
**FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)
EXECUTIVE OFFICER'S REPORT**

AGENDA ITEM No. 7

DATE: September 16, 2009

TO: Local Agency Formation Commission

FROM: Rick Ballantyne, Executive Officer
Kenneth Price, LAFCo Counsel

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

Background:

The Cities of Fowler, Kingsburg, Parlier, Sanger, and Selma are located within the Sphere of Influence of the Consolidated Irrigation District (CID). When these cities have annexed properties, a concurrent action has been to detach said territory from CID.

Approximately two years, ago it was brought to the attention of the Commission that several outstanding issues existed between the District and the Cities that needed to be addressed. These issues, to a large extent, focused upon perceived impacts growth and development of the urban areas were having upon District facilities and operations and the need to mitigate such impacts. Also, the District had indicated that its cooperative agreements with each of the five cities were soon to expire and needed to be renegotiated.

At that time, LAFCo's Counsel (Ken Price of Baker, Manock, and Jensen) advised the Commission that his firm had a potential conflict of interest in that it represented CID. Likewise, LAFCo's Special Counsel, Michael Noland, also indicated that his firm (Kahn, Soares & Conway, LLP) maintained a potential conflict in that he represented the City of Kingsburg. Because many of the issues involving both the District and the five cities posed potential problems to future annexation activities, the Commission determined that it would be appropriate to initiate a "facilitation" process. In response, LAFCo with the approval of representatives of the five cities and CID, hired Nancy Miller to serve as LAFCo's Special Counsel and facilitator.

While there have been several attempts by the parties to resolve their differences and prepare agreements that were mutually acceptable to each party, final resolutions and agreements have yet to be executed. Staff has previously prepared status reports to the Commission advising them of progress being made, although it would appear that efforts have been stalled.

On May 7, 2008, the Commission considered a request by the City of Parlier to continue to a date uncertain an application (City of Parlier Reorganization No. 06-02) to annex territory located north of E. Parlier Avenue in order to allow proponents time to provide information addressing potential public health concerns as related to the adjacent landfill facility and former railroad grade. Staff is in the process of working with the proponents in addressing unresolved health issues prior to bringing the application back to the Commission for action.

Also at issue are impacts identified by CID. In 2008, CID had indicated that it would accept a temporary mitigation measure(s) requiring projects approved prior to execution of the CID/Five Cities agreement to comply with the terms of the agreement once it was finalized. This was believed by CID to be reasonable at the time because negotiations were underway and it was

anticipated that agreements would be executed in the then near-future. Since an agreement with the City still has not been entered into, and it is not anticipated that such an agreement will be executed within the near future, CID now indicates that the previously agreed to mitigation measures do not adequately mitigate the project's water related impacts.

This is a significant issue because the City has adopted a revised Mitigated Negative Declaration for the project that includes this same mitigation measure seeking to mitigate impacts to CID facilities and water supply, but which CID now states is inadequate and represents potential grounds for CID to challenge the City's CEQA document. Because the Commission will serve as Responsible Agency under CEQA at such time as this project returns to the Commission, there is potential for CID to challenge the Commission if it chooses to accept the City's CEQA work as complete. Due to this situation, it is apparent that a "conflict of interest" for both Counsels Price and Noland exists for this project, and consequently neither can advise the Commission with respect to this project.

Request:

Counsel Price and Noland have requested that given the current City of Parlier application that is being processed by LAFCo, and given the current relationship between the City of Parlier and CID and the concern expressed by CID related to the environmental analysis of the subject proposal, that Special Counsel should be obtained to advise the Commission.

Recommendation:

Staff is seeking direction from the Commission related to obtaining Special Counsel to provide legal representation to the Commission given the above identified conflict issues. It would appear that the above referenced application can't be presented prior to your regular public hearing scheduled for November 4, 2009, given factors that it has not been deemed complete nor publically noticed. Based upon the Commission's direction, Staff could return with a report and recommendation for consideration at your October 7th public hearing.