proposal is a reorganization submitted by the City to annex the balance of the mobile home park, which was inadvertently omitted from the previous annexation, and to provide municipal services to the area. This action would also alleviate confusion regarding service delivery within the mobile home park. He says that in LAFCO staff's view this is a straightforward item for the Commission's consideration and should be supported. With regard to boundaries, Mr. Martinez states that it is LAFCO staff's position that the reorganization area is a logical boundary and the City's inclusion of those parcels fronting Calabash Avenue outside the mobile home park provides for an easily identifiable boundary. He states that the City has prezoned the area R-1, single-family residential; however, it should be noted that the entire reorganization area is totally built out. With regard to service issues, he says it is LAFCO staff's position that LAFCO 3128 is a straightforward and logical extension of the City of Fontana's services and the City of Fontana provided a plan for service that indicates that the extension of its services can maintain or exceed current service levels. He notes that the transfer of streetlighting responsibilities from County Service Area SL-1 to the City is a condition of approval for this proposal. LAFCO staff has verified that there is one streetlight on Calabash Avenue that is to be transferred to the City.

Mr. Martinez states that the Commission's environmental consultant, Tom Dodson & Associates, has indicated that the review of LAFCO 3128 is statutorily exempt from CEQA based upon the

fact that the reorganization area is fully developed and LAFCO 3128 can be implemented without causing any physical changes to the environment.

Mr. Martinez summarizes by stating that the reorganization area annexes an area that was inadvertently omitted from a previous annexation and upon annexation the entire mobile home park will be within the City of Fontana's boundaries, eliminating any confusion regarding service delivery. He states that the area will benefit from the full range of municipal services and the reorganization area as presented provides a logical and easily-identifiable boundary for service delivery. He says staff recommends approval of LAFCO 3128 by adopting the statutory exemption and directing the clerk to file the Notice of Exemption, approving LAFCO 3128 with the conditions regarding the transfer of street lights and the standard terms and conditions, and adopting LAFCO Resolution 3055 setting forth the Commission's findings, determinations and conditions for this proposal.

Chairman Nuaimi calls for questions from the Commission. Commissioner McCallon asks why the land to the east of Banana Street is not included in the annexation. Mr. Martinez explains that to include that parcel would create a peninsula and to include additional territory to create a logical boundary would involve 20 single-family residences, creating the potential for termination of the proposal through the protest process. He states that the intent was to annex the balance of the mobile home park without risking termination of the proposal.

Chairman Nuaimi asks how close this proposal is to the redevelopment area for the Speedway. Executive Officer Kathleen Rollings-McDonald states the redevelopment area is along Arrow Avenue and does not extend this far north.

Chairman Nuaimi opens the public hearing and calls upon those wishing to speak. There is no one. Chairman Nuaimi closes the public hearing.

Commissioner McCallon moves approval of staff recommendation, second by Commissioner Mitzelfelt. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Curatalo, McCallon, Mitzelfelt, Nuaimi. Noes: None. Abstain: None. Absent: Biane, Cox, Pearson.

CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3102; AND (2) LAFCO 3102 – SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR BIG RIVER COMMUNITY SERVICES DISTRICT – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider LAFCO 3102 – Service Review and Sphere of Influence Update for Big River Community Services District (CSD). Notice of the original hearing was advertised as required by law through publication of a 1/8th page ad in *The Sun* and *Parker Pioneer,* newspapers of general circulation. Individual notice of this hearing was provided to affected and interested agencies, and those individuals and agencies requesting mailed notice.

LAFCO Analyst Michael Tuerpe presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by reference herein. He states Big River Community Services District is along the Colorado River northerly of the Riverside County line. He points out on the map the Colorado River Indian reservation which extends southerly into Riverside County and easterly into the State of Arizona and adds that the Big River CSD is wholly within the boundaries of the reservation.

Mr. Tuerpe states that the Federal District Court of Arizona has agreed to hear arguments in a case entitled *Water Wheel Camp Recreational Area, Inc., et al* (U.S. District Court, Arizona) to determine jurisdiction within the State of California to hear claim or contract disputes. He says that while the territory is located in Riverside County, it is the staff's opinion that the case has the potential to impact the leasehold interests within the boundaries of Big River CSD because the ruling would determine whose jurisdiction would hear claims, CRIT Tribal Court or Federal Court. However, he points out that the case has no direct bearing on this service review or the sphere of influence update.

(It is noted that Commissioners Pearson and Bagley arrive at 9:23 a.m.)

He states the CSD is primarily comprised of residential, recreation, and vacant lands. The community was developed in the 1960's, 1970's and 1980's by a private developer, and the Big River CSD was subsequently formed to take over the services performed by the private developer. He states the district is approximately 14 square miles and its sphere is coterminous with its boundaries. He outlines the community of Earp at the northern end of the District and developed areas inland from the Colorado River and says that the rest of the District is comprised of vacant land on the graphic display. He adds that much of that vacant land is owned by the federal government or the CRIT. He states that the operation of the District is without issue; however, a unique situation exists because the CSD is wholly within the boundaries of an Indian reservation and receives its revenues through leaseholds which terminate in 2029. He explains that, while the community was developed by a private developer, in 1996 the CRIT removed many of its parcels from the tax and assessment rolls, and in 1997 the CRIT formed an instrumentality of its government called the Big River Development Enterprise, an Arizona corporation. That Enterprise purchased the interests of the private developer and those interests were placed in the name of the Big River Development Enterprise and were then removed by the CRIT or the Enterprise from the property tax assessment rolls. He states that today the District has less revenue through property tax and assessments and when the master lease expires in 2029, the remaining properties will revert to CRIT ownership. Today's consideration includes the question of what is the appropriate sphere of influence designation for this district, given the expiration of the master lease in 2029 and the likelihood of the removal of the District's public funding source. He presents the two options for the Commission's consideration: affirmation of the existing sphere, which is the position of the District, or designation of a zero sphere. The District makes three points in support of affirmation of the existing sphere: 1) the District can plan for services and operation until 2029; 2) the Federal case would determine the jurisdictional authority of the CRIT in the State of California; and 3) until 2029 the Commission will conduct at least three more service reviews and sphere of influence updates.

In support of designating a zero sphere, Mr. Tuerpe says that the expiration of the lease in 2029 will transfer remaining interests back to the underlying ownership, the CRIT, removing the public funding source of the District. Given the lack of public funding, the physical presence of the District is questionable. He states that, for those reasons, LAFCO staff recommends a zero sphere of influence. He points out that designating a zero sphere of influence does not affect the existing boundaries of the District or the authorized and actively provided services, but would signal the Commission's position that at the expiration of the master lease the District would be dissolved. This dissolution process, by necessity, would address the issue of succession to its assets.

Mr. Tuerpe points out that staff is concerned about the high amount of uncollectible property tax and assessments owed to the District. The District's most recent audit indicates that the amount

is over $300,000, spanning from 2000 through 2007, as indicated in County Assessor records. LAFCO staff has been in contact with County Assessor and County Tax Collector representatives, and the assessment records show that many parcels were removed from the assessment rolls. He states that the District provides park and recreation and police powers. Police powers are limited to security patrol only. The District operates a park on the banks of the Colorado River which includes a pagoda, two docks, clubhouse and district office, including open area. He states that the District has authorized water power; however, there is no record that the District has ever provided water service. In 2005-2006, upon the CSD rewrite, the District responded to LAFCO that it did not provide water service. Therefore, LAFCO staff recommends that the Commission remove the function of water and its related service descriptions from the list of authorized services for the District. He adds that the Commission's environmental consultant, Tom Dodson and Associates, has determined that this service review and sphere of influence update is statutorily exempt and that either option, affirmation of the existing sphere, or designation of a zero sphere, would not have potential to cause any physical changes in the environment and therefore does not constitute a project under CEQA.

Mr. Tuerpe concludes and states that LAFCO staff recommends: 1) a zero sphere of influence for the District based upon the uncertainty of the physical presence of the District, given the likelihood of the removal of its public funding source upon the expiration of the lease in 2029, and; 2) removal of the water function and its related service descriptions because there is no record that the District has ever provided the service.

Chairman Nuaimi calls for questions from the Commission. There are none.

Chairman Nuaimi opens the public hearing and calls upon those wishing to speak.

Terry Conaway, Big River CSD Director, states the Indians are defending their right to be in California in federal court, but expresses his opinion that they do not have a right to be in California. He recommends that the Commission postpone its decision until the decision in federal court is made. He states he represents the senior community as the operator of the senior center and the senior nutrition site and is Chairman of the Board of the senior commissioners. He further recommends that the Commission not impose a zero sphere.

Robyn Gaffney, Big River CSD Director, states that a zero sphere determination would be preliminary, as CRIT is not a recognized tribe in California. She says the boundaries and jurisdiction will be determined in federal court. She explains that the CRIT took over the master lease when the original company went bankrupt, but the boundaries and jurisdiction do not belong to the CRIT. She says the land is reservation land, but not CRIT land. She urged the Commission to affirm the sphere at this time and reconsider during the next review.

Eric Shepard, Attorney General for the CRIT, states the CRIT supports the staff recommendation to reduce the sphere of influence of the Big River CSD to zero. He says CRIT's comments are included in Attachment 5 to the staff report, as well as the position of the Bureau of Indian Affairs, Department of the Interior. He comments on the federal court case and says neither the CRIT nor the United States is a party to the litigation and the boundary of the reservation will not be determined by that case. He explains that this case is to decide if the tribal court has jurisdiction over a California corporation, Waterwheel Corporation, and a California resident, Robert Johnson.

Chairman Nuaimi calls upon anyone else who wishes to speak on this item. There is no one. Chairman Nuaimi closes the public hearing.

(It is noted that Commissioner Derry arrives at 9:37 a.m.)

Commissioner Mitzelfelt asks counsel to elaborate on the statement that the federal case is not directly related to this land. Legal Counsel Clark Alsop states it is his opinion that the federal case does not relate to the determination of a sphere of influence. He states there is no question that federal land, whether it is in trust for one Indian tribe or not, once the lease expires, reverts to its status of federal land. He states that the staff's position is that in 2029 when the lease expires the federal government retains control and ownership of the land. He does not believe the federal case would have an effect on establishing the sphere of influence.

Chairman Nuaimi states that the existing CSD provides existing services with a revenue stream that ends in 2029 or sooner. He mentions reference in the staff report that there may be other options for additional revenues in the future. He questions whether, after the Commission imposes a zero sphere, a subsequent action could be taken to revise the sphere if additional revenues became available. Mr. Alsop confirms that it could. Chairman Nuaimi states that the action would be a declaration by LAFCO as to what future planning should include. Mr. Alsop states that is correct. Chairman Nuaimi states, given that there is not a perpetual revenue stream, it makes little sense to expect an organization to plan for service delivery to a sphere of influence when there is no revenue stream to provide those services. Mr. Alsop states that is correct.

Chairman Nuaimi questions whether the sphere could be reduced to include just the area around the river area and park facility where services are provided. Mr. Tuerpe points out on the map the lease boundary. LAFCO staff was unable to obtain records as to why the District's boundary on the southern boundary of Riverside County; however, the assessment rolls from the County indicate ownership of non-developed areas by the federal government or CRIT. He says the funding source is limited to that developed portion along the Colorado River, and the crux of the issue is the termination of the lease and removal of the funding source in 2029. Chairman Nuaimi says he believes the zero sphere makes sense, but he would like to arrive at a compromise that limits the sphere to the developed area. Ms. McDonald states staff has no map available that identifies what has actually been developed. She points out that development is scattered inside the overall master lease, and says that the issue is that these are on possessory interest leaseholds and that is the only revenue stream for the District. She says staff could provide a recognizable boundary inside the overall master lease that reflects developed areas; however, most of the development is along the river and there are very few developed parcels westerly. She explains that the sphere of influence is a declaration of a planning tool that planning should not exist beyond that window. She states it would not change the fact that the district exists and no one can take the district away unless the registered voters support such a change. It would simply signal that, for planning purposes, the CSD should not plan beyond that horizon.

Commissioner McCallon states that staff's recommendation makes sense and the situation can be assessed again in five years. Ms. McDonald reiterates that even if there is no sphere of influence the Commission is still obligated to review the District again every five years as long as it exists.

Commissioner McCallon moves approval of staff recommendation, second by Chairman Nuaimi.

Commissioner Mitzelfelt states that, as the sphere is coterminous with the boundary of the District he does not see the practical effect of zeroing out the sphere. As the District is free to operate

within its existing boundary and the sphere does not extend beyond its boundary he does not view zeroing the sphere as a planning tool. He asks what the practical effect would be. Mr. Tuerpe responds that it would mean that the Commission would signal its position that at a future date, 2029, the District be dissolved. Commissioner Mitzelfelt states he does not believe anyone would dispute that, and from a perception standpoint, he does not believe it is worth the potential misinterpretation of changing the status quo.

Commissioner Pearson states that this District has a lot of homework to do as there are many things not being done in accordance with CSD law. He says this has been going on for some time and there appears to be a complete lack of oversight in how some of the outlying Districts are being governed. He cites the lack of appropriations limits and audits which do not comply with state law as examples. He adds that banking is being done in Arizona, allowing taxpayers' money to go to another state. He states that District staff has not been complying with the law and based upon that, he recommends foregoing establishing the zero sphere and making it clear that before the next municipal service review LAFCO's position is that the District must operate in compliance with the law. He points out that the District is not providing water, so the services assigned to the District should be changed to remove that power.

Chairman Nuaimi clarifies that zeroing the sphere tells the District that there can be no expansion of services beyond the current footprint. He does not believe the federal court case would affect the sphere of influence determination and he supports the staff recommendation to zero the sphere.

Commissioner Mitzelfelt states that, other than identifying the problematic issues, there is no practical way to effect the change. Mr. Tuerpe replies that that is correct; however, LAFCO staff has used the municipal service reviews as an educational tool for the Districts and staff has provided the District with information that would bring the District into compliance. Commissioner Mitzelfelt questions if County Special Districts has any jurisdiction over a CSD. Mr. Tuerpe states that it does not. Commissioner Mitzelfelt states that the taxes pay for countywide services; however, because of the unusual situation of the District being located on federal and Indian land, he believes the residents believe the services from the County are inadequate and he agrees. He states that zeroing the sphere would be a meaningless action but doing away with latent powers would be appropriate. He adds that there will be several more opportunities for LAFCO review before the CSD is dissolved.

Chairman Nuaimi states that if the sphere is not zeroed today the District could theoretically expand the existing services of parks and recreation and police and security patrol beyond the current boundaries where they provide service. Ms. McDonald explains that, given the existing boundaries of the District, the Commission has no ability or authority to restrict the delivery of service anywhere within the existing boundary. The restriction would be inherent in the issues identified in the municipal service review which are financial. She says the financial ability of this District is limited to only those properties which pay a property tax on their leasehold. She points out that there are ownerships that are developed on leaseholds that are not paying. She states that the Commission cannot limit where the District provides service inside its existing boundaries. The sphere of influence does not affect that existing service ability. She explains that the point is to acknowledge that this District will expire and the coterminous sphere was intended to be limited to the master lease even though the properties included in the District went beyond the master lease. That fact was not understood at the time of the District's formation. Chairman Nuaimi states that essentially zeroing the sphere is a statement by LAFCO that this district will terminate.

Commissioner Curatalo states he has difficulty supporting the zero sphere and he would prefer continuance to allow time to get clarification of the issues.

Commissioner McCallon states that based upon this discussion, he modifies his motion to recommend staff recommendations 1, 2, 3 and 5, and that recommendation 4 be amended to maintain the current sphere of influence, with the intention of reviewing the current issues at the next municipal service review in five years, second by Commissioner Curatalo. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Curatalo, Derry, McCallon, Mitzelfelt, Pearson. Noes: Nuaimi. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Cox.

CONSIDERATION OF LAFCO 3076 – CONSOLIDATION OF SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT AND SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider LAFCO 3076 - Consolidation of San Bernardino Valley Water Conservation District and San Bernardino Valley Municipal Water District. Notice of this hearing has been advertised as required by law in *The Sun,* a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, and those individuals and agencies requesting mailed notice.

Ms. McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by reference herein. She states that at the January hearing the Commission certified the completion of the EIR for LAFCO 3076 and LAFCO staff was then able to issue the certificate of filing required by law stating that the application was complete and could move forward for consideration. She says that one element of issuing the certificate of filing is that the Commission is obligated to open its public hearing within 90 days of the issuance; therefore, LAFCO 3076 by law had to be placed on the April agenda. However, it is staff's recommendation that the item be continued for the reasons outlined in the staff report, most importantly, RSG is preparing the independent financial analysis for this proposal. She states that on Monday, April 13, 2009, RSG met with both districts, reviewed its preliminary summary report, and outlined required data to complete the analysis. She explains that one element of the Municipal Water District's plan for service concerned an existing memorandum of understanding with the City of Redlands that had a sunset of July 2008. As there is a financial component included in that preexisting expired MOU, LAFCO staff contacted the City of Redlands to ask its position on moving forward. She says the City has indicated it wishes to move forward and is currently negotiating with the Municipal Water District. It will become part of the independent financial analysis. She indicates that LAFCO received the Water Conservation District resolution of opposition on April 6, 2009, and it will be included for consideration. Ms. McDonald states that for all of these reasons, staff is asking for continuance to the July 15, 2009 hearing. Both districts support the continuance.

Chairman Nuaimi states the letter submitted with the resolution of opposition expresses concerns regarding financial concerns, although the independent financial analysis has not yet been completed. Ms. McDonald states the Conservation District's position has been clearly identified through the environmental review process and the position regarding financial issues is reiterated by the resolution. RSG has received a copy of the resolution and the analysis will address these specific issues.

Chairman Nuaimi opens the public hearing and calls upon those wishing to speak. There is no one.

Commissioner McCallon moves approval of staff recommendation, second by Chairman Nuaimi. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Curatalo, Derry, McCallon, Mitzelfelt, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Cox.

PRELIMINARY BUDGET REVIEW FOR FISCAL YEAR 2009-2010 – APPROVE STAFF RECOMMENDATION

A. PROPOSED SCHEDULE OF FEES, DEPOSITS AND CHARGES

LAFCO conducts a public hearing for the preliminary review of the Budget for Fiscal Year 2009-10. Notice of this hearing has been advertised as required by law through publication in *The Sun*, a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, County departments, all Cities/Towns, Independent Special Districts and the County.

Mr. Tuerpe presents the staff report for Agenda Item 7A – Proposed Schedule of Fees and Charges, a copy of which is on file in the LAFCO office and is made a part of the record by reference herein. He states that LAFCO staff does not recommend any increases to the fees, deposits or charges; however, there are proposed modifications, and the two primary modifications are discussed. First, a non-refundable portion of the legal counsel deposit is requested, although the overall deposit does not increase. The non-refundable portion will allow for recovery of staff costs associated with the initial processing of the proposal. Second, a combination of the two notification deposits for registered voters and landowners is proposed. Combining these deposits into a single deposit will simplify tracking. He explains that currently the deposits are $450 each and the proposed combined amount is $700.

Chairman Nuaimi calls for questions from the Commission. Commissioner Pearson asks about the Department of Fish and Game fees increases. Mr. Tuerpe states the Fish and Game fee increases occur in December or January; therefore, a proposed language change is included which notifies the applicant that the applicant is responsible for the current Fish and Game fees in addition to the current State Board of Equalization fees. Commissioner Pearson asks if this would present some confusion for applicants. Mr. Tuerpe replies that the fee schedule includes a statement that the applicant will be charged a processing fee pursuant to the State Board of Equalization's adopted fee schedule. Ms. McDonald states that applicants are notified of the final costs, including the Department of Fish and Game Fees and State Board of Equalization fees, after the final hearing, so there is usually no question about the costs.

Chairman Nuaimi opens the public hearing and calls upon those wishing to speak. There is no one.

Commissioner Pearson moves approval of staff recommendation, second by Commissioner Derry. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Curatalo, Derry, McCallon, Mitzelfelt, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Cox.

B. PROPOSED BUDGET

Ms. McDonald presents the staff report for Agenda Item 7B – Proposed Budget, a copy of which is on file in the LAFCO office and is made a part of the record by reference herein. She states that this annual rite of spring does not provide hope and promise as in prior years, and this budget discussion will be unprecedented on a number of levels. The weakening economy of the County, the state and the nation, the lack of development activity which has a direct relationship to proposal filings, and the unprecedented reduction in property values affecting the revenue streams of many constituent agencies, among many other things, are factors in this budget. Ms. McDonald refers to the graph on page one of the staff report. She says that for Fiscal Year 2008-09 proposal filings are at the lowest level in more than 45 years. She says that we have received four proposals, and even though that appears to be very low, it is more than many LAFCOs in the state have received this year. The four proposals, which are 50 percent of what was anticipated, have caused concern and more of the same is projected for next year. She points out that municipal service reviews require a mandated cost for which staffing costs cannot be recovered. Only some direct costs are recoverable, and in fact, a number of the smaller agencies are unable to pay those costs. She states that the proposed budget will provide the funding necessary to complete the mandated municipal service review and sphere updates, allow for recovering direct costs only for those reviews, and identification of staffing and funding necessary to process the anticipated proposals for jurisdictional change and to provide for the ongoing efforts of the Commission to respond, answer questions and educate the Commission's constituency. The 2008-09 staffing and workload considerations are included in the staff report. The present year budget included six employees and it is anticipated that salaries and benefits will be approximately $12,000 below budget targets. However, for 2009-10, unprecedented changes are proposed.

She says that following last month's Commission hearing she met with the Administrative Committee of the Commission made up of Chairman Nuaimi, Vice Chairman Mitzelfelt and most current Past Chairman Biane, to review the upcoming year and to review potential problems or recommendations presented by staff. This budget includes the elimination of a position in order to bring staffing in line with targets for activity levels. She states the staff report includes elimination of the Clerk to the Commission position and the proposal to provide a severance package to her. She corrects the report to read that the severance package is due to the elimination of the position, not a severance package for early retirement. She states that the budget includes deferral until June 2010 of the 3.25 percent cost of living increase previously approved for all levels of staff, and the cost of living increase scheduled for June 2010 would be pushed forward to June 2011. That deferral would provide a savings of almost $21,000 this year due to its impact on salary-related benefits. Ms. McDonald states that her pending retirement will be moved back to the following fiscal year because of the need for termination payments necessary for the Clerk to the Commission this year.

She states that the services and supplies budget is proposed to be changed to establish a specific hearing schedule allowing for only nine meetings per year, with the months of September, December and March of the upcoming fiscal year being dark. Legal advertising is proposed to be changed to be limited to only that required by law. She says it has been this Commission's policy to advertise in the newspaper of general circulation and a local newspaper to provide the broadest coverage and notice possible; however, given the costs of legal advertising, it is proposed that that be reduced to only that required by law and to individual notices to residents, landowners and registered voters. She proposes to reduce conference and workshop attendance

by Commissioners and staff to include only four Commissioners and two staff at the CALAFCO Annual Conference, and only two staff at the CALAFCO Annual Staff Workshop.

Ms. McDonald refers to the annual audit where a policy change was requested regarding leave balances brought to the Commission upon new hire of employees. As the audit states, LAFCO assumes financial obligations for County employees hired by LAFCO for the value of the leave balances. She proposes that it be clearly identified in the Policies and Procedures that only leave balances for which sums payable are provided be recognized. For example, if an employee leaves another jurisdiction and has leave balances, those cash balances are to be cashed out from that jurisdiction, and redeposited with LAFCO and LAFCO will acknowledge those leave balances upon receipt of payment.

For the current fiscal year, Ms. McDonald recognizes additional revenue receipts in the sum of $95,000, which includes revenues from legal services which are payments for ongoing litigation costs that are required to be absorbed by the applicant. In this case, the San Bernardino Valley Municipal Water District has deposited an excess of $35,000 of the budget target. Environmental deposits for the processing of that EIR have exceeded revenue estimates by $8,000 and the official carryover is recognized as $51,000 more from last year. She points out increased costs in the services and supplies budget in order to bring estimated expenses in line with appropriation authority, including $25,000 in legal notices, $10,000 in postage, $25,000 in other professional services and $35,000 in outside legal counsel.

She states Government Code Section 56381 requires that net costs be apportioned to the County, all 24 cities and the 51 Independent Special Districts. In order to arrive at the apportionment amount, a calculation is required as to net cost. She points out on the overhead display the net costs and the total apportionment to the three categories of a total of more than $1 million, or $344,000 per category. She says that in the case of the cities, it will be apportioned based upon the State Controller's Report of revenues received and a direct percentage applied. In the case of the 51 Independent Special Districts, those districts adopted an alternative formula six years ago and that apportionment formula will be applied for all 51 districts. She says that, given the current situation, she posed a question to some of the larger districts, if they would participate in an alternative formula; however, the response was in the negative, so all 51 districts will pay their apportionment. She adds that that apportionment will be based upon the State Controller's Report available at this time, not the most current when the July 1 billing requirement through the Auditor-Controller takes place. In that way, the constituents can budget and not be subject to a possible fluctuation.

Ms. McDonald states her recommendation includes authorization to sign the contract for a three-year lease for a new copy machine, which includes a $200-per-month savings.

She summarizes her recommendations, which ask the Commission:

- Approve deferral of cost of living increase as described;
- Make policy item declarations authorizing reduction in staffing through the elimination of a single position and pay a severance package to the Clerk to the Commission to be paid no later than July 31, 2009;
- Establish the nine-meeting schedule;
- Change the policy and practice for legal advertising;
- Designate a reduction in participation in the annual conference and workshops;
- Approve the amendments to the Commission's Human Resources Policies and Guidelines related to the assumption of obligations for leave balances for new hires; and

- Adopt the proposed budget and schedule a public hearing for May 20, 2009 to review the final budget.

She states that following today's hearing, once the proposed budget is adopted, it will be forwarded for review and comment by the County, the 24 cities and the 51 Independent Special Districts. Those responses and comments will be provided to the Commission as part of its final hearing in May.

Chairman Nuaimi calls for questions from the Commission. Commissioner McCallon states these are difficult times and he wishes to acknowledge the sacrifices being made by staff in this budget, and comments that he would like to have the August hearing go dark and hold a hearing in September. Ms. McDonald states this was an arbitrary decision and if the Commission wishes to change the schedule, there would be no problem with that. There is consensus from the Commission to change the hearing schedule to go dark in August and to hold a hearing in September.

Commissioner McCallon states that based upon his experience with CALAFCO he would recommend terminating membership in the organization to save those costs. Ms. McDonald states that since the representation is in fact moving forward and will be decided at the Annual Conference in September, her recommendation is to continue the participation in CALAFCO so that the Commission has a voting right on that decision. She says that once that decision is made it would be up to the Commission to decide if it wishes to move forward. She says that the decision on regional representation on CALAFCO will require the support of as many as LAFCOs as possible. Chairman Nuaimi states that that topic was discussed during the administrative review. Commissioner Mitzelfelt asks when the annual dues are due. Ms. McDonald states they are due in July and they must be paid in order to vote. The $7,000 dues are non-refundable and cannot be prorated.

Commissioner Curatalo comments, on behalf of Special Districts, that the request that was made to the four largest agencies for an adjusted contribution was a reasonable request; however, it was a question of principle that taking revenues from one district to support others did not seem right. The effort, however, was very good and understandable. Ms. McDonald responded that she felt compelled to ask since the Special Districts' determination for payment is an alternative formula decided by the districts themselves. She says that for many agencies the payment of LAFCO fees is a burden and the State Controller's report is based upon revenues two years in arrears. She points out that those agencies' actual receipts this year will be much less than what those revenues were two years ago.

Commissioner Mitzelfelt joins Commissioner McCallon in thanking the staff for its sacrifices and for making the Commission's decisions somewhat easier. Chairman Nuaimi echoes that comment and says it is not easy to cut a budget when there are no creative ways of generating revenue.

Chairman Nuaimi opens the public hearing and calls upon those wishing to speak. There is no one.

Commissioner Mitzelfelt moves approval of staff recommendation, as modified, second by Commissioner Curatalo. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Curatalo, Derry, McCallon, Mitzelfelt,

Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Cox.

REVIEW AND CONSIDERATION OF NOMINATION FOR SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY BOARD OF DIRECTORS

Ms. McDonald presents the staff report for Item 8 - Review and Consideration of Nomination for Special District Risk Management Authority (SDRMA) Board of Directors, a copy of which is on file in the LAFCO office and is made a part of the record by reference herein. She says this item seeks information from the Commission to determine if any of the Commissioners are interested in being nominated for a position on the SDRMA Board of Directors. She says if there is no interest, this report is to be noted and filed. As no Commissioner expressed interest, the report is noted and filed.

PENDING LEGISATION REPORT

Ms. McDonald presents the Legislative Committee minutes and the existing CALAFCO legislation report provided to the Commission.

She says AB1582 is the CALAFCO-sponsored Omnibus Bill. One item relates to small local water systems and concerns expressed by the State on their operation and the potential for consolidation through LAFCO and assumption of those services.

AB1109 (Blakeslee) is a placeholder bill introduced by the Assemblyman to address issues related to special districts in critical financial straits. She says Assemblyman Blakeslee is from San Luis Obispo and is directly affected by the Los Osos Community Services District and its declaration of bankruptcy for failure to meet its liabilities. She explains that this is proposed through a stakeholders' group to look at the ability to create receivership or other type of entity to take over the operations as it is currently structured for Special Districts and in order to create an environment where those agencies on the brink of bankruptcy can be forced into receivership and operated for the betterment of the community. She states that this is in the early stages and she has been asked to participate on the stakeholders' group; however, she has not been able to participate fully to date. She will participate with the CALAFCO committee specifically on proposing language to address these situations locally rather than through the Court system.

EXECUTIVE OFFICER'S ORAL REPORT

Ms. McDonald reports that a decision in the Appeals Court was provided to the Commission related to LAFCO 3076 as well as a copy of the letter from the Water Conservation District indicating it will not pursue that appeal further.

COMMISSIONER COMMENTS

Chairman Nuaimi presents a Resolution of Appreciation to Ms. McDonald commending her for her 30 years of service to LAFCO. Chairman Nuaimi comments that he was happy to hear that Ms. McDonald plans to extend her tour of duty with LAFCO for a few months. Ms. McDonald thanks the Commission and states her career with LAFCO has been very enjoyable and an honor. Chairman Nuaimi states that having Ms. McDonald at the Commission's side during some of the very contentious battles was very valuable and adds that she is an outstanding

asset for the County, each of the cities and special districts, and her efforts in engineering the County Fire Reorganization were amazing.

COMMENTS FROM THE PUBLIC

Chairman Nuaimi calls for comments from the public.

John Longville, on behalf of the San Bernardino County Water Conservation District, addresses Chairman Nuaimi's statement that the independent financial analysis of the proposed consolidation has not yet been presented and yet the Conservation District has indicated concerns about the financial analysis. He says those concerns do not refer to the financial analysis, but to the Environmental Impact Report financial component, which has already been presented to the Commission and which contained erroneous information based on the Municipal Water District's assertion that the consolidation would be appropriate because of $900,000 in mining revenue. Mr. Longville states, in point of fact, that is not accurate and that is a significant part of the concern. He states that it is the Conservation District's contention that it is impossible for LAFCO to comply with Government Code Section 56881(b) which requires a finding that the public service costs of the consolidation proposal are likely to be less than or substantially similar to the costs of alternative means of providing service in light of the fact that the ground water charge, which the Water Conservation District levies and to which the Municipal Water District has no legal basis to assess under state law, would go away, thereby causing a significant source of revenue to disappear. He says that revenue is paid by agencies which remove water from the area, the largest customer being the City of Riverside. He says that revenue would have to be made up by increasing the water charges for customers of the Municipal Water District or increasing property taxes for residents of the District.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS ADJOURNED AT 10:50 A.M.

ATTEST:

ANNA M. RAEF
Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

MARK NUAIMI, Chairman