

LOCAL AGENCY FORMATION COMMISSION COUNTY OF SAN BERNARDINO

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DATE: NOVEMBER 12, 2002
FROM: JAMES M. RODDY, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Items #10A, #10B, and #10C: Preliminary Action
Items Related to LAFCO #2911 and #2912--Sphere of Influence
Review and Proposed Detachment from the West San
Bernardino County Water District

RECOMMENDATION:

1. Designate Mr. Jeff Goldfarb as Special Legal Counsel for the review of LAFCO #2911 and LAFCO #2912;
2. Determine that LAFCO #2911, a sphere of influence review for the West San Bernardino County Water District is exempt from the requirement of a service review on the basis that it is a minor sphere amendment, as permitted by Commission policy, provided that the West San Bernardino County Water District and other overlaying agencies do not object to such an exemption; and,
3. Authorize staff to waive the LAFCO filing fee for the sphere of influence review of the West San Bernardino Water District (\$3,750) provided the District and overlaying agencies do not object to the service review exemption for this minor sphere change. Direct staff to collect the filing fee in the event that there is an objection to the service review exemption.

BACKGROUND INFORMATION:

LAFCO #2911 and #2912 involve a proposed sphere of influence reduction and detachment proposal from the West San Bernardino County Water District. These proposals were initiated by the owners of the proposed "Coyote Canyon" development which was annexed to the City of Fontana roughly one year ago.

Commissioners may recall that staff recommended that approval of the Fontana annexation should be conditioned upon a four-party agreement being reached among the Inland Empire Utilities Agency, the San Bernardino Valley Municipal Water District, the Metropolitan Water District of Southern California, and the West San Bernardino County Water District on matters pertaining to the delivery of wholesale and retail water services within the Coyote Canyon development area. The annexation proponents and the affected local agencies, however, indicated that such an agreement was close to fruition, and that such a condition would be unnecessary since a draft agreement was already being considered by the agencies.

At that time, then, it was thought that the four-party agreement would be quickly reached. Based on the assurances provided at the annexation hearing, the Commission omitted the recommended condition and approved the annexation to the City of Fontana, with the understanding that the wholesale/retail water agreement would soon be reached.

Unfortunately, that four-party agreement was never reached, and at least for now, it does not appear likely that it will be reached in the foreseeable future. Based on that perception, and for other reasons that will be outlined in the hearings on these proposals, the owners of the Coyote Canyon area have tentatively determined that they will seek water service from the Fontana Water Company, and detach their land from the West San Bernardino County Water District.

No hearing date has yet been firmly set for a Commission hearing on the sphere reduction/detachment from the West San Bernardino CWD, but in all likelihood, the District will vigorously oppose those proposed actions on the basis that it maintains that it can adequately serve the study area. At the November 20th hearing, however, the Commission can settle three important preliminary matters prior to the full hearing(s) on the sphere/detachment proposals:

LEGAL COUNSEL REPRESENTATION:

The Commission is aware that its Legal Counsel, Mr. Clark H. Alsop of Best, Best, and Krieger is also the City Attorney for the City of Fontana. Because of that dual representation, Mr. Alsop declared a conflict of interest on the Coyote Canyon annexation to the City of Fontana, and the Commission was represented by Mr. Jeff Goldfarb with the law firm of Rutan & Tucker.

The City of Fontana is not directly affected by the proposed sphere reduction and detachment from the West San Bernardino County Water District. The City Council for the City of Fontana, however, has taken a formal position in support of the landowner's proposals. Based on the City's advocacy position, and based on the point that these proposals are likely to be very controversial and contentious, staff suggests that it is appropriate for the Commission to once again retain Mr. Goldfarb for legal representation on the sphere/detachment proposals. Staff has reviewed this situation with Mr. Alsop, and he concurs that he has a conflict based on Fontana's expression of support for these proposals.

WAIVER OF SERVICE REVIEW REQUIREMENTS:

Government Code Section 56430 now requires the Commission to conduct a service review prior to or in conjunction with consideration of a sphere of influence review. The San Bernardino LAFCO, however, has adopted a local policy which can exempt a "minor" sphere of influence proposal from the service review requirement. The Commission has defined a "minor sphere adjustment" as one consisting of less than 3% of the agency's existing sphere territory, and the Coyote Canyon sphere adjustment would clearly fall below that threshold.

In relevant part, the Commission's service review exemption policy is as follows:

A minor amendment to the sphere of influence of any agency may be processed and acted upon by the Commission without a service review if all the following criteria are met:

- 1. The requested amendment is less than 3 percent of the acreage of the subject agency's existing sphere of influence.*
- 2. There are no objections from other agencies that are authorized to provide the services the subject agency provides and whose sphere of influence underlies or is adjacent to the subject territory.*

The West San Bernardino County Water District, obviously, is "authorized to provide services" within the study area, and it has informally indicated that it may opt to decline the exemption and undertake a service review pursuant to Section 56430. In the event that the District takes this position, then the Commission will need to defer consideration of LAFCO #2911/2912 until the service review is completed.

At this point, staff would recommend that the Commission exempt the proposed sphere reduction from the service review requirement, with the understanding that if the District objects to the exemption, then a service review for the District would be required prior to consideration of the sphere reduction and detachment.

WAIVER OF FILING FEES FOR THE SPHERE REVIEW:

Attached for Commission review is the landowner/proponent request for waiver of the \$3,750 filing fee that is normally required for a sphere of influence review. Typically, the Commission grants such a waiver request when the sphere change is coterminous with a concurrent boundary change proposed for a city or district (in this case, a detachment from the West San Bernardino County Water District).

The basis for that policy determination is that a concurrent sphere review and boundary change, involving the same area and acreage, can be included within one environmental review, one legal advertisement, and one staff report. In that circumstance, it is appropriate to waive the sphere filing fee since the sphere review is included within the staff work for the actual boundary change proposal.

At this point, however, it seems to staff that the proposed sphere of influence review for the West San Bernardino County Water District will be a contentious, time-consuming issue, particularly if the District does not agree to a waiver of the service review under the Commission's exemption policy. In that event, staff submits that payment of the LAFCO sphere of influence filing fee by the proponents would be appropriate based on the staff time and separate publication requirements for the service review study.

CONCLUSION:

At this early stage of review, the processing for LAFCO #2911 and #2912 is somewhat fluid. The clearest immediate need for Commission action is to designate Mr. Jeff Goldfarb as LAFCO Special Counsel on the basis of a conflict with Mr. Alsop's service as City Attorney for the City of Fontana, which is a known advocate for approval of these two proposals.

Beyond that, it is requested that the Commission authorize an exemption from the service review requirement for LAFCO #2911 (the sphere review), provided that the West San Bernardino County Water District (or any other overlaying local agency) does not object to such a waiver. If there is an

objection, the Commission's policy would require the conduct of a service review prior to or in conjunction with the sphere of influence study.

Finally, it is recommended that the sphere of influence filing fees be required in the event the sphere of influence study requires a service review. It is further recommended that the Commission authorize staff to waive the sphere of influence filing fees in the event there is agreement among the overlaying agencies that a service review is not required.

Attachments:

1. Map of Sphere/Detachment Proposal
2. Landowner's request for Sphere Filing Fee Waiver