

DRAFT – ACTION MINUTES OF THE – DRAFT
LOCAL AGENCY FORMATION COMMISSION
HEARING OF September 20, 2017

REGULAR MEETING

9:00 A.M.

September 20, 2017

PRESENT:

COMMISSIONERS: Jim Bagley Acquanetta Warren, Alternate
Kimberly Cox, Chair Ryan McEachron, Alternate
Jim Curatalo Janice Rutherford, Alternate
Steve Farrell, Alternate
Diane Williams

STAFF: Kathleen Rollings-McDonald, Executive Officer
Clark Alsop, LAFCO Legal Counsel
Samuel Martinez, Assistant Executive Officer
Jeffrey Lum, LAFCO Analyst
La Trici Jones, Commission Clerk
Bob Aldrich, LAFCO Consultant

ABSENT: James Ramos, Vice-Chair
Robert Lovingood
Larry McCallon

CONVENE REGULAR SESSION OF THE LOCAL AGENCY FORMATION COMMISSION
– CALL TO ORDER – 9:05 A.M. – NORTON REGIONAL EVENT CENTER

Chair Cox calls the regular session of the Local Agency Formation Commission to order and leads the flag salute.

Swear in Regular Alternate (Supervisor Janice Rutherford) Supervisorial Commissioner (Continued from May 17, 2017 Hearing)

Clerk to the Commission La Trici Jones gives the Oath of Office to Supervisor Janice Rutherford for her term as Alternate Supervisorial Commissioner ending in May 2021.

ITEM 1. Public Comments on Closed Session
There are none.

ITEM 2. ADJOURN TO CLOSED SESSION OF THE LOCAL AGENCY FORMATION COMMISSION – 9:08 A.M.

- a. Personnel (Government Code Section 54957) – Recruitment Process for Executive Officer
- b. Conference with Legal Counsel – Existing Litigation (Government Code Section 54956.9(d)(1)) – San Antonio Heights Association v. County of

San Bernardino et al, San Bernardino County Superior Court Case NO CIVDS1712441 and San Antonio Heights Association v. Local Agency Formation Commission for San Bernardino County et al Superior Court Case No. CIVDS1715504

- c. Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to Litigation (Government Code section 54956.9(d)(2) – One case Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9

RECONVENE PUBLIC SESSION – 10:10 A.M.

Chair Cox asks LAFCO Legal Counsel Clark Alsop to report on the closed session. Mr. Alsop states that no reportable action was taken in closed session.

ANNOUNCEMENT OF CONTRIBUTIONS

Chair Cox 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 12 months to any member of the Commission to come forward and state for the record their name, the member to whom the contribution was made, and the matter of consideration with which they are involved. There were none.

CONSENT ITEMS:

The following consent items are expected to be routine and non-controversial and will be acted upon by the Commission at one time without discussion, unless a request has been received prior to the hearing to discuss the matter.

- ITEM 3.** Approval of Minutes for Regular Meeting of August 16, 2017
- ITEM 4.** Approval of Executive Officer’s Expense Report
- ITEM 5.** Ratify Payments as Reconciled for Month of July and August 2017 and Note Cash Receipts
- ITEM 6.** Approval of Contract for Janitorial Services at 1170 West Third Street for the period of August 24, 2017 through June 30, 2018

Commissioner Curatalo moves approval of the Consent Calendar, Second by Commissioner Williams. There being no opposition, the motion passes with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Williams, Warren and Rutherford. Noes: None. Abstain: None. Absent: Lovingood (Supervisor Rutherford voting in his stead), McCallon (Commissioner Warren voting in his stead), and Ramos.

ITEM 7. CONSENT ITEMS DEFERRED FOR DISCUSSION:

None

PUBLIC HEARING ITEMS:

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

Assistant Executive Officer Samuel Martinez introduces the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. The item has been advertised through publication in a newspaper of general circulation within the service area, the *San Bernardino Sun*. As outlined in Commission policy, in-lieu of individual notice, the notice of hearing publication was provided through an eighth page legal ad.

Mr. Martinez states that the Running Springs Water District submitted a request that the Commission determine that the ordinance they adopted on March 29, 2017, which became effective July 1, 2017, is exempt from the provisions of Government Code 56133. Mr. Martinez states that the Running Springs Water District entered into 40-year agreements in 1977 with County Service Area 79 and Arrowbear Park County Water District for the transportation, treatment and disposal of wastewater within the Hilltop Community. He states that as of July 2017 those contracts have expired.

Mr. Martinez states that it is the understanding of LAFCO staff that the Running Springs Water District started discussion in 2015 with County Service Area 79 and Arrowbear Park County Water District about renewing the agreements with updated terms and conditions. Mr. Martinez states that those negotiations failed in part because CSA 79 and Arrowbear Park County Water District objected to the new cost sharing method that Running Springs Water District was proposing; therefore, in light of not having an agreement Running Springs Water District opted to adopt Ordinance 47 which sets rates and terms for continuing the wastewater service.

He states that LAFCO staff considers the Ordinance to be a contractual relationship between Running Springs Water District, County Service Area 79 and Arrowbear Park Water District. Mr. Martinez states that this rationale is based on the Ordinance including the provision that if either CSA 79 or Arrowbear Park Water District opts to use the waste water treatment service, then such election shall constitute agreement with the provisions of the Ordinance including the rate methodology and terms and conditions that are set forth by the Ordinance. Mr. Martinez states that the request from the Running Springs Water District is to determine that the Ordinance and the service are exempt from Government Code Section 56133 (e) under the provisions of subsections (1) and (4).

Mr. Martinez states that it is the staff's position that the exemption provisions identified in the staff report apply to the transportation, treatment, and disposal of wastewater between the Running Springs Water District and County Service Area 79 and Arrowbear Park Water District. Mr. Martinez states that the service provided by Running Springs to County Service Area 79 and Arrowbear Park Water District began in 1977. He states that the original agreements have since expired and the adoption of Ordinance 47 is the means for Running Springs Water District to continue to provide the service in lieu of the expired contracts.

Mr. Martinez states that both County Service Area 79 and Arrowbear Park Water District have publicly objected to Running Springs Water District's Ordinance 47 and LAFCO staff requested that both agencies provide their comments in writing in regards to Ordinance 47. Mr. Martinez states that County Service Area 79 was unable to provide a response to LAFCO prior to the publication of the staff report, but it was noted that a letter response was provided the day prior to the hearing – a copy of which was distributed to each of the Commissioners at the dais – indicating County Service Area 79 has concerns related to the new rate structure and requests that the Commission deny the exemption requests and are requesting that the Commission review the Ordinance. He states that the request before the Commission is to determine whether or not the Ordinance is exempt from your review and approval; not to validate the terms of the ordinance.

Mr. Martinez states that Arrowbear Park Water District also provided a response which is included as part of the staff report attachments. This response outlines their opposition to the request for exemption noting that Ordinance 47 does not constitute an agreement or contract and therefore the exemption provisions do not apply. It also outlined their objection to Ordinance 47 indicating they had not agreed nor do they agree with the ordinance, the rate methodologies or terms and conditions it imposes. Mr. Martinez states that LAFCO staff wants to point out that the service has been provided since 1977 so the exemption identified clearly applies, and LAFCO staff encourages all parties to continue to work towards a better contractual agreement.

Executive Officer Rollings-McDonald states that the determination of exemption is one of many of the items outlined in 56133 subsection (e). She states that even if the Commission did not agree with the exemption for two contracting entities, the exemption outlined in Subsection 4, that this was an existing service that was authorized and provided prior to 2001, would be sufficient for the Commission to determine that this is exempt from review. She also states that the Commission is not authorizing the agreement. She states that 56133 talks about allowing an agency to extend the service. The Commission does not review or make determinations on the terms of a contract. The Commission will simply make the determination regarding whether or not it meets the criteria. She states that if it was not exempt from 56133, the Commission would have to make a determination that it was compliant with the requirement for a future change of organization.

Chair Cox asks if there are any comments from the Commission.

Commissioner Farrell states that he has a concern that there is no need for the Commission to make a determination in this case because the other entities are not a named party in the Ordinance, and there is no need because the service already exists. He further states that the only action he sees the Commission taking is to encourage the parties involved to come to an agreement.

LAFCO Legal Counsel Clark Alsop states that he agrees with what Commissioner Farrell has stated and if the Commission follows what the Executive Officer has just stated it would encourage the parties to continue to work together to achieve an agreement. Commission discussion ensued.

Chair Cox opens the public hearing and calls upon Mr. Norman Huff from Arrowbear Park Water District.

Mr. Huff, General Manager of the District, states that he is in attendance to represent the citizens of Arrowbear who were not afforded due process to be heard or protest the unfair and substantial rate increase imposed on them under Running Springs Ordinance 47. He states that for years the residents of Arrowbear have contributed their fair share and millions of dollars in construction, expansion and capital improvement, as well as the day-to-day operations of the Regional Wastewater Treatment Facility in Running Springs. Now Running Springs is holding those facilities and services hostage in order to get more money from Arrowbear in an attempt to fix the District's fiscal issues. He states that Running Springs has decided to dictate terms by Ordinance instead of a mutual agreed upon contract by the two Districts. He states that Arrowbear strongly urges the Commission to reject Running Springs' request for exemption from 56133, not on the merits of whether it meets exemption requirements, rather, reject the exemption request based on the fact that Ordinance 47 does not meet the definition of contract or agreement that Government Code Section 56133 was meant to cover.

Chair Cox calls for further testimony; there being none, she closes the public hearing and brings the discussion back to the Commission.

Chair Cox asks Executive Officer McDonald, based on Mr. Huff's comments, does the Commission have the ability to reject this Ordinance as requested and are there any legal grounds?

Executive Officer McDonald states 56133 is about the service, not the contract. She states that when an entity proposes to extend service outside its boundary in a contractual relationship, the Commission is asked to review and approve that extension of service; though the Commission is not reviewing those terms of that agreement. She states that discussion by the Commission shows there is some concern about using subsection (1) (e) regarding the contracts between public agencies, however subsection 4 still applies, the service existed prior to January 1, 2001.

Commission discussion ensues.

Collectively, the Commission determines to modify the staff Recommendation #1 to read: *Determine that the Running Springs Water District's Wastewater transportation, treatment and disposal service complies with the exemption criteria listed within Government Code Section 56133, (E) (4) and therefore, does not require Commission review and approval,* and the balance of the staff recommendation was approved.

Commissioner Warren moves approval of the amended staff recommendation, Second by Commissioner Bagley. There being no opposition, the motion passes with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Williams, Warren and Rutherford. Noes: None. Abstain: None. Absent: Lovingood (Supervisor Rutherford voting in his stead), McCallon (Commissioner Warren voting in his stead) and Ramos

ITEM 9. CONSIDERATION OF (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3219 AND (2) REORGANIZATION TO INCLUDE DETACHMENTS FROM CUCAMONGA VALLEY WATER DISTRICT

Assistant Executive Officer Samuel Martinez introduces the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. The item has been advertised through publication in a newspaper of general circulation within the reorganization area, the *Inland Valley Daily Bulletin*. Individual notice was not provided as allowed under Government Code Section 56157 as such mailing would include more than 1,000 individual notices. As outlined in Commission policy, in-lieu of individual notice, the notice of hearing publication was provided through an eighth page legal ad.

Mr. Martinez states that Cucamonga Valley Water District initiated the reorganization proposal to process the detachment of five areas from the District. He states that all five areas are in the City of Ontario and are not currently in the sphere of influence for the Cucamonga Valley Water District. He states that the primary reason for LAFCO 3219 is to remove the overlap of service boundaries between the Cucamonga Valley Water District and the City of Ontario which is the water and sewer service provider of all five areas rather than the District.

Mr. Martinez states that the Cucamonga Valley Water District does not provide water and/or sewer services to the customers within any of the areas proposed for detachment; however, the registered voters within these areas participate in elections related to the District. He states that upon completion of the detachment, the five areas will continue to receive water and/or sewer services from the City of Ontario. He states for these reasons, and those outlined in the staff report, the staff supports the approval of LAFCO 3219.

Commissioner Cox asks if there are any comments from the Commission. There are none.

Commissioner Cox opens the public hearing and calls upon Mr. Patrick King.

Mr. King states that for the last 37 years he has owned property in detachment area A, and during this time he has received no services from the Cucamonga Valley Water District although he did pay the bonded indebtedness of the District. He states that all the utility services have been provided by the City of Ontario. He states that he requests the support of the Commission in approving the Staff recommendation.

Chair Cox closes the public hearing.

Commissioner Williams moves approval of all three recommendations of the Staff, Second by Commissioner Warren. There being no opposition, the motion passes with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Williams, Warren and Rutherford. Noes: None. Abstain: None. Absent: Lovingood (Commissioner Rutherford voting in his stead), McCallon (Commissioner Warren voting in his stead), and Ramos.

DISCUSSION ITEMS:

ITEM 10 Appointment of Voting Delegate for CALAFCO Business Meeting October CALAFCO Annual Conference

Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office. Chair Cox states that she will not be in attendance at the CALAFCO Annual Conference. Ms. Rollings-McDonald states that the Commission will need to designate a different primary voting delegate from the Commissioners that will be present. Commissioner Curatalo states that he will do whatever is necessary and will stand in as the primary voting delegate.

Commissioner Bagley moves approval of the staff's recommendation with the modification that Commissioner Curatalo will be the primary Voting delegate, Second by Commissioner Williams. There being no opposition, the motion passes with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Williams, Warren and Rutherford. Noes: None. Abstain: None. Absent: Lovingood (Commissioner Rutherford voting in his stead), McCallon (Commissioner Warren voting in his stead), and Ramos.

INFORMATION ITEMS:

ITEM 11 LEGISLATIVE REPORT

Executive Officer McDonald states that materials have been provided to the Commissioners at the dais. She states that September 15 closed the 2017 Legislative session and all bills from the Senate and the Assembly needed to be either forwarded to the Governor, tabled or become a two year bill.

ITEM 12 EXECUTIVE OFFICER'S ORAL REPORT

Executive Officer McDonald states that there will be hearings in October and November and it is anticipated that the Commission will be dark in December.

ITEM 13 COMMISSIONER'S COMMENTS

Chair Cox asks if there are any Commissioner comments. There are none.

ITEM 14 COMMENTS FROM THE PUBLIC

Chair Cox asks if there are any comments from the public. There are none.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS ADJOURNED AT 11:15 A.M.

ATTEST:

LA TRICI JONES
Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

KIMBERLY COX, Chair

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