

# LOCAL AGENCY FORMATION COMMISSION COUNTY OF SAN BERNARDINO

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**DATE:** MAY 10, 2010

**FROM:** KATHLEEN ROLLINGS-McDONALD, Executive Officer  
SAMUEL MARTINEZ, Senior LAFCO Analyst

**TO:** LOCAL AGENCY FORMATION COMMISSION

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**SUBJECT:** **Agenda Item #11:** Consideration of LAFCO SC#352 – Request for Exemption from Government Code Section 56133 for Water Service from City of San Bernardino Municipal Water Department Within the Private Companies, San Bernardino Water Utilities Corporation and Arrowhead Valley Mutual Water Company, Acquired by the City

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## **RECOMMENDATION:**

Determine that LAFCO SC#352 is exempt from the provisions of Government Code Section 56133 as outlined in Government Code Section 56133 Subsection (e) and Commission Policy.

## **BACKGROUND:**

In March 2010, the City of San Bernardino Municipal Water Department (hereinafter the "City Water Department") submitted a letter requesting that the Commission consider an exemption from the provisions of Government Code Section 56133 for it to provide water service within the areas previously served by two private water companies, the San Bernardino Water Utilities Corporation and the Arrowhead Valley Mutual Water Company. The premise of this request was that the City Water Department had acquired the responsibility for water delivery within these agencies as outlined below:

### **SAN BERNARDINO WATER UTILITIES CORPORATION**

The City Water Department provides water service to parcels previously served by the San Bernardino Water Utilities Corporation (hereafter the "Water Utility Corporation"). The City Water Department operated the Water Utility Corporation for 11 years (1971) before it finally began proceedings to acquire the system in 1982. On March 20, 1984, the Water Utility Corporation was officially condemned with the City Water Department assuming responsibility for providing water service within its certificated service area.

Currently, two areas of the former Water Utility Corporation’s certificated service area are located within the City’s unincorporated sphere of influence – one area being the unincorporated Verdemon community located along Kendall Drive, generally between Glen Helen Parkway and Palm Avenue while the other area is located within the unincorporated Muscoy community, generally located west of Cajon Boulevard and north of Ogden Street.

### ARROWHEAD VALLEY MUTUAL WATER COMPANY

The City Water Department provides water service to parcels served by the Arrowhead Valley Mutual Water Company (hereafter the “Mutual Water Company”). In 1925, the City of San Bernardino entered into a three-party agreement with the Mutual Water Company and the Arrowhead Suburban Farms Company, which included the acquisition by the City of all the company’s water rights and the obligation to provide domestic water service within the 1,000 +/- acre unincorporated island area (Arrowhead Suburban Farms) generally located within the City of San Bernardino’s central sphere of influence.

#### Location:

Figure 1 below is a map of the service areas identified for the former Water Utility Corporation and the Mutual Water Company. Location and vicinity maps are also included as Attachment #1 to this report.

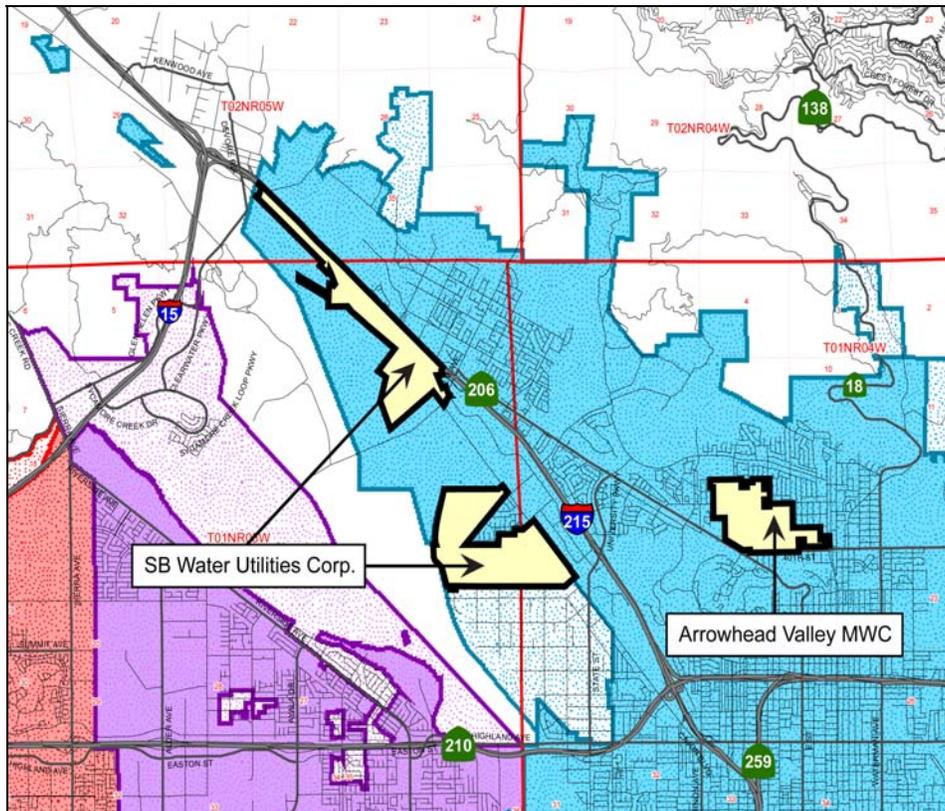


Figure 1 – Vicinity Map

**Discussion:**

The City Water Department request outlines that it already provides water service to the unincorporated areas that were formerly served by the Water Utility Corporation and the Mutual Water Company. Therefore, the City Water Department is requesting that LAFCO determine that the provision of water service to these areas is exempt from Government Code Section 56133 (e), a copy of which is included as Attachment #2 to this report. The pertinent section that applies to the City Water Department's request reads as follows:

(e) ... This section does not apply to an extended service that a city or district was providing on or before January 1, 2001...

In addition, the City Water Department is requesting that it be exempted from the provision of Government Code Section 56133 for providing water service to the undeveloped parcels within the service boundaries of the prior companies. The Commission's policy related to out-of-agency service contracts addresses the obligations assumed by public agencies when acquiring private/mutual water companies is as follows:

*"In the case where a city or district has acquired the system of a private or mutual water company prior to the enactment of this legislation, those agencies shall be authorized to continue such service and provide additional connections within the certificated service area of the private or mutual water company defined by the Public Utilities Commission or other appropriate agency, at the time of acquisition without LAFCO review or approval as outlined in Govt. Code Section 56133. The continuation of service connections under this policy shall not be constrained by the sphere of influence of that local agency at the time.*

*Proposals to extend service outside this previously defined certificated area would come under the provisions of Govt. Code Section 56133 for the review and approval by the Commission prior to the signing of a contract/agreement for the provision of the service."*

Staff believes that the provisions outlined above apply to the exemption request submitted by the City Water Department for the provision of water service within the service areas of the former Water Utility Corporation and the Mutual Water Company on the basis of the following determinations:

- *San Bernardino Water Utilities Corporation*

The City has provided LAFCO a copy of the recorded "Final Order of Condemnation" related to the City's acquisition of the former Water Utility Corporation in 1982, including a list of all the parcels that it currently serves within its unincorporated sphere of influence associated with the former Water Utility Corporation's certificated service area (copies of which are on file at the LAFCO Office). These provide

documentation that the City Water Department provided water service within the former Water Utility Corporation's certificated service area prior to January 1, 2001.

- *Arrowhead Valley Mutual Water Company*

The City has provided LAFCO a copy of the 1925 three-party agreement between the City of San Bernardino, the Mutual Water Company, and the Arrowhead Suburban Farms Company, including a list of parcels that the City Water Department currently serves water within the Arrowhead Suburban Farms area (copies of which are on file at the LAFCO Office). These provide documentation that the City Water Department provided water service within the Mutual Water Company's certificated service area prior to January 1, 2001.

The provisions of Government Code Section 56133 requires that a city or special district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it requests and receives written approval from LAFCO. Due to the number of parcels involved and the onerous task of requesting exemptions each and every time new water service is requested, the application of the Commission's policy for acquired water systems will streamline the acquisition of this service when development is contemplated through the County of San Bernardino's Land Use Services Department.

### **CONCLUSION:**

In conclusion, this exemption request only applies for the provision of water service within the service areas of the former Water Utility Corporation and the Mutual Water Company that are located within the City's unincorporated sphere of influence. Therefore, the extension of sewer service within these areas in the future will require a contract with the City and its Water Department for service outside the City's boundaries. Such a contract is required to be reviewed and approved by the Commission pursuant to the provisions of Government Code Section 56133.

However, on the basis of the determinations outlined above and throughout the staff report, it is staff's recommendation that the Commission determine that the provision of water service within the service areas identified for the Water Utility Corporation and the Mutual Water Company are exempt from the provisions of Government Code Section 56133.

KRM/SM

Attachments:

1. [Vicinity Map and Service Area Maps for the San Bernardino Water Utilities Corporation and the Arrowhead Valley Mutual Water Company](#)
2. [Government Code Section 56133 and Commission Policy for Out-of-Agency Service Contracts](#)

3. [City of San Bernardino Municipal Water Department Letter Dated March 8, 2010 Requesting Exemption from Government Code Section 56133 Including the Following:](#)
  - a. Municipal Water Department Commission Staff Report Dated November 24, 2009 (Agenda Item #8)
  - b. Municipal Water Department Commission Staff Report Dated December 8, 2009 (Agenda Item #13)