

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: JUNE 13, 2018

FROM: 
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TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #12(b): LAFCO SC#423 -- Request for Exemption from Government Code Section 56133 for Settlement Agreement Provisions for East Valley Water District and City of San Bernardino Municipal Water Department Exchange of Wastewater Service Territories

RECOMMENDATION:

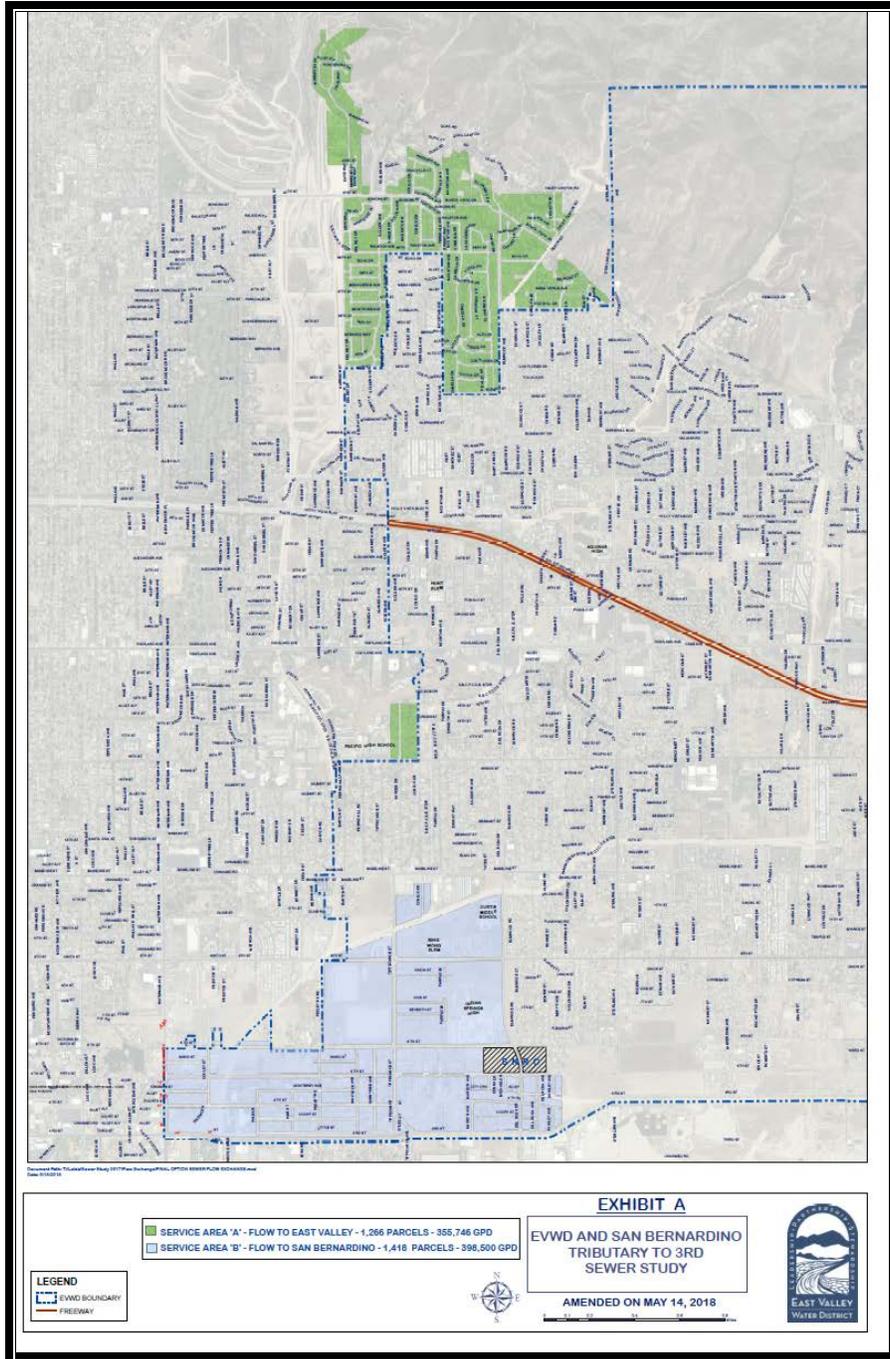
Staff recommends that the Commission take the following actions:

1. Modify LAFCO SC#423 to include the request for exemption for agreement between the East Valley Water District and City of San Bernardino Municipal Water Department related to the provision of water service to 3331 Third Street (Wyle Labs) as requested by the City of San Bernardino Municipal Water Department by letter dated April 6, 2010; and,
2. Determine that LAFCO SC#423, as modified, complies with the exemption provisions outlined within Government Code Section 56133 (e) and, therefore, does not require Commission approval.

BACKGROUND:

On February 22, 2018, the East Valley Water District (hereafter EVWD or District) submitted a request that the Commission determine that the proposed agreement between EVWD and the City of San Bernardino Municipal Water Department (hereafter identified as City) for the exchange of wastewater conveyance and treatment is exempt from the provisions of Government Code Section 56133 as outlined in Subsection (e). Per the Commission's policy, this is being presented to the Commission since the exemption request is development-related.

The agreement originally identified areas for exchange referenced in the settlement agreement process for the Sterling Natural Resources Center (SNRC) to include two areas for exchange. However, following the Departmental Review process on May 18, 2018 the District and City submitted a modification to the areas to identify three areas shown below:



A copy of the exemption request letter (Attachment #1) and draft agreement (Attachment #2) are included as a part of this report.

The request has cited the relevant exemption language within Government Code Section 56133 (e) for its request. The section reads as follows:

“(e) This section does not apply to... ..[t]wo 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.”

In the present case, staff believes that the exemption outlined above applies to the wastewater commingling/exchange of wastewater flows based on the following facts:

1. The agreement is between the East Valley Water District and the City of San Bernardino Municipal Water Department, both of which are public agencies.
2. The public service to be provided is an exchange of wastewater flows to enhance the efficiency of sewer operations of the regional wastewater system. The letter submitted has indicated that this exchange will be invisible to the customers and will not affect their rates. Therefore, this is a substitute for public services currently being provided in compliance with requirements of 56133 (e).
3. The level of service to be provided through this contractual relationship is consistent with the level of service currently provided the exchange areas.

During the current processing of the Wastewater Service Review, it was identified that the EVWD and City had agreed to a service arrangement related to the provision of water service by EVWD to the properties located at the northeastern portion of the Inland Valley Development Authority (hereafter shown as IVDA) generally at the southeastern intersection of Third and Alabama Streets. This area was included in the District’s sphere of influence during the first cycle service review (2004) at the request of IVDA and the developers of the Jet and Rocket Engine Test Site (JRETS) which LAFCO staff understood was operated by Wyle Labs. This service delivery method was supported by both the City and EVWD. However, there was no follow on action to address this service either through annexation or out of agency service exemption request accepted for processing by LAFCO. As outlined in the EVWD email dated March 1, 2018, the agreement was entered into in 2010, has been in operation since, and the affected parties were unaware of the need for further action.

LAFCO staff is proposing the expansion of LAFCO SC# 423 to include the determination of exemption for the water service agreement between the District and City for this parcel. The determinations for this are:

1. The agreement is between the East Valley Water District and the City of San Bernardino Municipal Water Department, both of which are public agencies.
2. The public service to be provided is the provision of retail water service to parcel (APN 0136-381-09) for the development of the Jet and Rocket Engine Test Site. The email submitted indicates that this service relationship was entered into in 2010 recognizing that the District had facilities closer to the site for service than did the City which had succeeded to the water system at the former Norton Air Force Base facility now a part of the Inland Valley Development Authority. Therefore, this is a substitute for public services currently being provided in compliance with requirements of 56133 (e).
3. The level of service to be provided through this contractual relationship is consistent with the level of service that was anticipated at the time that the contract was entered into.

CONCLUSION:

Based on the determinations outlined above, the staff is recommending that the Commission determine that pursuant to Government Code Section 56133 (e), the exchange/commingling of wastewater flows and the delivery of water service agreements between the East Valley Water District and the City of San Bernardino Municipal Water Department are exempt from further review and approval by the Commission under the provisions of Government Code Section 56133.

KRM/

Attachments:

1. [LAFCO SC#423 Request for Exemption Submitted February 22, 2018](#)
2. [Email Dated March 1, 2018 Outlining Existing Contract for Water Service](#)