

**FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)**

**(Fresno County, California)**

**“MINUTES”**

**REGULAR LAFCo MEETING –SEPTEMBER 16, 2009**

**Call to Order:** Vice-Chair Susan Anderson called the meeting to order at 1:30 p.m.

**Members Present:** Commissioners Susan Anderson, Larry Fortune, Henry Perea, Trinidad Rodriguez, and Alternate Commissioner Dennis Lujan

**Members Absent:** Chairman Victor Lopez

**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 August 12, 2009.**

The minutes were approved as presented with Commissioner Lujan abstaining.

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

Commissioner Rodriguez stated that he had a conflict with Agenda Item # 5.

**CONSENT AGENDA**

5. **City of Mendota “North East Bass Avenue Annexation”.**

A motion to approve a one-year extension was made, seconded, and unanimously passed. Commissioner Rodriguez abstained.

**PUBLIC HEARINGS**

6. **Consider Retirement Options for LAFCo Employees.**

Deputy Executive Officer Schmidt presented staff’s report. He stated that the Commission had previously expressed its desire that the transition of LAFCo employees from County to LAFCo employment occur as seamless as possible. Mr. Schmidt reported that all the staff members had expressed their desire to remain members of Fresno County Employees Retirement Association (FCERA) at their present Tier I level.

He then outlined the various retirement options that would be available for staff. He reported that retirement benefits normally involve a significant cost to the agency. He then reviewed a number of available retirement plan options citing their advantages and disadvantages.

Commissioner Anderson indicated that the County was proposing to create a new “Tier-IV” level in their retirement plan for new employees and asked whether the Commission would consider such tier for new LAFCo employee. Roberto Pena, FCERA Administrator, said that he believed that the Commission could offer whatever level of retirement benefits that they desired.

Commissioner Perea supported staff recommended alternative 1-A since the Commission desired that LAFCo’s current employees maintain the same retirement benefit levels. He asked if the Commission could approve alternative 1-A, and direct staff to further define retirement options for new employees.

Kenneth Price responded that he was not aware of any legal requirement(s) that would mandate the Commission to provide the same level of retirement benefits for both the existing as well as future employees.

Commissioner Perea made a motion for LAFCo Counsel to prepare a resolution reflecting the Commission’s initiation of LAFCo’s membership into FCERA under Option 1-A for current employees that would extend the same level of current retirement benefits and direct staff to bring a report back to the Commission including an alternate retirement plan for future LAFCo employees. Commissioner Perea’s motion was seconded and passed unanimously.

**7. Discussion Regarding CID/Five Cities Negotiations, Related Potential Conflicts of Interest, and Consider Appointment of Special Counsel for Affected Proposals (Including Parlier Annexation).**

Executive Officer Ballantyne presented staff’s report. He stated that when territory is annexed to the Cities of Fowler, Kingsburg, Parlier, Sanger, and Selma, that the same territory is detached from the Consolidated Irrigation District. He explained that approximately two years ago, staff had reported that there were several outstanding issues existing between the District and five Cities that needed to be addressed related to perceived impacts that growth and development were having on District facilities and operations and the need to mitigate these impacts. He reported that Consolidated Irrigation District had indicated that their cooperative agreements with each of the five cities would soon expire and needed to be renegotiated.

A facilitation process lead by Nancy Miller was initiated. Negotiations took place over the last two years but the parties were unable to come to an agreement that was mutually acceptable to each and negotiations had been stalled.

Executive Officer Ballantyne reported that during May of 2008, a City of Parlier reorganization proposal had been continued so that the City could provide additional information addressing public health issues including potential arsenic contamination along an abandoned railroad grade located within the territory. At this time, the Consolidated Irrigation District had expressed its willingness to accept as a mitigation measure a condition requiring that the project comply with the terms of the future agreement once it had been finalized. CID recently stated, however, that such condition

is no longer acceptable because the City of Parlier environmental analysis does not adequately address and mitigate the project's water-related impacts.

Executive Officer Ballantyne reported that the City of Parlier had prepared and adopted a revised Mitigated Negative Declaration for the project that included a similar non-specific Mitigation Measure which CID indicates is inadequate and says it represents potential grounds for them to challenge the City's Initial Study and CEQA Findings.

Executive Officer Ballantyne explained that LAFCo would serve as a Responsible Agency under CEQA. If the Commission concurred with the City's Mitigated Negative Declaration, CID has indicated that it would challenge such finding in a court of law. Since LAFCo Counsel Kenneth Price and Special Counsel Michael Noland have indicated that they may have a potential conflict of interest, neither Counsel would be able to advise the Commission with respect to the City of Parlier's project and, therefore, staff was recommending that the Commission seek additional Special Counsel to advise them.

Commissioner Fortune said that he had received a call from the Mayor of Parlier wanting to know why his project can't be heard by the Commission. Deputy Executive Officer Schmidt responded that even though the City of Parlier had addressed some of the issues, some issues still remained. Of concern were issues related to CEQA that could potentially pose legal problems for the Commission, and that is why the Commission needed to obtain Special Counsel.

Alternate Commissioner Lujan questioned why the Commission was so involved with the CEQA portion of an application when a City should have already conducted the study on a project before it got to LAFCo.

Don Pauley, representing the City of Kingsburg, reported upon negotiations that had been taking place between CID and the five cities. Mr. Pauley said that a meeting had taken place between CID's legal counsel and the Kingsburg's City Attorney (who represented the five cities) to negotiate an agreement. CID indicated that the Draft Agreement was their last, best and final offer. Mr. Pauley said he briefed the other City Managers on the revised Draft Cooperative Agreement(s) and that it was unlikely that all five cities would enter into that agreement. He said that it was his opinion that some of the cities had taken a position that would require that they negotiate and enter into a stand-alone agreement with CID.

A motion was made and seconded to delegate authority to the Chairman and Vice-Chairman to sign a contract for Special LAFCo Counsel.

Phil Desatoff, General Manager for Consolidated Irrigation District, expressed his frustration with not being able to conclude agreements between CID and the five Cities. He indicated that CID had not received a formal response from any of the Cities and asked that whatever the Commission did, to expedite the process to bring the matter to a conclusion as soon as possible.

## **8. Special District Directory**

Samantha Hendricks reported that a new "Special Districts Directory" had been prepared for the LAFCo Website. This Directory included staffing, district directors and terms of office, services provided, and service area information. Ms. Hendricks said staff would continue to gather information from the Districts that did not respond.

## **OTHER ITEMS:**

### **9. LAFCo Audit Process**

Executive Office Ballantyne reported that the last LAFCo audit was performed in June, 2006. It was prepared at the Commission's request upon the departure of former Executive Officer, Mike Waiczis. Mr. Ballantyne reported that the Auditor's Office indicated its willingness to perform an audit for the Commission.

Cindy Hamm, representing the Fresno County Auditor's Office, reported that the last audit covered an 18-month period and was very extensive. She indicated that an audit with a smaller scope would be appropriate. She also shared that the County normally prepares a transition review when County Department Directors leave office. Such review is characterized by having a limited scope and usually covers an 18 month period.

Commissioner Perea made a motion and Commissioner Lujan seconded the motion to request the Auditor's Office perform a "Transitional Audit" covering the last 18 month period. The motion and second were unanimously approved.

### **10. A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION. Subdivision (a) of Section 54956.9: *City of Fresno v. Fresno Local Agency Formation Commission***

#### **B. PUBLIC EMPLOYMENT Title: Executive Officer**

LAFCo Counsel Price reported that the Commission authorized Counsel to send a letter to CALAFCO regarding litigation between the City of Fresno and LAFCo.

## **PUBLIC COMMENTS**

There were no comments from the public.

## **ADJOURNMENT**

The meeting was adjourned at 2:50 p.m.

**THE NEXT LAFCO MEETING** will be held on October 7, 2009, at 1:30 p.m. in the Board of Supervisors' Chamber - Hall of Records, Room 301, Fresno, California.