

**FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)  
(Fresno County, California)**

**“MINUTES”**

**REGULAR LAFCo MEETING –AUGUST 12, 2009**

**Call to Order:** Chairman Victor Lopez called the meeting to order at 1:30 p.m.

**Members Present:** Commissioners, Susan Anderson Larry Fortune, Victor Lopez, Henry Perea, Trinidad Rodriguez, and Alternate Commissioner Joe Chaidez

**Members Absent:** None

**Staff Present:** Rick Ballantyne, LAFCo Executive Officer  
Darrel Schmidt, LAFCo Deputy Executive Officer  
Kenneth J. Price, LAFCo Counsel  
Candie Fleming, Clerk to the Commission  
Samantha Hendricks, LAFCo Technician II

1. **Call to Order and Roll Call**
2. **Pledge of Allegiance**
3. **Minutes from the regular LAFCo Meeting of July 8, 2009.**

The minutes were unanimously approved as presented.

4. **Potential Conflicts of Interest: Any Commission Member who has a potential conflict of interest may now identify the item and recuse themselves from discussing and voting on the matter.**

Commissioner Anderson noted a conflict with Agenda Item # 7.

**CONSENT AGENDA**

5. **Destruction of Fresno LAFCo Public Records**

A motion to approve the destruction of LAFCo Public Records was made, seconded and passed unanimously.

**PUBLIC HEARINGS**

6. **City of Fresno “Ashlan-Bryan No. 1 Reorganization” (LAFCo File No. RO-09-1).**

Deputy Executive Officer Darrel Schmidt, reported that the protest hearing was required because not all property owners had consented to the annexation and reported that no protests had been received prior to the hearing. Chairman Lopez then opened the public hearing. McCaffrey Group representative, Dirk Poeschel, spoke in support of the

proposal. With no further testimony offered, the public hearing was closed. A motion to reaffirm their prior approval was made, seconded and passed unanimously.

**7. Pinedale County Water District “Derrel’s Mini Storage Detachment” (LAFCo File No. DD-09-1).**

Deputy Executive Officer Schmidt presented staff’s report and reported that Pinedale County Water District’s (PCWD) attorney, Neal Costanzo, had submitted a voluminous letter. Mr. Costanzo addressed several concerns the District had with the proposal including a 1985 agreement entered into between the PCWD and the City of Fresno.

LAFCo Counsel, Ken Price, responded to Mr. Costanzo’s letter stating that after his review, many of the issues raised in the letter, were not pertinent to the action that was before the Commission and that the issues raised were between the City of Fresno and the Pinedale County Water District. Mr. Price said the key concern is that both the District and the City were authorized under LAFCo law to provide water service to the affected territory.

Attorney Bob Hillison, representing the applicant (Paul A. Ridenour), spoke in support of staff’s report. He stated that the applicant merely wants to develop his property and obtain water service at a reasonable cost. He said that the City told his client that the District’s fire flow was inadequate to meet its standards and that the District has not provided any evidence that the City’s conclusion was wrong. Mr. Hillison said that the existing circumstances have given them no choice but to detach from the District. He also agreed with staff’s recommendation—but disagreed with Mr. Costanzo’s objections on behalf of the District.

PCWD Counsel, Neal Costanzo, voiced numerous concerns why the Commission should not act on the application calling it “legally flawed”. He also stated that if the Commission approved the detachment based upon the LAFCo Executive Officer’s recommendations, the Commission would be violating CEQA. He said there was clearly an environmental impact that the City’s analysis did not address because it was based on the premise that the District would provide water service to the affected parcel. Additionally, if the detachment is approved, the City of Fresno would be in breach of a 1985 agreement with the District. Mr. Costanzo indicated that the District was prepared to go to court over the issue. He also stated that the detachment would create a peninsula and would violate the Commission’s own policies and standards.

He further stated that as a condition of the approval of the Conditional Use Permit, the City required the developer to loop the PCWD’s lines. He said that by looping their lines the District could dramatically increase the water flow and water pressure and would be able to achieve any standard. He then added that if the property is detached, Pinedale could not loop their water lines and the District would be left with a water system that is doomed to mediocrity. Mr. Costanzo suggested that if the Commission was inclined to consider staff’s recommendation for approval, they should continue the matter for the time period necessary to evaluate legal questions.

At the request of Commissioner Perea, Ken Price addressed the legal issues raised by Mr. Costanzo. In regard to the claim that the detachment violated CEQA, Mr. Price explained that when the Commission receives an application by landowner petition, it

was common for the Commission to be the “Lead Agency”; however, there is an exception to CEQA with respect to reorganizations and that a “Categorical Exemption” applied to this reorganization.

Mr. Price said the City approved a Mitigated Negative Declaration at the time the City approved the Conditional Use Permit application for the proponent’s mini storage facility and that the Commission under normal circumstances reviews and accepts the City’s environmental analysis and findings and then serves as a “responsible agency” rather than a lead agency in compliance with CEQA. Counsel Price said that the City’s environmental document discussed at great length potential impacts related to water consumption, but did not fully discuss impacts related to the detachment.

After his review, LAFCo Counsel Price stated that he had determined that a “Categorical Exemption” with respect to CEQA was applicable and that in his judgment he did not see such determination violating the California Environmental Quality Act. He also stated that staff did not view the issue as an environmental issue—but as a regulatory issue in terms of which agency would provide the water service.

LAFCo Counsel Price also responded that the City of Fresno’s *Urban Water Management Plan* that was mentioned was simply utilized by the City as a “planning tool” necessary to project water use and identify various conservation measures. He also indicated that the 1985 agreement that had been entered into between the City and District did not speak to the legal authority as to which entity (or both) have the legal right to provide water service to the affected territory.

Responding to the point made regarding consistencies with LAFCo’s adopted *Policies and Procedures*, Mr. Price said staff believes they are consistent and that the territory is already located within the City of Fresno and, therefore, an argument that the proposal was inconsistent with Commission policies was not a valid claim.

Darrel Schmidt responded to Commissioner Perea’s questions of staff’s analysis regarding fire flow requirements. Mr. Schmidt stated that staff’s analysis was based upon comments received from the City concerning the fire flow available at hydrants at the time tests were conducted on pressure and flow from various fire hydrants.

Lon Martin, Assistant Director of the Fresno Public Utilities Department, indicated the City’s support. He said that the City’s Counsel advised that if the territory were to be detached from the District, the 1985 agreement would no longer apply and that the City of Fresno could legally provide fire service.

With regard to Mr. Costanzo’s comments on the City of Fresno’s *Urban Water Management Plan*, Mr. Martin said that Water Code 10640 did not require the City to review and to amend or update its *Urban Water Management Plan* based on serving water to a parcel that may or may not be in its service area. Nor, that it must amend the *Plan* every time it adds a new customer to its service area.

Mr. Martin said the City of Fresno and representatives of Darrel’s Mini Storage had already agreed to fully offset the water demand from the subject property by reducing the water demand requirements from other Darrel’s facilities located within the City of Fresno. Mr. Martin also responded that the City did not have any issue with LAFCo’s position pertaining to the “Categorical Exemption”.

Mr. Martin stated that in the past, the City and the District maintained dual service responsibilities to single parcels where domestic services were provided by the District and fire services were provided by the City. He stated that the City of Fresno has terminated this practice because it proved to be confusing for operations and maintenance and was not an efficient use of resources. He stated that the City had no interest in dividing services, only that whoever provided the services to the territory should provide all of the services—including domestic and fire.

Byron Beagles, Fire Prevention Engineer for the City of Fresno Fire Department, stated that he had conducted the water pressure tests for the Fresno Fire Department and had prepared the information that appears within staff's report. Mr. Beagles explained why a wide range existed within the test results and that water pressure was greater during the winter time than in the summer. He stated that no matter the time of year when a fire occurred, the hydrants had to provide adequate water pressure and flow. He said that the Pinedale County Water District could only meet its own standards and not that of the Fresno Fire Department.

Mr. Beagles said the area where the affected territory is located is served by two water lines and is already looped and they don't see how the District looping the lines would improve fire flow without more water going into the system.

Frank Daniele, Engineer for the Pinedale County Water District, testified that the District has served the affected territory since 1974. He stated that the District could meet the City's fire flow requirements 90% of the time, and of the 10% of the time the District couldn't meet it, they could provide 94% of the requirement. Mr. Daniele said that if the property was detached, that the District would not be able to loop their lines. This would impact public safety and result in reduced fire flows. He said the District has the capability to serve the area and feels they should do so. Mr. Daniele also said that if the Commission did approve detachment of the property, a condition should be added that the developer provide easements to the District and construct the two water mains through their property to their north property line as has been planned in all the City staff reports up to this point and time.

Commissioner Perea asked if the issue was really a dispute of who was going to provide the water to the area. Mr. Daniele responded that the District's concern is that the Commission would be detaching the territory from the PCWD—an area that had been served for 30 years. Such action would reduce the District's revenues that are necessary to provide adequate services and that the detachment may impact their ability to loop their lines within the area.

Lon Martin responded that it was important to close the loops; however, they do exist and require additional effort on the water system maintenance side to provide the appropriate flushing, if necessary, to avoid a water quality problem. He said the City does have some dead-end systems but they are definitely not a preferred alternative.

Ken Price advised the Commission that they have the ability to impose a condition that could require the property owner to consent to some kind of reasonable easement for closing the loop.

Paul Ridenour, representing Derrel's Mini Storage, stated that his company had offered several times to grant an easement to the District and construct both lines. However, the District could not make a decision. He said that after months of trying to negotiate,

they felt that they were getting nowhere, and subsequently filed an application for detachment. Mr. Ridenour said they would grant the District whatever they wanted, if they would stop holding up their project and threatening lawsuits.

David Rodriguez, President of the Pinedale County Water District, testified that the City of Fresno has historically taken property from the District—the last one being the Tutelian detachment which cost the District a lot of money in connection fees and monthly service fees. Mr. Rodriguez said the District would be willing to provide the domestic water and have the City of Fresno provide the water for fire service, but that the City refused.

Lon Martin responded that the City was not interested in providing redundant infrastructure service where the City of Fresno is providing a level of service to a parcel and then have domestic services provided by another agency. Mr. Martin stated again that this would not result in good and efficient operations for the City. Mr. Martin stated that the District would have to upgrade their system and construct whatever infrastructure and water well improvements that were necessary to provide the appropriate level of fire and domestic services. If they were to do that, the City would be willing to let the District serve the area.

Dirk Poeschel spoke on behalf of North Palm Investors, who own the property north of the subject property. He was concerned over any mention of a moratorium on development within the area. Mr. Poeschel indicated that his client has already spent thousands of dollars on his project and asked that the Commission deliberate and resolve the issue and not hold up future development in the area.

Carolyn Romersa, Corresponding Secretary of the Pinedale Community Association, testified that the Pinedale Community wants the Derrel's Mini Storage and that the Pinedale County Water District be allowed to serve the area.

Paula Guzman said they were not opposed to industry and felt that the City would not provide any better service than what the District could provide. She asked the Commission to consider what the detachment will do to the Community of Pinedale.

Commissioner Perea moved to approve the detachment with a condition added that easement language be worked out with staff from both parties. Commissioner Rodriguez seconded the motion and added that there should be a time frame for the language. LAFCo Counsel Price suggested appropriate language for the condition. The motion passed unanimously with the added condition.

Commissioner Perea said he was going to put an item on the Commission's agenda in the future to talk about the issues between the City and District so that no more full discussions were required at Commission hearings.

## **8. Revised Del Rey Community Services District Municipal Service Review (MSR).**

Deputy Executive Officer Schmidt presented Staff's report. Mr. Schmidt reported that revisions were being made to the MSR and Sphere of Influence Update Report that was prepared for the Del Rey Community Services District in 2007. He stated that the revisions were in response to the Grand Jury's Final Report No. 9, which identified a number of deficiencies in the Del Rey CSD's financial practices and oversight. The

Grand Jury had made two findings and recommendations specifically related to the MSR and SOI Update.

Mr. Schmidt reported that the MSR's Financing/Rate Restructuring and the Government's Structure/Efficiency Sections had been revised significantly and noted those revisions. Mr. Schmidt reported that it appeared that the current governing structure of the District (community services district) is the most appropriate structure at this time and that no changes were recommended.

The Commission unanimously approved the revised MSR and determinations and adopted the findings and recommendations within the report.

Commissioner Anderson asked what the process would be if the County was willing to take on the District as a County Service Area (CSA). Deputy Executive Officer Schmidt responded that the dissolution could be initiated by LAFCo and that the Del Rey CSD Board of Directors could concur. However, the dissolution would be subject to a voter protest. He said the formation of a new CSA might also require a vote and there would be costs associated with the election, and possibly engineering costs.

Commissioner Anderson said that it seems a CSA might be the best solution but the County would not want to take on the liability and shouldn't. She said there could possibly be a grant that could help if there was a larger plan with long-range solutions.

Ken Price reported that AB 1109 was introduced on a two-year track that would allow LAFCo, after commencing a study and if certain findings were made, to appoint a receiver. The receiver would have authority over a district to make improvements or consider filing for bankruptcy.

Larry Donaldson, Legal Counsel for the Del Rey Community Services District, said that the District Board had already started addressing the issues that the Grand Jury emphasized in their Report. He stated that the District was complying with the Grand Jury's recommendations to the best of their ability and that the District had adjusted their sewer service rates in order to substantially increase their revenues. They had also reduced expenses and personnel costs. Counsel Donaldson said they concurred with the conclusion of the report and believed staff did an excellent job in its review and conclusions.

A motion was made to approve the revised MSR incorporating staff's recommendations. The motion was seconded and unanimously passed by the Commission.

#### **OTHER ITEMS:**

- 9** **James Irrigation District.** A request to waive filing fees for consolidating the James Irrigation District and Reclamation District No. 1606 and detaching the successor district from territory located within the City of San Joaquin.

Deputy Executive Officer Darrel Schmidt presented staff's report. He reported that the James Irrigation District requested that LAFCo waive consolidation and detachment fees in the amount of \$10,500 for a number of reasons.

A motion was made, seconded, and passed unanimously to approve the fee waiver.

## **10. Executive Officer Recruitment Strategy**

Executive Officer Ballantyne reported that he did plan to retire from public service and had tendered his resignation. He reported that his last day would be January 8, 2010. Mr. Ballantyne reported that the Subcommittee formed by the Commission had met to discuss strategies for proceeding to fill his position and that the Subcommittee concluded that it would be more cost effective to have the County's Personnel Department conduct the recruitment with the understanding that recruitment efforts would be limited to the State of California. Beth Bandy, Director of Personnel Services, indicated that they would be able to provide the Commission with the three top candidates by the November 4<sup>th</sup> hearing.

A motion was made, seconded, and unanimously passed to approve the Subcommittee's recommendations and actions.

## **11. LAFCo Independence: Recent Actions Taken Towards LAFCo Independence**

Executive Officer Ballantyne reported on the progress being made towards independence. He summarized various meetings that have taken place and reported on conclusions of those meetings. He also reported what steps are still necessary to proceed with LAFCo's independence.

Commissioner Perea asked if there was anything in the retirement code that would prohibit or allow future employees not to be in the County's retirement system. He said that the County was looking at a new, lower-tiered retirement system for future employees.

Ken Price responded that LAFCo statute has a provision that provides that if the Commission desires to have the staff participate in the retirement system under the 1937 Act, the Commission would be statutorily allowed to participate and that FCERA could not deny LAFCo membership. He also said the Commission could account for two levels of retirement by having FCERA membership for existing staff and possibly having something different (like a 401K or 403C) for new employees.

## **12. CALAFCO State Conference: Update Regarding Conference Planning**

Executive Officer Ballantyne presented to the Commission the Preliminary Yosemite Conference Program Guide prepared by LAFCo's technician Samantha Hendricks. Mr. Ballantyne reported that as the host LAFCo, that it was traditional for the hosts to provide welcoming remarks. Mr. Ballantyne reported that since the County members have a time/meeting conflict and that neither City member will be able to attend, he asked Commissioner Fortune to participate in addressing conference attendees. Commissioner Fortune agreed to serve as the Commission's representative in this capacity.

## **13. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION. Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: **Number of Cases: 1****

The Commission went into closed session and upon return, the Chairman reported that there was no reportable action.

## **PUBLIC COMMENTS**

There were no comments from the public.

## **ADJOURNMENT**

The meeting was adjourned at 4:06 p.m.

**THE NEXT LAFCO MEETING** will be held on September 16, 2009, at 1:30 p.m. in the Board of Supervisors' Chamber - Hall of Records, Room 301, Fresno, California.