

From: Landers, Karen
Sent: Thursday, February 18, 2010 3:27 PM
To: 'Jacumba community Service District'
Cc: Bunton, Thomas D
Subject: RE: Water Sales

Mr. Lindenmeyer,

There are two questions that need to be answered:

- (1) Is Jacumba CSD allowed to sell this water to SDGE for a project outside of the CSD's boundaries, and
- (2) If so, is Jacumba CSD required to get LAFCO approval before it enters into a contract with SDGE for this purpose.

Because I am also counsel to LAFCO, our office ethical wall policies prevent me from answering this question. Therefore, Tom Bunton from our office has agreed to research and respond to your questions. To the extent SD LAFCO is required to come to a conclusion on this legal issue, they will be advised by their outside special counsel.

Tom can be reached at (619) 531-6456. His email address is thomas.bunton@sdcounty.ca.gov

This office ethical wall policy will not prevent me from answering future questions for Jacumba CSD, unless they also relate to LAFCO matters. We will determine this on a case-by-case basis based on your question.

Karen Landers
Sr. Deputy County Counsel
County of San Diego
1600 Pacific Highway , Room 355
San Diego , CA 92101
Telephone: (619) 531-5214
Fax: (619) 531-6005

Bunton, Thomas D
To
Jacumba community Service District
Feb 18, 2010
Mr. Lindenmeyer:

The answer to question 1 is yes, as long as the water being sold is surplus water and the water district's board deems the sale to be in the district's best interest. California Water Code section 22259 provides that "[i]f its board deems it to be for the best interest of the district, a district may enter into a contract for the lease or sale of any surplus water or use of surplus water not then necessary for use within the

district, for use either within or without the district.” The district’s board should make the findings required by the statute when entering into any contract.

The answer to question 2 is no, provided the surplus water being sold is non-potable. Government Code section 56133(a) provides that “[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.” Subdivision (e) of Government Code section 56133 contains exceptions to this provision. One of those exceptions states that “[t]his section does not apply to contracts for the transfer of nonpotable or nontreated water.”

Subdivision (e) also contains the following exception: “This section does not apply to contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county.” While not entirely clear, the better reading of the statute is that the last sentence requiring LAFCO approval only applies to the immediately preceding sentence, not the provision that states that the “section does not apply to contracts for the transfer of nonpotable or nontreated water.”

If you have any questions, please let me know.

Tom Bunton