

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

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DATE: NOVEMBER 7, 2003
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #6: Confirmation of Exemption from Government Code Section 56133 for LAFCO SC#212 – Sale of Wastewater Capacity by City of Colton

INITIATED BY:

City of Colton

RECOMMENDATION:

1. Confirm that LAFCO SC#212 is exempt from the provisions of Government Code Section 56133 on the basis that the reservation of treatment capacity in an existing wastewater treatment facility located within the City boundaries does not constitute the provision of new or extended services outside the City's jurisdictional boundaries as contemplated by the statute.
2. Determine that the City of Colton shall indemnify, defend, and hold harmless the Local Agency Formation Commission of the County of San Bernardino from any legal expense, legal action, or judgment arising out of the Commission's action on this matter, including any reimbursement of legal fees and costs incurred by the Commission.

BACKGROUND:

The City of Colton (the "City") has submitted a request to the Commission that it concur with the City's conclusion that the potential sale of wastewater treatment capacity within the City's sewer treatment plant is exempt from the provisions of Government Code Section 56133. As outlined in the letter from

the City (copy included as Attachment #1), the City is proposing to enter into an agreement to reserve capacity in its wastewater treatment facility so that it can accept and treat wastewater from the general Highgrove community within the County of Riverside. The wastewater service is primarily being reserved for the Spring Mountain Ranch project and the Springbrook Estates project within this unincorporated community. General information regarding the review and approval of these development projects is included in Attachment #2 to this report.

The City's request identifies that the capacity required would be for approximately 2,500 equivalent dwelling units. The letter indicates that the developers currently contemplate that either the County of Riverside, through its County Service Area 152C, or the Riverside Highland Water Company, a mutual water company, would be responsible for the sewage collection system and the transport of the effluent to the City of Colton plant.

The City of Colton has identified three issues which it believes supports its assertion that the "transaction" for the reservation of treatment capacity does not require LAFCO review under the auspices of Government Code Section 56133. The information which follows will address each of these issues:

1. The first assertion is that "reserving wastewater capacity in city's wastewater treatment facility does not constitute a "service" outside the City boundary."

Staff agrees with this position. Staff believes that the "transaction" as identified in the letter for the purchase of capacity for the treatment of the effluent does not constitute a service outside the City's boundaries as provided in Government Code Section 56133.

Government Code § 56133(a) states: "A city or district may provide new or extended services by contract or agreement **outside its jurisdictional boundaries** only if it first requests and receives written approval from the commission in the affected county." Thus one of the necessary preconditions to requiring LAFCO approval is that the service to be provided is "outside [the City's] jurisdictional boundaries." In the Colton situation, the Colton wastewater treatment facility is located wholly within Colton's jurisdictional boundaries. Moreover, Colton is not extending any of its sewage lines outside its jurisdiction to carry the wastewater. As such, Colton is not providing any services by contract or agreement outside its jurisdictional boundaries.

The above conclusion is consistent with past Commission practice. As noted in the attachment to the City of Colton letter, the Commission has previously determined that the reservation of treatment capacity in a facility located wholly within the City does not appear to constitute the provision of a new or extended service “outside its jurisdictional boundaries.” The Commission and staff have since implemented this policy declaration that “reserving capacity within a facility located inside the City’s jurisdiction” does not constitute the extension of the City’s “service”. Therefore, staff is recommending that the Commission concur with City of Colton’s conclusion that the agreement between Colton and the developers of the project reserving capacity in Colton’s wastewater treatment facility does not require LAFCO’s approval.

2. The second assertion is that “the statutory exclusion from LAFCO jurisdiction for “Nonpotable Water” applies to the proposed distribution system between Spring Mountain and the City”.

Staff disagrees with this assertion. Government Code Section 56133(e) states in part “this section does not apply to contracts for the transfer of nonpotable or nontreated water”. As is the case for many of the terms in the statute, Section 56133 fails to provide a definition of “nonpotable or nontreated water.” It is the staff’s position that this provision was included in the statute to allow for the transfer of recycled water for non-drinking purposes, such as irrigation or recharge. The staff can find no language that indicates that “nontreated or nonpotable water” relates to the transportation of sewage effluent, or wastewater, to a treatment plant. As a precedent, staff does not believe that this is an appropriate definition for this exemption. Therefore, staff does not believe that the exemption finding can be made on this basis and recommends that the Commission indicate its rejection of the assertion.

3. The third assertion is that “alternatively, Riverside Highland Water Company is a private company and thus is not subject to LAFCO authority.”

It appears that the City has raised this issue because Government Code Section 56133 only applies to the governmental provision of services beyond that government unit’s jurisdictional boundaries. Colton argues that the facilities that will carry the wastewater from the Highgrove community to the City may be owned by Riverside Highland Water Company, which is a private company. As such, the City argues that because it is not a governmental service that is being extended beyond the City’s boundaries, Government Code Section 56133 is inapplicable.

Interesting though this point is, its resolution is unnecessary for the present proceedings. The question is whether or not the City of Colton, an agency under the jurisdiction of this Commission for the purposes of Section 56133, is extending its services outside its boundaries. As outlined under item #1, it is the staff recommendation that the reservation of capacity is not an extension of service.

If the Commission could not make the finding as outlined in Item #1, according to the Commission's policies the extension of a service to a private or mutual water company would fall under the provisions of Government Code Section 56133. The Commission has adopted a policy regarding implementation of Government Code Section 56133, defining a public entity, noting that a private or mutual water company is not a public agency. It continues to outline that the extension of service by a public entity to a private or mutual water company would require the review and approval of the Commission. Staff, therefore, recommends that the Commission reject this assertion as a basis for exemption.

CONCLUSION:

As outlined above, the staff concurs in the determination of the City of Colton, as outlined in its letter under Item #1, that the agreement to reserve capacity in its sewer treatment plant in order to receive wastewater from the Highgrove area of Riverside County is not a service extended outside the boundaries of the City of Colton as such is identified in Government Code Section 56133. Therefore, the staff is recommending that the Commission confirm the City of Colton's exemption from the provisions of Government Code Section 56133 as it negotiates the agreement to accept wastewater for treatment at its regional facility on the basis that it is not the extension of a City service beyond its jurisdiction requiring Commission approval under Government Code Section 56133.

The staff has included within its recommendation that a determination be included that the City of Colton shall indemnify the Commission from any legal action arising out of this consideration.

KRM

Attachments:

1. Letter from the City of Colton dated October 8, 2003
2. Information on Spring Mountain Ranch Project within Riverside County