

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: NOVEMBER 9, 2015 
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
SAMUEL MARTINEZ, Assistant Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #6 LAFCO SC #401 – Consideration of Exemption from Government Code Section 56133 for LAFCO SC#401 – Agreement between City of Big Bear Lake Department of Water and Power and County Service Area 53 Zone C for Water Service

INITIATED BY:

City of Big Bear Lake Department of Water

RECOMMENDATION:

Determine that LAFCO SC#401 complies with the exemption criteria listed within Government Code Section 56133 Subsection (e) and, therefore, does not require Commission approval to proceed.

BACKGROUND:

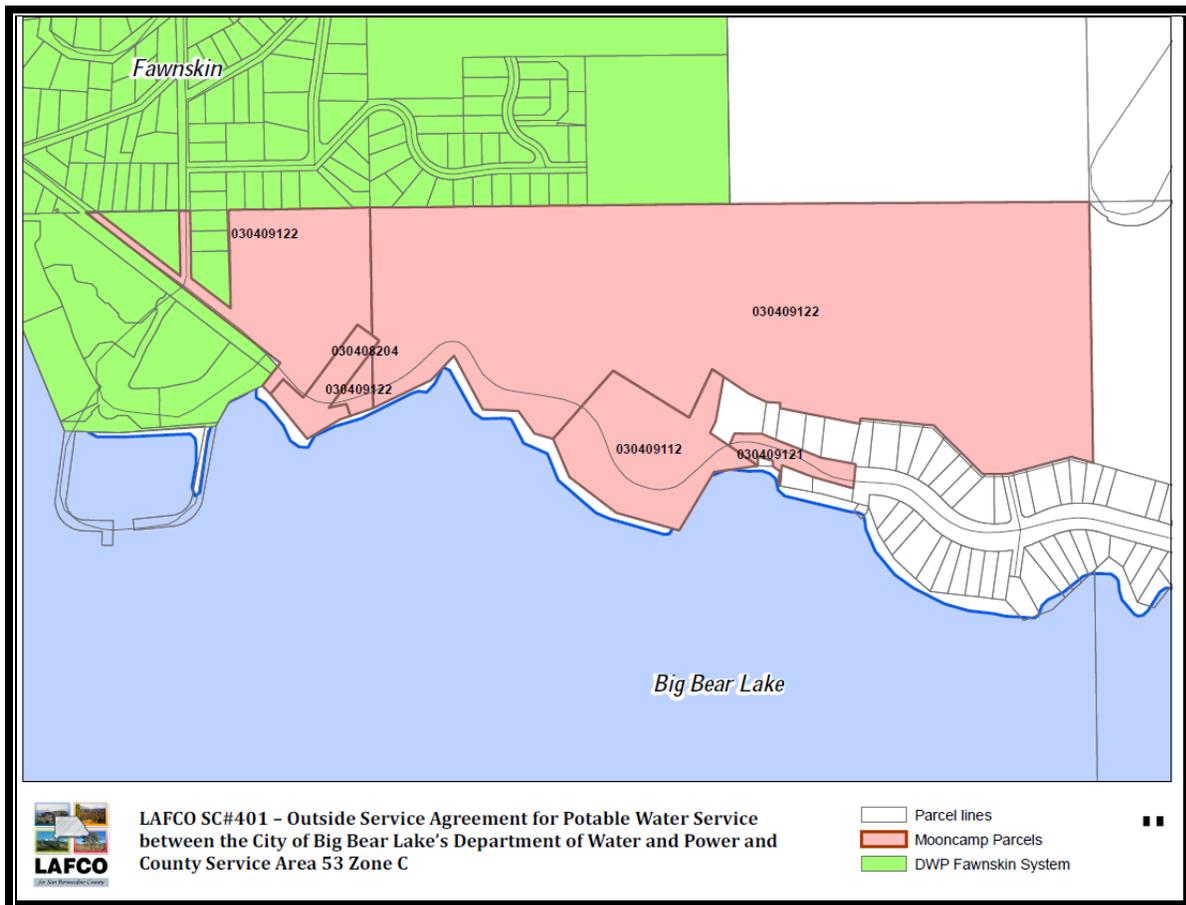
Beginning January 1, 2002, contracts between two or more public agencies were required to be reviewed and approved by the Commission pursuant to the provisions of Government Code Section 56133. However, when the Legislature amended these provisions to require LAFCO review of contracts between public agencies, they also noted that there could be instances where an exemption would remain appropriate. Included in this legislative amendment was specific exemption language contained in Subsection (e) which reads in part:

“This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be

provided is consistent with the level of service contemplated by the existing service provider...

On October 6, 2015, the City of Big Bear Lake Department of Water and Power (hereafter "DWP") submitted its request that the Commission determine that the proposed Water Services Agreement between DWP and County Service Area 53 Zone C (hereafter CSA 53 C or the "District") is exempt from the provisions of Government Code Section 56133 as authorized by Subsection (e). The proposed contract would allow the DWP to provide water service to the development commonly known as "Moon Camp" to the same extent that CSA 53C would contemplate to provide if its water functions were currently active. A copy of the exemption request letter (Attachment #1) and draft agreement (Attachment #2) are included as a part of this report.

The Moon Camp project proposes the development of 50 residential units and 7 lettered lots on 62 acres of land along the north shore of Big Bear Lake, a part of the larger Fawnskin community. Through the 2010 revision to the project's development plan all residential development will be north of SR-38. The graphic below depicts the parcel configuration of the area to be served by this contract and the area adjacent within the existing Fawnskin system of the DWP.



Over the last fourteen or so years, LAFCO staff has commented on the EIR and the several recirculated EIRs for the development application known as the Moon Camp project. In all of these environmental documents, the question of water service provision for the project has included a discussion of service delivery through the DWP. The Commission is well aware of the issues regarding the delivery of water service by the DWP following the condemnation of the former Golden State Water system by the City of Big Bear Lake. The service review completed in 2012 (Resolution No. 3141 included as Attachment #3) delineated the service area for the DWP outside the City's boundary and sphere of influence based upon existing service at the time of condemnation. The parcels included in the Moon Camp project, while adjacent, were not recognized as part of the DWP service boundary at that time. However, it has been acknowledged throughout the development process that the system to provide potable water would be under a contractual relationship between CSA 53C and the DWP, and sewer service would be provided by the existing sewer authority, CSA 53B.

The exemption determination is required to move forward with the completion of this agreement since the territory of the Moon Camp project is not within the sphere of influence of the City of Big Bear Lake. After reviewing the materials presented for SC#401, it is the staff's position that the findings identified in Subsection (e) of Section 56133 are applicable; therefore, the agreement between the DWP and CSA 53C should be exempted from further LAFCO review. The findings are as follows:

1. The Outside Service Agreement for Potable Water Services is between the City of Big Bear Lake DWP and CSA 53C, both of which are legally defined public agencies.
2. The public service to be provided is potable water service to the proposed Moon Camp development project, service authorized to be provided by CSA 53C but not actively provided. The services to be provided by DWP are in-lieu of CSA 53C developing the infrastructure to serve the tract, a cost prohibitive duplication of system improvements.
3. CSA 53C is contracting to authorize the delivery of potable water service by DWP and allowing it to require the payment of infrastructure development by the property owner to serve the 50 residential units proposed.
4. The level of service to be provided through this contract is consistent with the level of service contemplated by the formation of CSA 53C.

CONCLUSION:

On the basis of the findings outlined above, staff recommends that the Commission determine that pursuant to Government Code Section 56133 Subsection (e), the

Outside Service Agreement for Potable Water Services to be entered into by the City of Big Bear Lake Department of Water and Power and County Service Area 53C is exempt from further review and approval by the Commission. This determination is made with the understanding that contract finalization is ongoing between the two agencies with their expressed desire to achieve final approval by the County at its November 17 meeting. It is the staff's understanding that the outstanding issues related to language in the contract do not affect the determinations required of the Commission. .

/krm

Attachments:

1. [Department of Water and Power Letter Requesting Exemption dated September 23, 2015 with Application and Excerpts from Revised and Recirculated EIR No. 2 for TT 16136 and Appendix B Water Feasibility Study](#)
2. [Proposed Outside Service Agreement for Potable Water Services](#)
3. [LAFCO Resolution No. 3141 for the Service Review for the City of Big Bear Lake](#)