

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

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DATE: AUGUST 3, 2007

FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #11: LAFCO 3074 – Activation of Sewer Powers for Joshua Basin Water District

RECOMMENDATION:

Staff recommends that the Commission make the following determinations:

1. With respect to environmental review:
 - a) Certify that the Commission and its staff have reviewed and considered the environmental assessment and Negative Declaration prepared by the Commission's Environmental Consultant, Tom Dodson and Associates; it has reviewed, considered, and responded to any comments received;
 - b) Adopt the Negative Declaration prepared for the project;
 - c) Find and determine that the Commission does not intend to adopt alternatives or mitigation measures for the project; and,
 - d) Direct the Clerk to file a Notice of Determination within five (5) days.
2. Amend the "Rules and Regulations Affecting Special Districts" to indicate the following as authorized for the Joshua Basin Water District:

	<u>FUNCTION</u>	<u>SERVICES</u>
Joshua Basin	Water	Retail, agricultural, domestic, replenishment

Sewer

Operation of Package Treatment Plants defined as consisting of units or modules designed for construction, assembly, connection and installation at the site for treatment of sewage and are to be operated for a limited area, including but not limited to a residential subdivision

Planning and engineering for regional sewer service

3. Adopt LAFCO Resolution No. 2978 reflecting the Commission's findings and determinations.

BACKGROUND:

When Independent Special Districts were approved for seating on the San Bernardino LAFCO in 1976, the Commission was required by law to adopt "Rules and Regulations Affecting Special Districts" which established the "active" and "latent" powers for each of the special districts under its purview. Active powers were those defined as being actually provided by the special district at that time; latent power were those powers authorized the district by its respective principal act but which were not being actually provided at the time. The Rules and Regulations required a process to be undertaken thereafter to expand the "active" powers of an agency.

In December 2005, the Joshua Basin Water District (hereinafter "JBWD" or "District") contacted LAFCO staff to determine whether its "wastewater management" service identified under its water function was sufficient to allow the agency to manage "package treatment plants or advance treatment septic systems" (copy of the letter included as part of Attachment #2). In a letter, dated January 27, 2006, staff advised the District that the operations identified fell under the provisions of sewer services as such were defined in Water Code §31100. Therefore, LAFCO 3074 is a proposal submitted by the JBWD during October 2006 to add sewer powers to its list of active functions and services. If the Commission approves this request, the District will be required to formally acknowledge that approval, but no further public hearings or protest procedures are required. In order to consider this request, the Commission is required, pursuant to Government Code Section 56824.12 and its Rules and Regulations Affecting Special Districts, to conduct a public hearing to evaluate the plan for providing the service.

Attachment #1 to this report presents maps of the boundaries of the JBWD and Attachment #2 provides the District's Resolution #06-803, including its response to the plan requirements, and its application requesting that its latent power for sewer service be activated to allow it to manage package treatment plants within its boundaries currently being required by the Colorado River Basin Regional Water Quality Control Board and the ability to plan for a future sewer system should one be required. Attachment #3 provides a copy of the Commission's Rules and Regulation Affecting the Functions and Services of Special Districts.

The foundation for this request is in response to new directives from the Regional Water Quality Control Board regarding the use of septic systems and the preservation of the groundwater basin in this region. The Regional Water Quality Control Board has recently begun the process to adopt waste discharge requirements which has resulted in the requirement for installation of package treatment plants for developments approved within the JBWD boundaries and in other areas under its jurisdiction. As noted in the letter dated January 4, 2007 from Robert Perdue, Executive Officer of the Colorado River Basin Regional Water Quality Control Board (copy included as Attachment #4), the critical factor in the successful long-term performance of these systems is proper design, installation and operation and maintenance. For San Bernardino County, operation and maintenance of these facilities has in the past been assigned to either a Homeowners Association, a private or mutual water company, an improvement zone formed by the County under one of its County Service Areas, or a public water agency with appropriate authority. Retention of groundwater quality, which is the central feature for the requirement of these systems, is more appropriately maintained, in the staff opinion, on a regional basis rather than through the proliferation of multiple small entities charged with this operation.

LAFCO 3074 proposes to give the design, installation and operation and maintenance responsibility for package sewage treatment plants to the JBWD within its boundaries. The regional benefit to be achieved through approval of LAFCO 3074 is the provision of: consistent operation, the ability to charge the recipients of the service appropriately to assure maintenance and replacement funds are developed, and the ability to provide the appropriate level of expertise to operate these systems. The utilization of Homeowners Associations, unless large enough to sustain the service, are not well-equipped to contract for the required level of maintenance and operation and are typically more concerned with the cost per unit than the expertise of the contractor. Creation of Improvement Zones through the County is a viable option; however, the County Special Districts Department has indicated its support for this service to be provided by the JBWD. In addition, the Regional Water Quality Control Board "strongly" supports JBWD being the regional entity to provide this service from a watershed management approach, which is a key strategic goal of the State.

LAFCO staff has conducted a review of this application which included disbursal of the application to the community for review comment as well as the preparation and circulation of an Initial Study and the proposed Negative Declaration by the Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates.

The environmental evaluation is discussed later in this report. The response from the Regional Water Quality Control Board and County Special Districts Department in support of this application has been discussed above.

The Commission has been provided with testimony during public comment at the June 20, 2007 hearing, along with the provision of letters, DVDs and photographs submitted identifying the opposition to this proposal from the community group known as Joshua Tree Community Advocates (JTCA) through its representative, Ms. Iona Chelette, and Mr. Michael Luhrs, a resident in the area. The staff's analysis of this opposition is summarized as follows:

1. While package treatment plants may be required in the area by the Regional Water Quality Control Board, the current management and governance of the JBWD should not be given authority to operate such systems as they have the potential to change the land use direction of the recently adopted Joshua Tree Community Plan and a small portion of the Homestead Valley Community Plan adopted by the County on March 13, 2007;
2. The governance and management of the JBWD are not equipped to operate and maintain such facilities and have failed to operate the water system in an appropriate and environmentally safe manner in the past; and,
3. Does not believe that the sewer function and service should include the ability to operate a regional wastewater facility at this time based upon the direction of the Community Plan. Such a requirement should be considered on a regional basis and not until such a requirement is mandated in the future.

The positions taken by JTCA as outlined by staff as Items #1 and #2 are determinations made by the electorate within the JBWD through their ballots for members of the board of directors for the agency, who in turn select the management of the agency. As has been shown in the past, if dissatisfied with the operation of the Board of Directors or the District, the electorate can effectively mount a recall effort and replace the directors. However, in response to the assertion that approval of this proposal would change the direction of the recently adopted Joshua Tree Community Plan, implementation of the Regional Water Quality Control Board directives on the operation of package treatment plants has already been determined. In the staff view, any general plan/community plan change would be processed through the County and evaluated based upon the response from surrounding landowners and the community. This is the current process and this project has no direct effect on the land use determinations of the County. The purpose of this proposal would be to require a single government structure to address the operation of package sewage treatment plants required by the Water Quality Control Board within the Joshua Basin watershed.

However, staff concurs with the basic position taken in Item #3 as it relates to the authorization of the service to provide for full installation and operation of a regional wastewater treatment and collection system. However, it is the staff's position that the planning and engineering service is necessary to participate in any review of a regional collection system, be it the physical solution or to participate and conduct studies to address such a need on a regional level, and is an appropriate function to be added in conjunction with the authority to operate the package treatment plants.

Therefore, it is the staff recommendation that the Commission: (1) clarify the District's water service function to exclude "wastewater management" and (2) authorize the activation of the JBWD's latent sewer functions with the stipulation that the services that can be offered within its boundaries are defined as follows:

	<u>FUNCTION</u>	<u>SERVICES</u>
Joshua Basin	Water	Retail, agricultural, domestic, replenishment
	Sewer	<p>Operation of Package Treatment Plants defined as consisting of units or modules designed for construction, assembly, connection and installation at the site for treatment of sewage and are to be operated for a limited area, including but not limited to a residential subdivision</p> <p>Planning and engineering for regional sewer service</p>

Approval of this recommendation will provide for a community-based agency to be responsible for the design, assembly, connection, installation, operation and maintenance of package treatment plants required by the Regional Water Quality Control Board and implemented through the County Land Use Services Department review. It will authorize the JBWD to expend district revenues for planning and engineering related to a regional sewer service to be considered for the boundaries of the agency or to participate in a regional operation in conjunction with other government entities, but it would require further consideration by the Commission to expand the services to include the actual provision of collection, treatment and disposal of wastewater.

Inherent in the objections to the expansion of this service to be provided by the JBWD is the lack of ongoing oversight of the agency. However, pursuant to the requirements of Government Code Section 56425 et seq. the Commission is required to conduct municipal service reviews and sphere of influence updates on a five-year cycle for all agencies under its purview. For a special district, this includes an evaluation identified in Government Code Section 56425 (i) which reads as follows:

(i) When adopting, amending, or updating a sphere of influence for a special district, the commission shall do all of the following:

(1) Require existing districts to file written statements with the commission specifying the functions or classes of services provided by those districts.

(2) Establish the nature, location, and extent of any functions or classes of services provided by existing districts.

Therefore, a future review of the specific operations of the District will be undertaken routinely by the Commission at which time the community will have the ability to participate in the process.

For all of these reasons, staff supports: (1) the clarification of the District's water services and (2) the activation of the JBWD's latent sewer function with the limitations as outlined in the staff's recommendation.

ENVIRONMENTAL CONSIDERATIONS:

The Commission is the lead agency for review of the potential environmental consequences of this activation of sewer functions and services. In order to fulfill that requirement, the Commission's Environmental Consultant, Tom Dodson and Associates, prepared, and LAFCO staff reviewed, advertised and circulated an Initial Study and a proposed Negative Declaration for this proposal (copy included as a part of Attachment #5). The documents were forwarded, by certified mail, to all interested and affected agencies as well as the State Clearinghouse for review by State agencies. The comment period closed at 5:00 p.m on May 14, 2007.

The comments received to the circulation of the materials have been evaluated by the Commission's Environmental Consultant. A response to comments has been forwarded to each of these individuals. Therefore, the original Initial Study will be utilized as the description of environmental impacts anticipated by this project.

A copy of the Initial Study, Negative Declaration and Response to Comments are included as Attachment #5 to this staff report. Mr. Dodson has indicated that the following actions must be taken by the Commission prior to consideration of the proposal:

- 1) Certify that the Commission and its staff have reviewed and considered the environmental assessment and proposed Negative Declaration prepared by the Commission's Environmental Consultant, Tom Dodson and Associates; has reviewed and considered any comments received; and provided a response to those comments;
- 2) Adopt the Negative Declaration;
- 3) Find and determine that the Commission does not intend to adopt alternatives or mitigation measures for the project; and,
- 4) Direct the Clerk to file a Notice of Determination together with payment of the required Department of Fish and Game Fees within five (5) days;

DETERMINATIONS:

1. Notice of this hearing has been provided through publication in newspapers of general circulation in the area, as required by law.
2. This proposal does not conflict with the adopted County General Plan, Joshua Tree Community Plan and Homestead Valley Community Plan adopted for the area.
3. The Commission's Environmental Consultant prepared an environmental assessment for the activation of sewer powers and has proposed a Negative Declaration which indicates that approval of the activation of sewer powers for the purposes of operating and managing package sewer treatment plants as defined in the staff report and the ability to plan and engineer for a sewage system will not have a significant adverse impact on the environment. The initial study has been reviewed by the Commission's staff and has been found to be adequate for the activation of sewer powers. Responses to comments received during the circulation of the Notice of Availability for the Negative Declaration have been provided by the Commission and are made a part the document.

The Commission certifies it has reviewed and considered the proposed Negative Declaration and environmental effects as outlined in the Initial Study prior to reaching a decision on the project and finds the information substantiating the Negative Declaration adequate for its use in making a decision as a CEQA lead agency. The Commission further finds that it does not intend to adopt alternatives or mitigation measures for the project. The Commission hereby adopts the Negative Declaration, as presented by its Environmental Consultant. The Commission directs the Clerk to file a Notice of Determination and pay the required Department of Fish and Game filing fees within five working days of its adoption.

4. The area of the Joshua Basin Water District is currently served by the following local agencies:

County of San Bernardino
Joshua Basin Water District and its Improvement District #2
County Service Area 20 (fire protection, park and recreation, road maintenance, streetlighting)
County Service Area 38 (fire protection)
County Service Area 70 (multi-function regional agency) and its Improvement Zones R-19, TV-5, and R-28
Mojave Water Agency and its Improvement District M
Hi-Desert Memorial Healthcare District
Mojave Desert Resource Conservation District

5. The Plan for Service submitted by the District as a part of Resolution No. 06-803 has been reviewed and compared with the standards established by the Commission and the factors contained within Government Code Section 56668. The Commission finds that such Plan conforms to those adopted standards and requirements.
6. LAFCO 3074 is consistent with the Commission's policies and directives of State law indicating a preference for a single multi-purpose entity to provide service to communities providing for a more accountable form of government.
7. All notices required by law for this hearing have been provided. Protest to this consideration has been reviewed and considered by the Commission in making its determination.

KRM

Attachments:

1. Location and Vicinity Maps for the Joshua Basin Water District
2. Joshua Basin Water District Resolution No. 06-803, Justification for Proposal and Supplement Form, Exhibits, and Letter from LAFCO Staff Dated January 27, 2006 responding to District Letter Dated December 12, 2005
3. Rules and Regulations of the San Bernardino LAFCO Affecting Functions and Services of Special Districts
4. Letter Dated January 4, 2007 from California Regional Water Quality Control Board in Support of LAFCO 3074
5. Letter from Tom Dodson and Associates Responding to Comments and the Environmental Assessment, Initial Study and Proposed Negative Declaration
6. Draft LAFCO Resolution No. 2978