

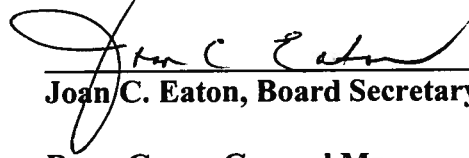
RUNNING SPRINGS WATER DISTRICT

MEMORANDUM

DATE: October 17, 2012

TO: Board of Directors

FROM:



Joan C. Eaton, Board Secretary/Administration Supervisor/Treasurer

Copy: Ryan Gross, General Manager
Mike Riddell, Legal Counsel, BB&K

SUBJECT: BOARD CORRESPONDENCE PACKET

- Memorandum BB&K – AB 685 Signed Into Law: Human Right to Water
- Running Springs Water District Information for CSA 79 Regular Advisory Committee Meeting



BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

Memorandum

TO: WATER AGENCIES
FROM: BEST BEST & KRIEGER LLP
DATE: October 8, 2012
RE: AB 685 Signed Into Law: Human Right to Water

INTRODUCTION

Last month Governor Brown signed into law Assembly Bill No. 685, known as the Human Right to Water Bill, which would add Section 106.3 to the California Water Code declaring that it is the established policy of the state that every Californian has a human right to safe, clean, affordable and accessible drinking water. Authored by Assemblymember Mike Eng (D-Alhambra), Section 106.3 will be effective January 1, 2013.

AB 685 requires specific state agencies, including the Department of Water Resources, the State Water Resources Control Board, and the State Department of Public Health, to consider this state policy when adopting policies and regulations. Further, AB 685 provides that this state policy does not apply to water supplies for new development and does not require the state to provide water beyond its current existing obligations. Finally, AB 685 provides that these provisions “shall not infringe on the rights or responsibilities of any public water system.” Although AB 685 is brief, it will require careful consideration by public agencies because the legal implications of the bill are largely uncertain. For instance, AB 685 requires that water be “affordable” but does not specify how public agencies will be required to comply with or implement this term. Such uncertainty could result in litigation between water suppliers and their customers who are unable to afford water service.

ANALYSIS

AB 685 adds Section 106.3 to the California Water Code, as follows:

(a) It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

(b) All relevant state agencies, including the department [of Water Resources], the state [Water Resources Control] board, and the State Department of Public Health, shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water described in this section.



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(c) This section does not expand any obligation of the state to provide water or to require the expenditure of additional resources to develop water infrastructure beyond the obligations that may exist pursuant to subdivision (b).

(d) This section shall not apply to water supplies for new development.

(e) The implementation of this section shall not infringe on the rights or responsibilities of any public water system.

The legislative history of AB 685 reveals that the intent of the Legislature and the bill's author, Assemblymember Mike Eng, was to create a state policy that would be applied to state agencies. (*Cal. Assemb. Daily J.*, September 1, 2012, p. 6817.) Subsections (a) and (b) require consideration of this policy in the administrative decision making process in order to provide greater access to safe, affordable domestic water service. (*Id.*)

Note that subsection (b) does not require state agencies to revise existing policies and regulations to bring them into compliance with AB 685. Rather, AB 685 requires such policies or regulations to come into compliance with this new law when an agency does revise its policies and regulations, or adopts new policies and regulations. Further, subsection (c) provides that AB 685 does not impose an obligation on the state to expend additional resources to develop additional water infrastructure.

Finally, subsection (e) specifies that AB 685 shall not infringe on the rights and responsibilities of any public water system. What this phrase means is uncertain, but it probably means that it does not affect a water purveyor's right and responsibility to set its own water rates. The legislative intent reveals that the bill was not intended to affect a water purveyor's ability to terminate water service for nonpayment of a delinquent bill or for a violation of the water purveyor's rules and regulations. (*Cal. Assemb. Daily J.* at 6818.)

CONCLUSION AND IMPLICATIONS

Water Code section 106, established in 1943, provides that it is "the established policy of this state that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation." AB 685 appears to amplify Water Code section 106, while noticeably not mentioning agricultural uses.

The enactment of AB 685 may not have established a new cause of action or claim for relief. AB 685 may be analogous to certain provisions of the California Environmental Quality Act ("CEQA") which have not been construed to create a private cause of action, such as the provision in CEQA which provides that "every citizen has a responsibility to contribute to the preservation and enhancement of the environment." (Pub. Res. Code § 21000.) Rather than



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construing this provision as one which creates a new cause of action, Courts have treated it as a policy statement and instead have enforced the other more specific provisions of CEQA that impose specific duties on public agencies. Likewise, subsection (a) of AB 685 does not impose any specific duties on public agencies, and the Courts may decide not to impose liability on public agencies under this provision alone.

Nonetheless, opponents of AB 685, including the Association of California Water Agencies, are particularly concerned with the provision in AB 685 which states that water must be “affordable.” It is not clear how this provision might be applied to water purveyors, although the legislative history reveals that the bill was not intended to affect a water purveyor’s ability to terminate water service. (*Cal. Assemb. Daily J.* at 6818.)

If you would like to discuss this new legislation, or its implications, please feel free to contact the BB&K attorney of your choice.

LUCAS I. QUASS
MICHAEL T. RIDDELL

RUNNING SPRINGS WATER DISTRICT

MEMORANDUM

DATE: October 15, 2012

TO: CSA 79 Advisory Committee

FROM: Ken Ayers, Board President
Ryan Gross, General Manager

SUBJECT: **RUNNING SPRINGS WATER DISTRICT INFORMATION FOR
CSA 79 REGUALR ADVISORY COMMITTEE MEETING**

The following information has been compiled and considered by the Running Springs Water District (District or RSWD) Board of Directors and staff regarding the potential annexation of the Green Valley Lake (GVL) CSA 79 sewer service area and San Bernardino County Green Valley Lake fire service area into the RSWD service area and consolidation of those services. This information is being provided to the CSA 79 Advisory Committee for their information.

CSA 79 SANITATION SYSTEM FACTS AND STATISTICS

1. 35 miles of sewer pipeline (40 year old truss pipe)
2. 4 sewer lift stations
3. 491 sewer manholes
4. 134 sewer clean outs
5. Current monthly sanitation user fee is \$63.24 per equivalent dwelling unit (EDU)
6. Current EDUs = 1,252
7. FY 2012/2013 CSA 79 revenue projected to be \$952K
8. Currently \$1.38 million in CSA 79 operating, CIP, replacement and expansion reserves
9. Current projects include: \$60,000 slip lining (1/2 mile), 50 manholes to be lined, Awanee Lift Station Improvements and pump replacement
10. CSA 79 staff provided RSWD with an Operational Activity Report for July 2012 at its August 29, 2012 Advisory Committee meeting.

11. Special District representatives have stated that there have been no fines assessed against CSA 79 in the last 10 years and that there have been very few sanitary sewer overflows (SSOs).

CURRENT STATUS OF RSWD STAFF REVIEW OF CSA 79 SEWER SYSTEM

As of August 2012 approximately 2 miles or 6% of the CSA 79 sewer pipeline inspection video had been reviewed in 8 of the 14 systems by RSWD staff. Of the 8 systems reviewed, 60 sections of pipe ranging from 6 to 10 inches in diameter were reviewed from video taken between 2009 thru late 2011. Only 2 of the 60 sections reviewed appeared to not be in need of repairs or replacement to reduce infiltration and inflow (I&I).

Based on this preliminary review it is the District staff's opinion that the system may require significant repair and/or replacement to get closer to RSWD standards and reduce I&I to an acceptable level. However, without a current comprehensive video inspection and cleaning it would be difficult to accurately estimate the cost of the necessary improvements to bring the system closer to RSWD standards but based on the information available it would likely be more than 5 years and greater than \$10 million. This would likely require the formation of an assessment district and issuance of improvement bonds to the residents of the Green Valley Lake and Snow Valley service areas.

RSWD staff has prepared a flow comparison from April and October of 2010 to illustrate the wet weather flows received from CSA 79 indicating excessive I&I.

Video inspection records that District staff has reviewed identify 114 potential problem areas in only 6% of the system that may or may not have been addressed since the video inspection was done. To date no maintenance or repair records have been acquired in order to determine if any of these areas have been addressed.

RSWD STAFF AND COMMITTEE MEMBER COMMENTS, CONCERNS AND OUTSTANDING ISSUES

Original Expectations:

- Consolidation of the three districts would reduce duplication of operational costs such as audit reports, legal, mandated studies, management, etc.
- The GVL sewer system was in need of repair and upgrades but those could be accomplished with the existing sewer rate in GVL due to the cost savings.
- The County Supervisor would support whatever the communities wanted.
- The costs associated with developing the new consolidated district would be reimbursed by the GVL service fees.

- Since RSWD provides first responder fire and paramedic service to the entire area, consolidation would incorporate the fees and taxes for the area currently served.
- Consolidation would rectify RSWD being a “donor service” for Arrowbear, Green Valley Lake and Snow Valley.

Currently:

- Arrowbear decided to withdraw from the consolidation process.
- In GVL, the portion of the pipes that the staff have been able to evaluate appear to be in much worse condition than was anticipated.
- The possible cost of upgrading the GVL system could reach \$15 million.
- The current County Supervisor has not been willing to either support or oppose the consolidation and continues to request additional information.
- The costs to prepare budgets, evaluate the GVL system and attend meetings is being borne by the RSWD.
- Since the initial evaluation of the GVL system revealed that it is probably in need of extensive and expensive repairs, it no longer seems reasonable to continue the consolidation effort unless a thorough video of the system is completed along with an engineer’s report of the necessary upgrades the system would need, including cost estimates.
- There is no funding source for any additional studies.

Other Major Issues of Concern

1. Cost incurred by RSWD for the last 2 years to study the consolidation project is approximately \$15,000 as of August 2012. Additional cost if this process moves forward would be approximately \$7,000 to \$10,000 for LAFCO application process plus an additional \$10,000 to \$15,000 for additional studies such as a formal Plan for Service and Feasibility Study.
2. County Fire Chief believes LAFCO study does not address consolidating fire services therefore he will apparently oppose expanding RSFD service area to include the Green Valley Lake area.
3. Estimated cost to provide repairs to significantly reduce I&I into the collection system could exceed \$10 million and require 5 years plus (refer to current status above).
4. Current monthly sanitation user fee is \$63.24 per dwelling unit. To adequately address I&I these costs will likely escalate possibly beyond affordable but to

adequately address this issue a more comprehensive and current video inspection would need to be performed.

5. See CSA 79 Sanitation System Facts and Statistics above.
6. RSWD financial consultant projection of net revenues for the first year of consolidation is \$11,000 for sanitation and \$130,000 for fire for a total of \$141,000.
7. CSA 79 provides service to 1,252 EDUs. Delinquent accounts and vacant property would need to be considered.
8. According to audit report, CSA 79 does not pursue uncollectable fees and instead uses the property tax roll as the method to collect fees for services. The percent of customer accounts that are delinquent would need to be determined.
9. Current RSWD contract with CSA 79 will expire on May 9, 2017. The terms of this contract will need to be re-negotiated to address current conditions and regulatory environment.
10. What costs would CSA 79 customers support for their sanitation system improvements? Would RSWD be the target of constant anger associated with system upgrades and maintenance?
11. CSA 79 has not provided any significant repair records so their systems integrity will always be the subject of major concern.
12. If consolidation does not occur with the added CSA 79 fire tax RSWD will be at risk in the future since County Fire already provides service to the mountain area. The question is the consolidation with CSA 79 collection system worth the funds the consolidation of the fire services would receive? \$680,000 for equipment replacement would require 5 years using the projected revenues of \$130,000 from the fire tax fund.
13. The five year plan formulated to address consolidation and the estimated monthly service charge of \$63.24 and reduce to RSWD current monthly service fee was figured prior to documentation of the collection system provided by County Special Districts and evaluated by RSWD staff.
14. County Supervisor has been reluctant to take a position on the consolidation and continues to ask for additional meetings and studies which are driving up the cost to RSWD.
15. CSA 79 system would require a complete video inspection to identify all maintenance issues which is estimated to cost \$400,000.
16. If CSA 79 system is in fact discovered to be in need of significant repair/replacement it would require a large sum to finance the work whose

responsibility would it be to sell the bonds and the responsibility associated with the bonds throughout their life? (i.e. failure to pay/default).

17. Regulatory reporting documentation such as the CSA 79 Sewer System Management Plan (SSMP), maintenance records or any spill reporting have not been able to be reviewed by RSWD staff. There is a concern with staff that this may be an extra burden that is unable to be defined at this time.
18. There have been improvements/benefits since the consolidation talks have begun that directly affect the GVL residents which are:
 - a. CSA 79 Advisory Committee has been revived and the appointment of Lewis Murray as the commission secretary will give the community a direct contact with their supervisor's office, hopefully addressing the communities concerns in a timelier manner.
 - b. The County Fire Chief has promised to improve the services they provide to the GVL community.
 - c. The problems identified with the sewer collection system have come to the surface and the community is now becoming aware of the issues.

Conclusion

Expansion of the RSFD fire service area to include Green Valley Lake is the most beneficial to both districts and appears feasible at this time. Annexation of CSA 79 Sanitation service area into RSWD service area could be considered in the future if and when the system is improved to the point of financial viability for both districts.