


EXECUTIVE OFFICER'S REPORT

To The **Local Agency Formation Commission**

TO:

Commissioner **VACANT** [City] Commissioner **MICHAEL KELLEY**(Vice-Chair) [Supervisor]
Commissioner **JASON JACKSON** (Chair) [City] Commissioner **RAY CASTILLO** [Supervisor]
Commissioner **DAVID WEST** [Public]

Alt Commissioner **JACK TERRAZAS** [Supervisor]
Alt Commissioner **MARIA NAVA-FROELICH** [City]
Alt Commissioner **RALPH MENVIELLE** [Public]

REPORT DATE: December 24, 2015
FROM: Jurg Heuberger, AICP, CEP, Executive Officer 
PROJECT: Palo Verde Waste Water Treatment Project PVC 1-14

HEARING DATE: **January 28, 2016** **TIME:** 9:05 a.m.

AGENDA ITEM NO: 12

HEARING LOCATION: 1275 Main St., El Centro, Ca. (City Council Chambers)

RECOMMENDATION(S) BY THE EXECUTIVE OFFICER (In summary & order)

- OPTION #1:** Approve the Expansion of Service as requested
- OPTION #2:** Approve the Expansion of Service as modified following the hearing
- OPTION # 3:** Deny the Expansion of Service
- OPTION # 4:** Continue the item not to exceed 70 days

Project Data:

DATA & FACTS:

Project ID	PVC 1-14	
Project Name:	Palo Verde Waste Water Treatment Project	
Applicant/Proponent:	Palo Verde Water District	
Application Type:	Petition	
Application Filed:	April 17, 2014	
Certificate of Filing:	April 17, 2014	
Area/Size:	NA	
Location/Legal:	See attached Map & Legal Description	Exhibit "A"
Proposed Project:	Additional Service to be provided by the Palo Verde Water District	

TAX AGREEMENT:

Board of Supervisors Action:	NA
City Resolution:	NA
Tax Split:	NA

CEQA:

Lead Agency:	Palo Verde Water District/Border Environment Cooperation Commission (BECC)	
Documentation:	Mitigated Negative Declaration & Final Initial Study	Exhibit "B"

OTHER DOCUMENTS:

Water Rate Study	Exhibit "C"
Summary of Project by BECC	Exhibit "D"
Financial Statements	Exhibit "E"

ANALYSIS

I: General Background:

This application by the Palo Verde Water District is to add a new service to their system, that being a Waste Water Treatment Plant and associated infrastructure.

The Palo Verde Water District currently and historically has provided Potable Water only. The Cortese Knox Hertzberg Reorganization Act requires the approval of LAFCO before any District can expand its services with the addition of a new service.

The Palo Verde Water District was established in March 2, 1962 to provide water treatment/distribution services to the townsite of Palo Verde. Palo Verde is a small community located adjacent to the Colorado River on the east and the County of Riverside on the north. It is a small rural community that has limited population or services.

The County of Imperial provides fire protection and law enforcement to the area.

Due to its proximity to the river and due in part to its small lot configuration, the use of septic tanks as a primary treatment for wastewater has been problematic for years.

Rather than restate an extensive project description within the EO Report, your attention is directed to Exhibit "B", which is the Final Initial Study and which contains a detailed project report, purpose and location of facilities.

II: Gov. Code 56824.14:

This project must be reviewed by the Commission pursuant to the following code section:

56824.14. (a) The commission shall review and approve with or without amendments, wholly, partially, or conditionally, or disapprove proposals for the establishment of new or different functions or class of services, or the divestiture of the power to provide particular functions or class of services, within all or part of the jurisdictional boundaries of a special district, after a public hearing called and held for that purpose. The commission shall not approve a proposal for the establishment of new or different functions or class of services within the jurisdictional boundaries of a special district unless the commission determines that the special district will have sufficient revenues to carry out the proposed new or different functions or class of services except as specified in paragraph (I).

- (I) The commission may approve a proposal for the establishment of new or different functions or class of services within the jurisdictional boundaries of a special district where the commission has determined that the special district will not have sufficient revenue to provide the proposed new or different functions or class of services, if the commission conditions its approval on the concurrent approval of sufficient revenue sources pursuant to Section 56886. In approving a proposal, the commission shall provide that if the revenue sources pursuant to Section 56886 are not approved, the authority of the special district to provide new or different functions or class of services shall not be established.
- (2) Unless otherwise required by the principal act of the subject special district, or unless otherwise required by Section 57075 or 57076, the approval by the commission for establishment of new or different functions or class of services, or the divestiture of the power to provide particular functions or class of services, shall not be subject to an election.

(b) At least 21 days prior to the date of that hearing, the executive officer shall give mailed notice of the hearing to each affected local agency or affected county, and to any interested party who has filed a written request for notice with the executive officer. In addition, at least 21 days prior to the date of that hearing, the executive officer shall cause notice of the hearing to be published in accordance with Section 56153 in a newspaper of general circulation that is circulated within the territory affected by the proposal proposed to be adopted.

(c) The commission may continue from time to time any hearing called pursuant to this section. The commission shall hear and consider oral or written testimony presented by any affected local agency, affected county, or any interested person who appears at any hearing called and held pursuant to this section.

III: District Approvals:

- | | | |
|----|------------------------------------------------------------------------------|-------------|
| 1) | RESOLUTION 3-15 <i>Adoption of Rate Study</i> | EXHIBIT "F" |
| 2) | RESOLUTION 2-12 <i>Adding Wastewater Collection & Treatment Services</i> | EXHIBIT "G" |

IV: County Land Use:

- 1) *County General Plan:* Under the County's General Plan, the area being proposed for service is shown to be Urban for the Palo Verde Plan.
- 2) *County Zoning:* Varies
- 3) *Surrounding Land Uses:* The project is generally surrounded by agricultural land, the Colorado River and the County of Riverside on the north.

V: Sphere of Influence:

EXHIBIT "H"

The proposed project is within the boundary limits of the current Sphere of Influence for the District

VI: Cortese/Knox/Hertzberg Reorganization Act of 2000:

Government Code Section 56668 specifically requires that certain factors be considered in the review of any proposal, and shall include but not be limited to Items A through P.

- (A) *Population, population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.*

Comment: The proposed project involves the possible implementation of a Waste Water Treatment Facility and related infrastructure in the town of Palo Verde which is an unincorporated community in Imperial County. This town is located on the border between Arizona and California in the northeast corner of Imperial County, immediately south of the Riverside County/Imperial County line. This is an area with a small population, with a limited number of existing small lots and an area that has a seasonal occupancy. The topography is generally flat and the drainage tends to flow to the Palo Verde Lagoon which then flows back to the Colorado River. The per capita assessed value is also reasonably low in contrast to the rest of the county.

The nearest incorporated community would be the City of Blythe, which is in Riverside County.

The land use within the boundary of the district is mostly residential with a limited amount of commercial and some agricultural.

The likelihood of significant growth in the area within the next ten years is marginal at best. Even with the installation of a wastewater treatment system, which will make some development more likely, the area is fairly remote. It can be characterized as an area for recreation which would generally entail second homes and an area for retirement, although senior services are also not generally available.

- (B) *Need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas.*

'Services,' as used in this subdivision, refers to governmental services whether or not the services are services, which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.

Comment: The installation of the Waste Water Treatment system will afford an opportunity for some development that might otherwise be more difficult or not likely. However given the current number of existing parcels and the fact that it is not likely to encourage significant investment in subdivisions, and given the location of the town, it is unlikely that government services or demands for same will increase substantially. The County already has a fire and sheriff substation in the area and an increase in population would need to be substantial in order to affect the service capacity of the existing systems.

(C) *The effect of the proposed action and of alternative actions, on adjacent area, on mutual social and economic interests, and on the local governmental structure of the County.*

Comment: The proposed project will not affect social or economic interests of any adjacent areas as most surrounding land is farm land and it is not likely to affect the local government structure of the County in any way..

(D) *The conformity of both the proposed and its anticipated effect with both the adopted Commission policies on providing planned, orderly, efficient pattern of urban development, and the policies and priorities set forth in Section 56377.*

Comment: The proposed project is consistent with the County's General Plan as well as the Palo Verde Plan. Implementation of the project would allow for a more efficient implementation of urban development as two crucial services (water and sewer) would make development more effective.

(E) *The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.*

Comment: This project will not affect agricultural land.

(F) *The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or of corridors of unincorporated territory and other similar matters affecting the proposed boundaries.*

Comment: This project will not affect boundaries or lines of ownership or assessment, nor would it create islands.

(G) *A regional transportation plan adopted pursuant to Section 65080, and consistency with City and County General and Specific Plans.*

Comment: The project has no effect on the regional or local transportation plans.

(H) *The Sphere of Influence for any local agency, which may be applicable to the proposal being reviewed.*

Comment: This project is within the Palo Verde Water District's Sphere of Influence.

(I) *The comments of any affected local agencies.*

Comment: No significant adverse comments have been received for this project by any responsible agency, nor from any individual.

(J) *The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.*

Comment: The project has been reviewed by a number of agencies in terms of both environmental as well as financial impacts. The District with outside help has revised its current fee schedule to place it in a financially better position. There little doubt that this is a struggling district due largely to the limited number of service connections and the financial status of the residents. More discussion on this topic is found later in this report and it is something that the Commission will need to make findings for.

(K) *Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.*

Comment: The project has an adequate raw water supply.

(L) *The extent to which the proposal will affect a city or cities and the county in achieving their respective far shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.*

Comment: This project will have a limited effect on the County's compliance with the regional housing needs in part due to its location and in part due to its size.

(M) *Any information or comments from the landowner or owners, voters, or residents of the affected territory.*

Comment: No comments have been received to date.

(N) *Any information relating to existing land use designations.*

Comment: Existing land use information on the area is readily available from the County Planning and Development Services Department. The project does not propose to change said designations.

(O) *The extent to which the proposal will promote environmental justice. As used in this subdivision, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services.*

Comment: The proposed project has no effect on environmental justice related issues.

(P) *Other considerations!*

Comment: None

VII: Financial Review:

The Commission needs to carefully review all of the information in this report as well as the attachments and make a determination on whether or not the requested extension of Services can be supported by the District.

There is no doubt that from a health and safety consideration there is a need for a waste water treatment system in order to eliminate the environmental issues related to the use of septic tank, particularly with regard to the proximity of the District to the Colorado River which serves significant downstream users. From this perspective there should be no argument that the Commission can find that there is a need for the service and absent its installation, there are risks to the environment.

With regard to the financial review, here again the Commission needs to make a finding, however there are concerns. The Executive Officer has reviewed all of the documents including the District's financials. The Executive Officer is also keenly aware that special Districts, particularly small districts are often reluctant to raise fees, sometime to the long term detriment of the residents.

In this instance the District has limited service connections which make the ability of spreading out the costs difficult and consequently the individual connection/use fees can be significant. This is also an area that does not show a high per capita income, which again makes it difficult for the District not only to raise fees but sometime to collect the charges.

As can be seen from the financial information including the District's budget review and the rate study, the water service side has shown some problems due to a lack of adequate fees and other issues. As can also be seen the cost for both services will be significant.

However marginal the financial picture looks, not approving the opportunity for the District to enter into this service, particularly with the financing and support from the various agencies, could result in creating an environmental problem and possibly lead to the area being uninhabitable.

The Executive Officer, with concern, is of the opinion that the extension request should be approved with conditions.

Public Notice:

Public notice for the proposed project hearing before the Imperial County Local Agency Formation Commission has been given, according to Section 56660 and 56661. Notice was issued in the form of a publication in the Imperial Valley Press at least twenty-one (21) days prior to said hearing, and posted on the Web. In addition, direct mail notices were at least sent to all property owners within ½ mile.

Report:

In accordance with Section 56665, the Executive Officer has prepared a report, and presented said report to your Commission and to any public member requesting such report. In addition, a copy of said report has been issued to the applicant, the County Counsel, County Executive Office, County Public Works, Imperial Irrigation District, Palo Verde Water District, El Centro Regional Medical Center, and any agency requesting same.

Conflict of Interest Statement:

To date (at the writing of this report) no Commissioner has indicated that there is any conflict of interest with regard to this project, nor has any Commissioner reported any communications with the Applicant, Proponent or Opponent. The Commissioners will be asked to declare that during and prior to the public hearing. The Executive Officer does not have any known conflict of interest, does not own any property within the project area.

EXECUTIVE OFFICERS RECOMMENDATION

RECOMMENDATION:

It is the recommendation of the Executive Officer that LAFCO conduct a public hearing and consider all information presented in both written and oral form. The Executive Officer then recommends, assuming no significant public input warrants to the contrary, that LAFCO take the following action;

- I: Approve the project (authority of the District to provide the additional service of Waste Water Treatment/infrastructure) as requested by the applicant (Palo Verde Water District) and supported by the County, BECC and other regulatory agencies.
- II: Take the action subject to the following:
 - 1: Certify the Negative Declaration as presented and prepared by the District/BECC and as attached hereto.
 - 2: Make the finding that this project with the conditions imposed herein (or as modified) is in substantial compliance with the provisions of the Cortese/Knox/Hertzberg Reorganization Act of 2000 and the Imperial County LAFCO Policy, and Procedures.
 - 3: Make the findings pursuant to Gov. Code Section 56375 that:
 - a) The project does not require any land use changes such as zone changes.
 - b) The project is within the existing sphere of influence pursuant to Gov. Code 56375.5
 - c) The project if not approved could lead to environmental degradation that may be severely detrimental to the area's residents and downstream water users.
 - d) The project although financially marginal, has the chance of remaining viable provided the District's Board of Directors exercises diligence in its budget and rate reviews and commits to make the necessary annual adjustments to keep the system in the financial positive.
 - 4: Approve the inclusion of the additional service (Waste Water Treatment) to the Palo Verde Water District, subject to all of the following conditions:
 - A. Authorize the Executive Officer to forward the Resolution of approval to the District, as an information item and for compliance with all relevant conditions imposed herein. (*Pursuant to the Cortese/Knox/Hertzberg Reorganization Act of 2000*)
 - B: Pursuant to Cortese-Knox-Hertzberg, authorize the Executive Officer to complete the actions necessary to implement the requested approval
 - C: The boundary of the District shall remain as it is currently configured. This additional service does not change the boundary of the Districts service area or Sphere of Influence.
 - D: The District shall transmit to the Executive Officer certified copies of all approvals given or required to be given by the District in approving the project reported herein, unless that information has already been submitted.
 - E. Check payable to LAFCO as determined by the Executive Officer to fully offset the cost of processing the application.

- F. The extension approval shall not be final or recorded until all conditions have been completed and all costs paid in full.
- G. The District shall, and shall agree via a written resolution to LAFCO, perform an annual review of the recommendation by California Rural Water Association (CRWA) as stated on page 8 of their May 5th, 2015 Rate Study which states;
“CRWA recommends review of this split of budgeted expenses on an annual basis. Things do change in the water system and the District will need to make adjustment according. Also this would be part of your annual review of the rates as well if water use changes dramatically one way or another that will affect the District’s ability to fund the system.” NOTE. The extension of service shall not become effective until a resolution by the District agreeing to this is submitted to LAFCO.
- H. The District shall annually review its rate structure and determine whether or not an increase is warranted to maintain not only sufficient funds for ongoing operation but to contribute at least 5% or more of its budget to a reserve account annually. The District shall commit to this in a resolution to be sent to LAFCO prior to the extension of service being effective. The District shall also send an adopted copy of the annual study to LAFCO.

LAFCO Policy:

The proposed application appears to be consistent with the Cortese/Knox/Hertzberg Reorganization Act of 2000, the Imperial LAFCO Policies and Procedures and the County of Imperial General Plan (Chapter IV. B. of LAFCO's Policies, Standards and Procedures).

NOTE: All “cc” submittals are the Executive Officer’s Report only. Attachments are generally too voluminous and are only supplied on CD. Information about the project may also be found on the LAFCO web page at www.iclafco.com.

cc:	County Board of Supervisors Ralph Cordova, County Executive Officer County Assessor Raymond Loera, Sheriff George Pacheco, Public Works Tony Rohoutas, Fire/OES Katherine Turner, County Counsel Jim Minnick, Planning Director/County PVC 1-14	Applicant Douglas R. Newland, Auditor – Controller Bill Brunett, Public Works Director Brad Poiriez, APCD Imperial Irrigation District, General Manager
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ATTACHMENTS:

- EXHIBIT A- Map & Legal Description
- EXHIBIT B- Mitigated Negative Declaration & Final Initial Study
- EXHIBIT C- Water Rate Study
- EXHIBIT D- Summary of Project by BECC
- EXHIBIT E- Financial Statements
- EXHIBIT F-Resolution #3-15
- EXHIBIT G-Resolution #2-12
- EXHIBIT H- Sphere of Influence Map