

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: SEPTEMBER 12, 2017 
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
SAMUEL MARTINEZ, Assistant Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #8: LAFCO SC #419 – Request for Exemption from Provisions of Government Code Section 56133 for Ordinance for Fees for Wastewater Processing by Running Springs Water District for Effluent from County Service Area 79 and Arrowbear Park County Water District

RECOMMENDATION:

Staff recommends that the Commission:

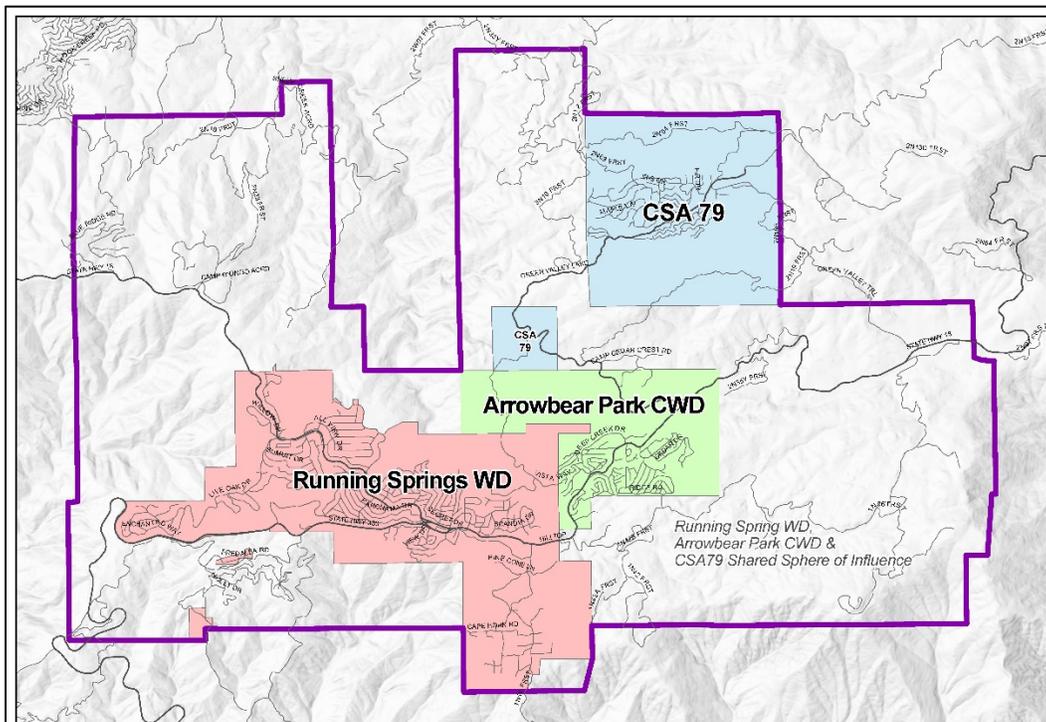
1. Determine that Running Springs Water District's Ordinance No. 47 complies with the exemption criteria listed within Government Code Section 56133 Subsection (e) and, therefore, does not require Commission review and approval; and,
2. Determine that if a future agreement is reached between the Running Springs Water District and either County Service Area 79 or Arrowbear Park County Water District to address the transportation/treatment/disposal of wastewater that it be subjected to an administrative review process by the Executive Officer under the Commission's existing Out-of-Agency Service Contract Policies.

BACKGROUND:

On July 27, 2017, the Running Springs Water District (hereafter the "District" or "Running Springs WD") submitted a request that the Commission determine that the ordinance its Board of Director's approved on March 29, 2017 and became effective July 1, 2017—Ordinance No. 47—is exempt from the provisions of Government Code Section 56133.

40 years ago the District entered into agreements with County Service Area (CSA) 79 and Arrowbear Park County Water District (APCWD) to provide for the transportation,

treatment and disposal of the wastewater generated in the Hilltop community, which include various public and private entities within the Upper Deep Creek Watershed area and within the Arrowbear and Snow Valley Areas (including Snow Valley Mountain Resort) identified as “CSA 79 Contributors” and “Arrowbear Contributors”. This service commenced on the date the agreements were executed. The District’s agreement with CSA 79 was signed on May 9, 1977 and the District’s agreement with APCWD was signed on January 20, 1977 (amended November 2016 to extend the term of the agreement to June 30, 2017). As of today, those agreements have expired but the service must continue to be provided through the wastewater treatment plant owned and operated by the District. Below is a vicinity map of the agencies which are affected by this request (a copy of the map including the Sewer Section of the 2011 Service Review for the Hilltop Community is included as Attachment #1 to the staff report):



As early as 2015, the Running Springs WD started discussions with both CSA 79 and APCWD on renewing the agreements with updated terms and conditions. However, negotiations between the agencies failed to come to an agreement in part because CSA 79 and APCWD object to the new cost sharing method that Running Springs WD was proposing. In light of not having a new agreement to replace the contracts that were about to expire, the Running Springs WD opted to adopt an ordinance on March 29, 2017 that sets rates and terms for continuing to provide the wastewater transportation/treatment/disposal service to the upstream users, known as Ordinance No. 47.

Ordinance No. 47 mandates a rate methodology including terms and conditions for the continued transportation, treatment and disposal of wastewater received from CSA 79

and APCWD. The ordinance allocates costs for variable operations and maintenance (O&M) expenses based on each agency's proportionate share of wastewater flow and allocates costs for the fixed O&M expenses and actual capital improvements and replacement for the Wastewater Transportation, Treatment and Disposal Joint Use Facilities for all three agencies based on each agency's proportion of equivalent dwelling units (EDUs). The original agreements based the cost share for the Joint Use Facilities on proportion of assessed valuation for capital improvements and proportion of wastewater flow plus 15 percent for variable O&M.

Although the ordinance may not be a typical agreement or contract that the Commission has seen in the past, LAFCO staff considers the ordinance to be a contractual relationship between Running Springs WD and its upstream users, CSA 79 and APCWD. This position is based upon the rationale that since the ordinance includes a provision stating that if either CSA 79 or APCWD elect to use the wastewater transportation/treatment/disposal service, "...such election shall constitute agreement with the provisions of [the] Ordinance, including the rate methodology, terms and conditions set forth in the exhibits..." However, neither CSA 79 nor APCWD has a realistic alternative to the provision of service from the District so this is a forced consent.

The service review conducted in 2011 identified that even at the time of the inception of the contracts for wastewater service there was the need for a single voice for the delivery of service as evidenced by this excerpt from that report:

The Commission established the spheres of influence for County Service Area 79 (LAFCO 1239), Arrowbear Park County Water District (LAFCO 1288), County Service Area 73 (LAFCO 1289), and Running Springs County Water District (LAFCO 1290). The staff report prepared by Robert B. Rigney, Assistant Executive Officer for LAFCO, for the sphere establishments included the following: "The districts in the future, should consider the feasibility and desirability of consolidating their operations so that one entity could provide all services with one tax rate, one board and one group to arrange priority of expenditures." This view was also supported by the Planning Department based upon the fragmented provision of water service for development of the area.

The request from the District is for a determination of exemption from the provision of 56133 related to contracting for service outside an agency's boundaries but within its sphere of influence. (In 2011 the Commission determined that a single sphere of influence would be assigned for the Hilltop community which includes the District, CSA 79 and APCWD). A copy of the exemption request letter from Running Springs WD is included as Attachment #2 to the staff report. The Running Springs WD's adopted Ordinance No. 47 (including the attached exhibits to the ordinance) is included as Attachment #3 to the staff report. In its request, the Running Springs WD cited the

exemption language within Government Code Section 56133 (e) (1) and (4) for its request. These sections read as follows:

“(e) This section does not apply to...

(1) Two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.

...

(4) An extended service that a city or district was providing on or before January 1, 2001.”

After reviewing the materials presented for SC#419, it is the staff’s position that the exemption provisions outlined above apply to the transportation, treatment, and disposal of wastewater between the Running Springs WD and CSA 79 and/or APCWD on the basis of the following determinations:

1. The ordinance, which establishes a relationship between the Running Springs WD and the entities that it serves—CSA 79 and APCWD—is between two or more public agencies. The public service being provided is the transportation, treatment and disposal of wastewater – a service already being provided by the Running Springs WD in-lieu of CSA 79 and/or APCWD developing their own treatment facility to serve their respective service areas and there is no realistic alternative to this relationship. The level of service that has been provided through this contractual relationship is consistent with the level of service contemplated (required) by CSA 79 and/or APCWD; and,
2. The wastewater transportation/treatment/disposal service provided by Running Springs WD is a service that the District has been providing to CSA 79 and/or APCWD prior to January 1, 2001, having begun in 1977. While the original agreements have since expired, the transportation, treatment and disposal of wastewater is a service that has been provided prior to January 1, 2001 and the adoption of Ordinance No. 47 is the means for Running Springs WD to continue to provide the service in lieu of the expired contracts.

POSITION/RESPONSE FROM CSA 79 AND APCWD

Both CSA 79 and APCWD have publicly objected to Running Springs WD’s Ordinance No. 47. LAFCO staff requested both agencies to provide their comments related to Running Springs WD’s exemption request and its Ordinance No. 47.

Although CSA 79 was not able to provide a response to LAFCO prior to the publication of the staff report, it is noted that CSA 79 did have concerns related to the new rate structure as identified in the Running Springs WD Board Meeting Minutes from October 19, 2016 (included as Attachment #4 to this staff report),

Arrowbear Park County Water District Response

On September 11, 2017 the APCWD provided its response to the exemption request by letter (included as Attachment #5 to this report), identifying a number of issues related to Running Springs WD's request and Ordinance No. 47. It outlines its opposition regarding Running Springs WD's request for exemption from the provisions of Government Code Section 56133 noting that Ordinance No. 47 does not constitute an agreement or contract and stating that neither exemption provisions outlined by the District apply because there is no contract or agreement. It also outlines its objection to Ordinance No. 47 indicating it has not agreed nor does it agree with the ordinance, the rate methodologies or terms and conditions it imposes. However, LAFCO staff would note that the service being provided has continued unabated since 1977 so the exemption identified in 56133(e)(4) clearly applies.

In addition, the attached letter APCWD sent to Running Springs WD dated July 20, 2017, again outlined its objection to Ordinance No. 47 but signaled its intent to negotiate with Running Springs WD regarding the future terms and conditions of a long-term contract for continuing wastewater transportation/treatment/disposal service and acknowledges Running Springs WD willingness to continue providing the service. Running Springs WD responded to this letter from APCWD identifying its position that the rates included do not exceed the cost of providing the service and would be implemented to continue the service, a copy of the letter dated August 8, 2017, is included as Attachment #6 to this report.

CONCLUSION:

LAFCO staff has expressed its grave concern that Running Springs WD and the agencies that it provides wastewater transportation/treatment/disposal service—CSA 79 and APCWD—are continuing to operate under expired contracts. LAFCO staff believes there needs to be a better method to move forward with this contractual relationship that should not have an end date -- especially for a service that cannot be terminated due to health and safety reasons. LAFCO staff strongly encourages all parties to continue negotiating a long-term agreement rather than simply having an ordinance in lieu of the expired contracts.

However, the request that Running Springs WD has submitted to the Commission at this time is to make its determination that Ordinance No. 47 is exempt from LAFCO review and approval. Based on the determinations outlined above, the staff is recommending that the Commission determine that Ordinance No. 47, which establishes a contractual relationship between Running Springs Water District and CSA

79 and Arrowbear Park County Water District that mandates a rate methodology and terms and conditions for the continued transportation, treatment and disposal of wastewater received from CSA 79 and APCWD, is exempt from review and approval by the Commission pursuant to the provisions of Government Code Section 56133 (e).

Again, LAFCO staff reiterates its concern that the agencies do not have a valid contract for the provision of wastewater transportation/treatment/disposal service. Although, Running Springs WD has clearly expressed its willingness to continue providing wastewater transportation/treatment/disposal service to CSA 79 and APCWD, it is LAFCO staff's hope that the agencies negotiate a long-term agreement sometime in the near future. In the event that the Running Springs WD and either CSA 79 or APCWD do come to an agreement and execute a new contract for the transportation, treatment and disposal of wastewater, staff is recommending that such an agreement be determined to be an administrative review that can be considered and approved by the Executive Officer.

KRM/sm

Attachments:

1. Vicinity Map and Sewer Section of Service Review for the Hilltop Community (2011)
2. Running Springs Water District Letter Dated July 27, 2017
3. Ordinance No. 47 with Exhibits
4. Excerpt of Running Springs Water District Board Meeting Minutes for its October 19, 2016 Meeting
5. Arrowbear Park County Water District Letter Response to LAFCO Dated September 11, 2017, Including the Attached Letter to Running Springs Water District Dated July 20, 2017
6. Running Springs Water District Letter to Arrowbear Park County Water District Dated August 8, 2017