

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

January 28, 2025

FROM

LUTHER SNOKE, Chief Executive Officer, County Administrative Office

SUBJECT

Memorandum of Understanding with the City of Colton to Provide Potable Water Service to an Unincorporated Area of the County

RECOMMENDATION(S)

1. Find that the proposed Memorandum of Understanding with the City of Colton to provide potable water service to an unincorporated area of San Bernardino County is exempt under the California Environmental Quality Act Guidelines Sections 15301 and 15302 – for negligible replacement of existing facilities, and Section 15061 – Common Sense Exemption.
2. Approve non-financial **Memorandum of Understanding No. 25-49**, including non-standard terms, with the City of Colton to provide potable water service to an unincorporated area of San Bernardino County, effective the date of Local Agency Formation Commission's approval of San Bernardino County's exemption request under Government Code Section 56133(e)(1), and in effect as long as water services are required to the area, unless amended and approved by both the County Board of Supervisors and City of Colton City Council.
3. Approve the Letter of Intent, which includes a \$2,750 filing fee, requesting that the Local Agency Formation Commission determine the Memorandum of Understanding in Recommendation No. 2 is exempt from the provisions of Government Code Section 56133, as allowed under subsection (e).
4. Authorize the Chief Executive Officer to execute the Letter of Intent, subject to County Counsel review.
5. Authorize the Assistant Executive Officer or Deputy Executive Officer to submit the Memorandum of Understanding and Letter of Intent to the Local Agency Formation Commission, on behalf of San Bernardino County.
6. Direct the Deputy Executive Officer to transmit the executed Letter of Intent to the Clerk of the Board of Supervisors within 30 days of execution.
7. Direct the County Administrative Office to file the Notice of Exemption in accordance with the California Environmental Quality Act.

(Presenter: Luther Snoke, Chief Executive Officer, 387-4811)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

Provide for the Safety, Health and Social Service Needs of County Residents.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

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Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The filing fee, in the amount of \$2,750, is payable to the Local Agency Formation Commission (LAFCO) for San Bernardino County to consider the extension of service by contract and exemption from Government Code Section 56133, as allowed under subsection (e). Sufficient appropriation exists within the County Administrative Office 2024-25 budget.

BACKGROUND INFORMATION

Terrace Water Company (Terrace) serves approximately 2,000 customers who reside partially within unincorporated San Bernardino County (County) and the City of Colton (City) (Service Area). In 2013, Terrace and the City entered into an emergency water agreement for Terrace to obtain potable water from the City through an intertie with the City's water system. In 2019, the City and Terrace amended the emergency water agreement, which then allowed Terrace to purchase non-emergency water from the City as available but continue to maintain its distribution system, provide customer service, and continue to bill its customers within the Service Area.

In 2020, the State Water Resources Control Board (Water Board) imposed a service connection moratorium on Terrace as it was unable to comply with the maximum daily demand regulatory requirements of the Safe Drinking Water Act due to lack of water. A feasibility study was conducted which recommended that Terrace consolidate its water system with the City's. Terrace has since disconnected its wells and storage tanks and since October 2021, has relied on the intertie with the City for its entire water supply to the Service Area.

The County has the jurisdictional authority to provide potable water to the unincorporated portion of the Service Area. However, the County does not have potable water facilities, and it would not be economical for the County to provide potable water services to the unincorporated area within the Service Area.

The recommended Memorandum of Understanding (MOU) outlines the terms for the City to continue providing potable water to the Service Area. The County will also file a Letter of Intent requesting that LAFCO determine the MOU exempt from LAFCO review under the provisions of Government Code Section 56133, as allowed under subsection (e). If the exemption is approved, the City and Terrace will enter into a consolidation agreement and the City will then own, operate, and maintain Terrace's water distribution system. The MOU was approved and executed by the City Council on December 17, 2024.

The recommended MOU and Letter of Intent are required to be submitted to LAFCO for consideration of the exemption. If approved by the Board of Supervisors (Board), the County will submit the documents for consideration at the March 19, 2025 LAFCO meeting.

The MOU contains terms that differ from the County standard contract as follows:

1. The term of the MOU is perpetual beginning upon LAFCO approval and continuing as long as water services are required.
 - County Policies 11-05 and 11-06SP1 do not permit indefinite term contracts except for end user license agreements, software/hardware licenses and subscriptions, and master service agreement or unless approved by the Board.
 - Potential Impact: There is no end term of the MOU and the County is indefinitely bound to the terms and conditions of the MOU until the water services are no longer needed or both parties agree to amend the MOU.

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2. The MOU contains a mutual indemnification provision where the County is required to indemnify the City from claims, actions, losses damages and liabilities.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify the City, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County could be brought against the City and the County could be responsible to defend and reimburse the City for costs, expenses, and damages, which could exceed the benefit of the MOU. However, the City is a government entity and County Policy 11-05 provides for mutual comparative fault and indemnification of other government entities.

The MOU is recommended, with the non-standard terms, and is being done to ensure that county residents have access to quality water service, through minor alterations of existing water facilities, as the City has been providing the water since the Water Board order was issued and will consolidate with Terrace, and there is no possibility that approval of the MOU will have a significant effect on the environment. Therefore, the MOU is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15301 and 15302 for operation and or minor alteration of facilities with negligible or no expansion and replacement of existing utility systems; and Section 15061(b)(3) because it can be determined with certainty that the proposed ordinance will not have a significant effect on the environment.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Maria Insixiengmay, Deputy County Counsel, 387-5455) on December 17, 2024; LAFCO (Samuel Martinez, Executive Officer, 388-0480) on December 20, 2024; Risk Management (Greg Ustaszewski, Staff Analyst II, 396-9008) on December 20, 2024; Finance (Erika Rodarte, Administrative Analyst, 387-4919) on January 11, 2025; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on January 12, 2025.

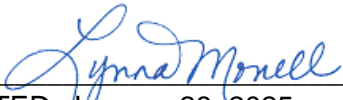
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: January 28, 2025



cc: CAO - Snoke w/agree
Contractor - c/o CAO w/agree
File - w/agree
MBA 01/28/2025