

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE : OCTOBER 9, 2019
Samuel Martinez
FROM: SAMUEL MARTINEZ, Executive Officer
MICHAEL TUERPE, Project Manager
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #8 – LAFCO SC#443 – Authorization for the City of Big Bear Lake to Provide Services outside its Boundary and Outside its Sphere of Influence Pursuant to Government Code Section 56133.5

RECOMMENDATIONS:

Staff recommends that the Commission take the following actions related to LAFCO SC #443:

1. For environmental review, certify that LAFCO SC #443 is statutorily exempt from environmental review, and direct the Executive Officer to file the Notice of Exemption within five (5) days.
2. Approve LAFCO SC #443 authorizing the City of Big Bear Lake to provide water service outside its boundary and sphere of influence within the areas identified in Attachment #1.
3. Adopt LAFCO Resolution #3292 setting forth the Commission's determinations for service outside the City of Big Bear Lake's boundary and sphere of influence pursuant to Government Code Section 56133.5.

BACKGROUND:

In 1989, the City of Big Bear Lake Department of Water and Power (DWP) succeeded to the water service territory previously assigned the Southern California Water Company – Big Bear District upon its condemnation by the City of Big Bear Lake. As a condition of the City's acquisition through condemnation, it was required to assume service responsibility for all of Southern California Water Company's service area in the mountains which included area beyond the City's boundary and sphere of influence. In 1995, LAFCO granted the City of Big Bear Lake an exemption from the provisions of Government Code Section 56133 for the provision of water service within the State Public Utilities Commission assigned certificated service area.

In 2012, LAFCO conducted a service review for the City of Big Bear Lake (LAFCO 3125). It was noted at that time that there was confusion as to the extent of where the DWP provides water service outside of the City's corporate limits. Through the service review process, LAFCO staff and the DWP staff extensively reviewed its water service boundaries. This work resulted in extensive mapping illustrating the current DWP water service boundary. These maps were used as the basis for defining the City of Big Bear Lake water service area as of January 1, 2001. The Commission's action was to:

Accept the City's Department of Water and Power's current water service area, as existing prior to January 1, 2001, therefore noting that the City's DWP is authorized to connect any of the parcels within its water service area without the requirements set forth in Government Code Section 56133.

The resolution for the 2012 service review is included as Attachment #2 to this report, which outlines the Commission's acceptance of the City's DWP service area. However, there are two differences between the DWP's service area outlined in the resolution and DWP's service area today.

First, the Rimforest System was transferred to the Lake Arrowhead Community Services District (LACSD) in 2014. One of the questions raised during the 2012 service review was the option of transferring DWP's obligation of its Rimforest System to LACSD due to its proximity. As a result, the City of Big Bear initiated discussions with LACSD regarding taking over the operation and maintenance of its Rimforest System. The said transfer took effect in 2014, which not only allowed the DWP to operate more efficiently by not having to travel to Rimforest to service its customers but also allowed the LACSD to provide prompt service since the system was already within the CSDs service area.

Secondly, in 2015, the County and the City entered into an agreement for the City's DWP to provide water service to the Moon Camp Project, which is within County Service Area 53 Zone C, the overlaying water service provider for the project site. However, since CSA 53 C lacks the water infrastructure to actually serve the project, an agreement between CSA 53C and DWP had to be executed in order for DWP to provide potable water service to the Moon Camp Project. In November 2015, the Commission determined that the agreement between CSA 53 C and the City's DWP was exempt from LAFCO review.

GOVERNMENT CODE SECTION 56133

Statewide, questions remained for circumstances like this – Is the assumption of a water system for the configuration at that time? In this case, much of the system is outside of the City's boundary and sphere of influence. What about future infill connections? Under the provisions outlined in Government Section 56133, such extension is prohibited since the Commission's approval to authorize an agency to provide service outside its boundary and sphere of influence is only to respond to a health and safety issue.

PILOT PROGRAM:

In 2016, Government Code §56133.5 established a pilot program, through 2020, for Napa and San Bernardino LAFCOs to authorize a city or district to extend services outside of a sphere for additional purposes beyond responding to threat to a public health or safety, based upon specific criteria.

In 2017, LAFCO's *Countywide Service Review for Water* identified and evaluated the City's service delivery to the entirety of its system. The map of the service areas was clarified (see Attachment #1 to this report), and the applicability of the Pilot Program to the City's circumstance was discussed (see Attachment #3 to this report for an excerpt from LAFCO 3187).

For the City of Big Bear Lake, the pilot program provides a mechanism for infill connections to not be subject to further LAFCO review and approval. However, should the City desire to provide service beyond the identified service area, that action would be subject to LAFCO Policy 3 of Section IV, Chapter 2 of its *Policy and Procedure Manual*:

A proposal by a city or district to provide new or extended services outside the agency's boundaries and outside the agency's sphere of influence would come under the provisions of Government Code Section 56133.5, which will require Commission approval at a noticed public hearing **prior** to the signing of an agreement/contract for the provision of the service.

PILOT PROGRAM DETERMINATIONS:

The pilot program requires that the Commission make the following determinations regarding the area to be served outside the agency's sphere of influence, at a noticed public hearing. In the case of LAFCO SC#443, staff's position is that all three determinations can be made by the Commission.

1. That the proposed service extension was identified and evaluated in a service review. The service was identified and evaluated in the following service reviews: LAFCO 3125 in 2012 and LAFCO 3187 in 2017.
2. That the proposed service extension will not have an adverse impact on open space/agricultural lands and/or is not growth inducing. Continuation of water service to the areas that the City assumed service via condemnation by the court in 1989 is not anticipated to have an adverse impact on open space or agricultural lands.
3. That inclusion of the area to be served into the agency's sphere of influence is not feasible or desirable based on adopted commission policies. The areas served by the City outside of its boundary and sphere of influence are well beyond the City's sphere of influence. Therefore, inclusion within the City's sphere is not feasible or desirable.

ENVIRONMENTAL DETERMINATION:

As the CEQA lead agency, the Commission's Environmental Consultant, Tom Dodson from Dodson and Associates, has reviewed this item and has indicated that it is his recommendation that the review of LAFCO SC#443 is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the Commission's approval of this item does not have the potential to cause a significant adverse impact on the environment; and therefore, the proposal is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061(b)(3).

CONCLUSION:

Condemnation of a failing system that extends well beyond an agency's sphere of influence is a unique circumstance – one that does not fit into existing out-of-agency service agreement parameters. This pilot program, unique to two counties, provides a mechanism to accommodate unique circumstances and harmonize with the other statutes regarding out-of-agency service agreements. For these reasons, staff recommends the Commission approve LAFCO SC #443, which allows the City's DWP to provide water service outside its boundary and outside its sphere within the areas outlined in Attachment #1 and in Resolution #3292.

SM/MT

Attachments:

1. [Map: City of Big Bear Lake DWP Service outside Boundary and Sphere](#)
2. [Resolution #3141: LAFCO 3125 – City of Big Bear Lake Service Review \(2012\)](#)
3. [Excerpt from LAFCO 3187 \(Countywide Service Review for Water Services\)](#)
4. [City of Big Bear Lake Department of Water and Power Application Materials](#)
5. [Response from Tom Dodson and Associates](#)
6. [Draft Resolution #3292](#)