

**SAN DIEGO LAFCO
MINUTES OF THE REGULAR MEETING
AUGUST 2, 2004**

There being a quorum present, the meeting was convened at 9:06 a.m. by Chairwoman Patty Davis. Also present were: Regular Commissioners - Councilmember Donna Frye, Supervisor Bill Horn, Supervisor Dianne Jacob, Bud Pocklington, Andrew Vanderlaan, and Ron Wootton; Alternate Commissioners - Harry Mathis, Andy Menshek, and Betty Rexford; LAFCO and County Staff - Executive Officer Michael Ott; Chief, Governmental Services Ingrid Hansen; Local Governmental Analyst Laura Biery; and LAFCO Legal Counsel, William Smith. Absent were: Regular Commissioner - Councilmember Jill Greer; Alternate Commissioner - Supervisor Greg Cox.

Item 1
Approval of Minutes
of Meeting Held July 12, 2004

On motion of Commissioner Horn, seconded by Commissioner Pocklington, the commissioners dispensed with reading the minutes of July 12, 2004, and approved said minutes.

Item 2
Executive Officer's Recommended Agenda Revisions

Michael Ott indicated there were no revisions to the agenda.

Item 3
Commissioner/Executive Officer Announcement

Michael Ott provided an update on regional fire protection issues. He reported that the Board of Supervisors would be deliberating on August 3, 2004, to provide funding for LAFCO to assist with a fire regionalization study. He said he plans to meet with City managers to discuss the municipal component of the regionalization study. Supervisors Jacob and Horn, Commissioners Vanderlaan, Wootton, and Alternate Commissioner Menshek provided additional information.

Item 4
Public Comment

No members of the public requested to speak.

Item 5A
Adoption of an Amendment to the Sphere of Influence
for the City of El Cajon (SA04-17)

Item 5B
Proposed "Cajon View Drive Reorganization"
(City of El Cajon) (RO04-17)

At the request of Michael Ott, the Commission waived the staff report.

Chairwoman Davis opened the public hearing.

With no members of the public wishing to speak in support or in opposition of the item, and no discussion from the Commission, Chairwoman Davis closed the public hearing.

On motion of Commissioner Jacob, seconded by Commissioner Rexford, and carried unanimously by the commissioners present, the Commission took the following actions:

- (1) Certified that the determination by the City of El Cajon that this sphere amendment and reorganization are exempted from environmental review has been reviewed and considered;
- (2) Amended the sphere of influence for the City of El Cajon to include the territory shown on the attached map and adopted the written Statement of Determinations, as shown in Exhibit A; and
- (3) Adopted the form of resolution approving the minor sphere amendment and reorganization for the reasons set forth in the Executive Officer's Report, waived the Conducting Authority proceedings according to Government Code Section 56663(c), and ordered the reorganization, subject to the following term and condition:
 - a) Payment of all LAFCO and State Board of Equalization processing fees.

Item 6A
Adoption of an Amendment to the Sphere of Influence
for the Spring Valley Sanitation District (SA04-16)

Item 6B
Proposed "Nafso Annexation" to the
Spring Valley Sanitation District (DA04-16)

At the request of Michael Ott, the Commission waived the staff report.

Chairwoman Davis opened the public hearing.

With no members of the public wishing to speak in support or in opposition of the item, and no discussion from the Commission, Chairwoman Davis closed the public hearing.

On motion of Commissioner Pocklington, seconded by Commissioner Jacob, and carried unanimously by the commissioners present, the Commission took the following actions:

- (1) Found in accordance with the Executive Officer's determination, that pursuant to Section 15319(b) of the State CEQA Guidelines, this minor sphere amendment and annexation are not subject to the environmental impact evaluation process;
- (2) Amended the sphere of influence for the Spring Valley Sanitation District to include the territory shown on the attached map and adopted the written Statement of Determinations, as shown in Exhibit A; and
- (3) Adopted the form of resolution approving the minor sphere amendment and annexation for the reasons set forth in the Executive Officer's Report, waived the Conducting Authority proceedings according to Government Code Section 56663(c), and ordered the annexation, subject to the following term and condition:
 - a) Payment of all LAFCO and District annexation fees along with the State Board of Equalization fee.

Item 7

Tijuana Watershed Municipal Service Review and Sphere of Influence Updates (MSR02-20; SR02-20[A]; SR02-20[B]; SR02-20[C])

Mr. Ott provided an update and direction for Items 8 and 9.

Mr. Ott reported that LAFCO staff met with City of San Diego representatives to discuss concerns regarding successor responsibilities. He indicated that the City's concerns have been addressed effectively, as illustrated in the handout (Item 8 & 9 - Attachment 1 - Revised Terms and Conditions) provided to the Commission. In addition, Mr. Ott said that LAFCO staff drafted a referral letter to the District Attorney and the Attorney General (Item 8 & 9 - Attachment 5) providing information on issues regarding the Tia Juana Valley County Water District. He asked the Commission to review the draft letter and provide LAFCO staff with any revisions. Mr. Ott said that since the July 12th meeting, LAFCO staff conducted further research on the functions of the Tia Juana Valley County Water District and indicated that the conclusions, determinations, and recommendations of the MSR Sphere Update and dissolution reports have been reaffirmed. He reported that on July 30th, LAFCO received a fax from the District's law firm proclaiming the legality of the District's Fixed Charge Special Assessment. Mr. Ott said that the District's conclusions were incorrect. Mr. Ott also reported that per the Public Records Act, LAFCO staff supplied information to the District and said that a copy of the information was provided to the Commission. In addition, Mr. Ott said that Chris Gilmore, representative from the County Auditor and Controllers Office, and Ben Trovaten, representative from the County Treasurer Tax Collectors Office were invited

to the meeting to answer any questions from the Commission and public. He indicated that the County is not a responsible party for determining the legality of the Fixed Charge Special Assessment, but acts in a ministerial capacity by implementing requests to impose taxes or assessments. Mr. Ott said that per Government Section Code 56383(d) and LAFCO's Fee Schedule, the processing fees associated with the Tijuana Watershed Municipal Service Review and Sphere of Influence Updates – as well as the dissolution of the Tia Juana Valley County Water District – have been waived.

Ingrid Hansen, Chief, Governmental Services, provided a PowerPoint presentation to the Commission.

Chairwoman Davis opened the public hearing.

Howard Freelove, Representative of the Citizens Action Committee for the Dissolution of the Tia Juana Valley County Water District, addressed the Commission in support of the dissolution. He provided a history of the process in obtaining votes from residents in support of the dissolution.

Michael Giorgino addressed the Commission in support of the Citizens Action Committee for the Dissolution of the Tia Juana Valley CWD.

Art Letter, former General Manager of the Tia Juana Valley County Water District, addressed the Commission in opposition to the dissolution and provided a handout of his presentation.

David Gomez, Tia Juana Valley County Water District Board Member, addressed the Commission in opposition to the dissolution.

Nick Inzunza, Tia Juana Valley County Water District Board Member, addressed the Commission in opposition of the dissolution.

Congressman Bob Filner, Representative of the 51st Congressional District, addressed the Commission in opposition to the dissolution.

Mary Odermatt, former President of the Tia Juana Valley CWD, addressed the Commission in support of the dissolution. She stated that the District was not formed to advocate, but was formed to protect the groundwater from exploitation in the valley.

Chairwoman Davis closed the public hearing.

Commissioner Jacob asked Chris Gilmore, Representative for the County Auditor and Controller's Office, to explain the County's rules and responsibilities of imposing taxes or assessments.

Chris Gilmore, Deputy Controller of the County Auditor and Controller's Office, said that the County has a collection agreement with the Tia Juana Valley County Water District. He indicated that every year, the District provides a letter to the County stating that the assessments are made in accordance with State Constitution. He indicated that the

County does not conduct legal interpretation, and is required to implement taxes or assessments based on the District's figures in accordance to the law. Mr. Gilmore provided the Commission with copies of the District's letters in relation to the Fixed Charge Special Assessment.

Ben Trovaten, Chief Deputy Tax Collector, indicated that any inquiries the County Treasurer Tax Collector's Office receives regarding implementation of taxes or assessments are referred to the Auditor and Controller's Office.

Commissioner Andy Menshek requested that the Commission adhere to the maximum time limits allowed per speaker.

In response to a comment from Congressman Bob Filner, Michael Ott said that Government Section Code 56383(d) allows the Commission to waive fees when it is in the interest of the public and asked that the Commission ratify LAFCO staff's recommendation in relation to the subject fees. He also said LAFCO's Fee Schedule, which was adopted by the Commission, contains a provision that allows the Executive Officer to waive or reduce processing fees for applicants when it is consistent with the Commission's action or recommendation. Mr. Ott said that in 1984, the Commission adopted a zero sphere of influence for the Tia Juana Valley County Water District and indicated that one of the follow-up aspects associated with that decision was the dissolution of the District. Mr. Ott said that LAFCO's conclusion of the Fixed Charge Special Assessment was based on LAFCO Legal Counsel's opinion. In response to another comment from Congressman Filner, Michael Ott said that the Recommendations and Conclusions in the MSR report are based on 46 other determinations in addition to the 3 that are related to assessments and taxes. In response to a statement regarding the referral to the District Attorney and the Attorney General, Michael Ott said that any information and documentation gathered by LAFCO, through the process of a municipal service review, should be made available to other agencies in the county.

Michael Ott clarified for Congressman Filner that San Diego LAFCO is independent of the Board of Supervisors, and that the Commission is an autonomous agency consisting of elected officials from the County, Cities, and special districts.

In response to a comment regarding environmental justice, Commissioner Ron Wootton said that LAFCO has considered the environmental justice aspect of the MSR report and dissolution.

Commissioner Bill Horn left at 11:25 a.m.

In response to a concern from Commissioner Frye regarding two different legal opinions from both LAFCO and the Tia Juana Valley CWD's law firm, LAFCO Legal Counsel Bill Smith said that he reviewed the letter from the District's attorney and indicated that the District's Fixed Charge Special Assessment is not an "Ad Valorem," and is indeed a fixed charge, which is not authorized under the California Water Code, Proposition 13 or Proposition 218.

In response to a question from Commissioner Frye, Michael Ott explained voting regulations. He said that at least 10% of registered voters residing within the subject agency would need to sign petitions to initiate LAFCO proceedings. He said that the County's Registrar of Voters is responsible for reviewing the petitions. Mr. Ott said that if petitions are certified sufficient, the dissolution proposal is scheduled for a LAFCO hearing. Mr. Ott said that after the hearing, a Conducting Authority/Protest Hearing is scheduled.

Michael Ott said that the options of the Commission could be to approve, deny, or modify LAFCO staff's recommendations in relation to the MSR report and the dissolution. He indicated that LAFCO does not have the authorization to order an election without protest. He said that if the Commission approves staff recommendations, a protest hearing will be held. Mr. Ott said that if property owners or voters within the Tia Juana Valley County Water District obtain signatures from 25% or more of registered voters within the District, an election would be held.

In response to a question from Commissioner Jacob, Michael Ott said that the residents of the Tia Juana Valley CWD have the option to form a civic, planning, or community group for advocacy purposes. In response to forming a Community Services District, Mr. Ott said that LAFCO discourages the formation of new layers of government or other special districts within the City of San Diego when existing ones are in place.

On motion of Commissioner Jacob, seconded by Alternate Commissioner Rexford, and carried unanimously by the commissioners present, the Commission took the following actions:

- (1) Found, in accordance with the Executive Officer's determination, that pursuant to Section 15306 of the State CEQA Guidelines, the municipal service review is not subject to the environmental impact evaluation process because the service review consists of basic data collection and research that will not result in a disturbance to an environmental resource;
- (2) Found, in accordance with the Executive Officer's determination, that pursuant to Section 15061(b)(3) of the State CEQA Guidelines affirming a zero sphere of influence for the Tia Juana Valley County Water District is not subject to the environmental impact evaluation process because it can be seen with certainty that there is no possibility for the proposed project to significantly impact the environment, and the activity is not subject to CEQA;
- (3) Found, in accordance with the Executive Officer's determination, that pursuant to Section 15061(b)(3) of the State CEQA Guidelines affirming coterminous partial spheres of influence for the portions of the Cities of San Diego and Imperial Beach located in the Tia Juana Valley County Water District is not subject to the environmental impact evaluation process because it can be seen with certainty that there is no possibility for the proposed project to significantly impact the environment, and the activity is not subject to CEQA;

- (4) For the reasons set forth in the August 2, 2004 LAFCO staff report and in the Tijuana Watershed (Western Hydrologic Unit) Municipal Service Review and Sphere of Influence Update Study, affirmed a zero sphere of influence for the Tia Juana Valley CWD, affirmed coterminous partial spheres for the boundary between the Cities of San Diego and Imperial Beach located in the Tia Juana Valley CWD as previously adopted, and adopted the written Statements of Determinations as proposed in Exhibits A, B, and C; and
- (5) For the reasons set forth in the Tijuana Watershed (Western Hydrologic Unit) Municipal Service Review, adopted the Determinations proposed in Section III.

Item 8

"Dissolution of the Tia Juana Valley County Water District" (DT04-10)

After receiving testimony on Items 8 and 9, Chairwoman Davis closed the public hearing.

In response to a question from Commissioner Frye, Michael Ott said that the City Attorney's Office and the City Manager's Office worked with LAFCO staff in developing the Revised Terms and Conditions (Item 8 and 9 – Attachment 1).

Bill Smith indicated that the dissolution would not go into effect until LAFCO's Executive Officer files the Certificate of Completion with the Office of the County Recorders.

Commissioner Frye moved the LAFCO staff recommendation.

In response to a question from Commissioner Frye, Michael Ott said that under the statute for initiating dissolution proposals, there is a six month time period associated with gathering petition signatures. He indicated that there is a different statutory requirement for protest provisions contained in Government Code Section 57002. Mr. Ott recommended that the Commission follow that statute, which states that within 35 days following the adoption of the Commission's resolution, making determinations, the Executive Officer shall set the proposal for hearing and notice; the hearing shall not be held prior to the expiration of the reconsideration period, and that date shall not be less than 21 days or more than 60 days after the notice is given. Mr. Ott indicated that a protest hearing could be scheduled 30 days after the Commission's determination.

Commissioner Frye said she would like the Commission to provide 95 days for District residents to collect signatures in opposition of the dissolution.

Bill Smith said that a protest hearing cannot be held until the 30 day reconsideration period has passed, and that Mr. Ott is required to give notice of the hearing within 35 days following the date of the Commission's adopted resolution, which would be 35 days after August 2, 2004. Mr. Smith indicated that if a notice is sent out 35 days after the date of the Commission's adopted resolution, LAFCO could set the protest hearing 60 days from that notice, which would be a total of 95 days from August 2, 2004.

At the request of Commissioner Frye, seconded by Commissioner Jacob, Chairwoman Davis amended staff recommendation to include the following:

Set a protest hearing for the maximum time limit specified by State law, which is 95 days from August 2, 2004.

On motion of Commissioner Frye, seconded by Commissioner Jacob, and carried unanimously by the commissioners present, the Commission took the following actions:

- (1) Found in accordance with the Executive Officer's determination, that pursuant to Section 15320 of the State CEQA Guidelines, the dissolution is not subject to the environmental impact evaluation process because the change of organization of this local governmental agency does not change the geographical area in which previously existing powers are exercised;
- (2) Found that since the Tia Juana Valley CWD does not receive property tax revenue, the Master Property Tax Resolution For Jurisdictional Changes Involving Agencies That Do Not Receive Any Property Tax pertains to this dissolution;
- (3) Designated the City of San Diego as successor agency to the Tia Juana Valley County Water District solely for the purpose of winding up the District's affairs, as further described in the attached terms and conditions;
- (4) For the reasons set forth in the Executive Officer's July 12 and August 2, 2004 Reports, adopted the form of resolution approving this dissolution and delegating to the Executive Officer of the Local Agency Formation Commission the responsibility for holding conducting authority proceedings subject to the terms and conditions as provided in Attachment 1 attached hereto;
- (5) Authorized LAFCO's legal counsel in coordination with LAFCO's Executive Officer to enforce the Terms and Conditions of Dissolution as adopted by the Commission; and
- (6) Requested the Executive Officer follow the maximum time limit allowed under State law and notice a protest hearing 35 days from August 2, 2004, and set the protest hearing not more than 60 days after notice is given. The Commission noted that the intent of the request is to allow petitioners 95 days to circulate protest petitions.

Item 9
Fourth Quarter Budget Update FY 2003-2004

This was an information item and no action was required.

Item 10
Legislative Report

Michael Ott said that the staff report would be provided at the September 13, 2004 LAFCO meeting.

There being no further business to come before the Commission, the meeting adjourned at 11:46 a.m. to the September 13, 2004 meeting, in Rooms 302-303, County Administration Center.

TITA JACQUE CAYETANO
Administrative Assistant