

FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)

LAFCo MEETING MINUTES FEBRUARY 11, 2015

Members Present: Commissioners Daniel Parra, Buddy Mendes, Mario Santoyo and Robert Silva

Members Absent: Commissioner Pacheco

Staff Present: David E. Fey, AICP, LAFCo Executive Officer
Ken Price, LAFCo Counsel
Candie Fleming, Commission Clerk
George Uc, LAFCo Analyst

1. Call to Order and Roll Call

Chairman Silva called the meeting to order at 10:00 am.

2. Pledge of Allegiance

Chairman Silva led the recital of the Pledge of Allegiance.

3. Comments from the Public

There were no comments from the public.

4. Potential Conflicts of Interest

There were no conflicts to report.

5. CONSENT AGENDA

Consider Approval of Items A Through D

- A. Minutes from the regular LAFCo meeting of January 14, 2015.
- B. Request for a One-Year Extension to Complete Proceedings for the City of Fresno "Barstow-Grantland No. 3A Reorganization." (LAFCo File No. RO-13-6) (First Request)
- C. Request for a One-Year Extension of Time to Complete Proceedings for the Fresno County Board of Supervisors "Dissolution of County Service Area No. 47" (LAFCo File No. DOD-12-1) (Second Request)

- D. City of Reedley "Reed-Floral Reorganization, 2014." A proposed reorganization to annex 20.29 acres to the City of Reedley and detach from the Fresno County Fire Protection District and the Kings River Conservation District for territory located at the northeast corner of Reed and Floral Avenues. (LAFCo File No. RO-14-5)

Commissioner Santoyo pulled Items B and C from the consent agenda for discussion. Commissioner Perea made a motion to approve Items A and D. Commissioner Parra seconded the motion. Commissioners Mendes and Santoyo voted in favor of the motion.

Commissioner Santoyo asked if approval of these extension requests should wait until after the Commission has finished its discussion on extension procedures. Executive Officer Fey responded that both requests were considered in light of current policy. Fey said this was the first request for item B and that the annexation would expire if not extended before the next meeting. Fey said Item C is the dissolution of a county service area and there have been significant impediments that were not anticipated at the time. Fey said both requests are compliant with current conditions and staff supports the requests.

Commissioner Santoyo made a motion to approved Item B and Commissioner Mendes seconded the motion. Commissioners Santoyo and Silva voted in favor of the motion. Commissioner Parra made a motion to approve Item C and Commissioner Santoyo seconded the motion. Commissioners Mendes and Silva voted in favor of the motion.

Chairman Silva reported that there was a request to continue the hearing to February 18th. Commissioner Santoyo made a motion to continue the meeting and Commissioner Parra seconded the motion. Commissioners Mendes and Silva voted in favor of the motion.

The meeting was adjourned at 10:08 a.m.

LAFCo MEETING MINUTES FEBRUARY 11, 2015

Members Present: Commissioners Brian Pacheco, Daniel Parra, Henry Perea, Mario Santoyo and Robert Silva

Staff Present: David E. Fey, AICP, LAFCo Executive Officer
Ken Price, LAFCo Counsel
Candie Fleming, Commission Clerk
George Uc, LAFCo Analyst

1. Call to Order and Roll Call

Chairman Silva called the meeting to order at 10:03 a.m.

2. Pledge of Allegiance

Chairman Silva led the recital of the Pledge of Allegiance.

3. Comments from the Public

There were no comments from the public.

4. Potential Conflicts of Interest

There were no conflicts to report.

Chairman Silva reported that this meeting is a continuance of the February 11th hearing and that the consent agenda had been previously approved.

PUBLIC HEARING

6. Consider Approval: Amendment to Section 502 of the Commission's Policies, Standards, and Procedures regarding the election of Chairman and Chairman Pro Tempore.

Fey clarified a discrepancy between the agenda item and the staff recommendation. Fey said that at the January meeting, the Commission directed staff to review Section 502 of the Commission's Policies, Standards and Procedures and inquire with other LAFCOs on their policies regarding rotation of chairman and chairman pro tempore. Fey reported that there were also comments made during the meeting about the City Selection Committee's direction to its appointees; however, the Commission is not bound to any direction given by the City Selection Committee to its appointees. Fey summarized his findings from other LAFCOs and found that 80% of those responding had a rotation policy or practice where the chairman and chairman pro tempore rotated among the membership and made recommendations as identified in staff's report.

Commissioner Perea said that he believed tension between the County representatives and City representatives in the past resulted in the current practice of not rotating chairman and chairman pro tempore which has been the case for many years. Commissioner Perea said that LAFCo is an independent agency and no longer part of the County and despite past relationships among the commissioners, he felt the current Commissioners had a good working relationship. Commissioner Perea noted that the County contributes 50% of LAFCo's annual operating budget and the cities together contribute the other 50%. Commissioner Perea said going forward he felt the chairman and chairman pro tempore should be rotated every one or two years.

Chairman Silva said he agreed with Commissioner Perea that there was a good working relationship among the Commissioners and that the Commission needs to work together to accomplish its goals.

Commissioner Lopez asked Chairman Silva if he had discussed this issue with the other city mayors and what their thoughts were on the rotation of the chair. Chairman Silva responded that this issue had not been discussed lately but in the past the mayors had wanted to make sure their representatives were not excluded from decisions. Chairman Silva asked Commissioner Perea what he proposed and Commissioner Perea proposed that the Commission begins a rotation policy on a one- or two-year basis once the current terms of chairman and chairman pro tempore expire and asked Chairman Silva when their terms

expired. Chairman Silva responded that the City Selection Committee meets in April to appoint their members beginning in May. Commissioner Perea suggested the new policy go into place in May or June and begin with a city member as chairman and then next year a county member would become chairman. Chairman Silva asked Commissioner Pacheco if he had any feelings or opinions on the matter. Commissioner Pacheco responded that he had the least history with the Commission and would go along with what the other Commissioners thought would be fair. Commissioner Pacheco said he was curious as to how the public member felt as he would have a great impact on what the vote may be. Commissioner Lopez said that to be fair, he was in favor of alternating the chairmanship between the city and county membership. Commissioner Pacheco said he would be in favor of the rotation if the cities and county were in favor. Commissioner Silva said he could not vote for the cities and that would have to be a discussion among the COG members. Commissioner Perea said that Fey pointed out in staff's report that the City Selection Committee appoints two members and an alternate to the Commission, but does not have jurisdiction over the selection of chairman or chairman pro tempore and that decision belongs to the Commission.

Commissioner Perea made a motion to adopt a policy that rotates the chairman and chairman pro tempore of LAFCo for one-year periods of time with the city representative being the first chair beginning in May and that would set the policy on a go-forward basis. To clarify the motion, Chairman Silva said that the following year the chairman would be a county member. Fey asked for clarification on the status of the chairman pro tempore if the first chairman is a city member. Commissioner Perea said the chairman pro tempore would be a county member and the rotation would go forward in perpetuity. Commissioner Lopez seconded the motion. Commissioners Pacheco, Lopez and Silva voted in favor of the motion and Commissioner Parra opposed the motion.

Commissioner Silva said this sets the tone for it to go back to the City Selection Committee for their consideration. Commissioner Perea said the City Selection Committee could talk about this issue but the Commission just made a decision to make chair rotation a policy. Fey said that he could meet with the City Selection Committee to let them know the nature of the discussion, the vote, and the intent of the Commission, if that was so directed. The chair indicated his support of this offer.

7. Consider Approval: Disadvantaged Unincorporated Communities Database Management and Implementation Guidelines.

Fey began the presentation and LAFCo Analyst George Uc then summarized the history of SB 244 and disadvantaged unincorporated communities, outlining staff's database development guidelines and implementation guidelines. Fey said a disadvantaged community is a community with less than 80% of the state median household income and so many of the census tracts in the County show that the median household income is below \$48,000. Chairman Silva observed that the median household income for many of the cities in the County is far below that. Fey said that that LAFCo's policy addresses unincorporated communities and that the guidelines were developed to enhance the implementation of the policy that the Commission adopted in 2013. Fey said these guidelines allow staff to implement and maintain a database for staff to access as projects occur so they don't have to reinvent the wheel each time. These guidelines were developed so that staff could work with the cities to come up with a plan to accommodate state law.

Commissioner Perea asked what would happen if a DUC was just outside a city's sphere of influence. Fey responded that if there is a DUC within 300 feet of a project, Commission policy is that LAFCo has to treat it as if it were adjacent to the project, but if it were outside the city's sphere of influence the discussion would have to be whether to change the sphere or recognize that the DUC will not be annexed because it lies outside the city's sphere and is more a legacy community.

Commissioner Parra noted that once land is annexed a city would have to provide services and said the city may not support the annexation, which could hurt the developer. Fey responded that would be possible, but if the territory lies within a city's sphere, then it is intended that the city will grow and serve that area. Chairman Silva asked if the city would have to pay the annexation fees for the DUC area and Fey responded that was the plan under the current policies.

Veronica Garibay with the Leadership Counsel spoke to commend staff for their efforts. Ms. Garibay said she was concerned with the guidelines because it used census data that is not always up to date or reliable and said she had spoken with staff regarding those concerns prior to the meeting. Ms. Garibay had wanted to make sure that the policy would allow for other evidence to determine whether or not a community was a DUC. As a point of clarification, Ms. Garibay asked for some language revisions to the guidelines. Ms. Garibay asked if the Commission could theoretically condition an annexation on the city providing water and sewer services to a DUC, if that community did not want to annex. Ms. Garibay said the Tulare County LAFCo recently approved an annexation without including a DUC, but placed that condition on the annexation. Commissioner Perea asked if the Commission had the authority to add that condition. Fey responded that could be an option but said he wished to reserve the opportunity to look at each project on its own merits. Commissioner Perea asked if that option could be added to Commission policy. Fey said it could and that outreach to the DUC could reveal a lot of characteristics about each DUC. Counsel Price agreed with Fey and stated again that the Commission by statute has very broad conditioning authority and could add territory to an annexation.

Commissioner Perea asked Ms. Garibay how her organization or organizations like hers would interact with Commission staff in the process of meetings. Ms. Garibay responded that staff agreed to meet with them on issues in areas that they are working in as they come up. Ms. Garibay said they would also be participating in the cities' and county's public process in the development of their land use update and housing elements.

Commissioner Perea made a motion to adopt the guidelines and Commissioner Parra seconded the motion and asked if language regarding the condition that Ms. Garibay described could be included in the motion. To clarify the motion, Counsel Price said the Commission could simply add language that states that LAFCo staff considers the possibility of conditioning approval on the annexation of a nearby DUC or using a conditioning authority for a nearby DUC.

Mike Prandini representing the Building Industry Association said that conditioning an annexation on the inclusion of a DUC is a problem if these rural residential properties do not want to be annexed and asked if it would kill the annexation if the residents did not want to annex.

Commissioner Perea responded that the issue is if a DUC chose not to be included in the annexation, the Commission could consider placing a condition on the annexation that would require the city to provide services to the DUC, and that the Commission would not hold the annexation hostage.

Commissioners Perea, Parra, Pacheco, Lopez, and Silva voted in favor of the motion.

8. Consider Approval: Amendment to Fresno LAFCo Policy Regarding Extension of Time to Complete Proceedings. (Continued from January 14, 2015)

Fey summarized previous discussions on the Commission's extension policy and presented staff's report. Fey said he met with Commissioner Santoyo to discuss his concerns. Fey said that the proposed amendment requires the requesting party to provide information that would serve as the basis for staff's recommendation. Fey said that staff has revised the proposed amendment to not create specific criteria, but to make clear that the request required an explanation of the project's feasibility and what progress will be made to comply with the conditions of approval and complete all necessary prerequisite actions by that party. Fey said the information provided by the party would reflect specific criteria that would be evaluated by staff, which would be the basis for staff's recommendation to the Commission. Fey recommended that the Commission approve the amendment to the policy as described in Attachment 1.

Mike Prandini said the BIA objects to the one-time only extension policy because they didn't think it was reasonable due to the many different situations that come up that requires substantial review and governmental approvals to get the annexation completed.

Fey responded that staff's recommended policy reflects the past discussions and wishes of the Commission, however, it is still up to the discretion of the Commission for the window of extensions that would be permitted. Fey said the Commission could maintain the policy as "status quo," but staff recommended that the Commission's interest in imminent development be recognized as something that should have an effect on the approval of extensions. Chairman Silva asked if the policy would allow for a hardship case. Fey responded that the current policy amendment reads no more than one extension of time "may" be authorized by the Commission and doesn't say "shall," so in extreme cases, the Commission would have discretion. Chairman Silva said if there was a major problem the Commission would have the ability to work with the applicant. Fey responded that the Commission could add that language to the policy if it wanted to, but staff was of the opinion that the policy gives the Commission the discretion to focus on a limited term and to also allow exceptions based on additional information or hardship.

Commissioner Pacheco asked Mr. Prandini what would be his alternative if he didn't like the proposed amendment. Mr. Prandini responded that as long as staff agrees that "may" doesn't stall or forbid the Commission from considering additional extensions of time based on the circumstances, the BIA would be ok with the amendment.

Commissioner Perea said this policy amendment is to send a message that extensions will not be granted in perpetuity and for the developer to pre-plan for issues that could delay the annexation. Mr. Prandini said they understand the Commission's reason for the amendment but wanted to make sure that there wasn't only one shot at an extension.

Commissioner Parra made a motion to approve the amendment and Commissioner Perea seconded the motion. Commissioners Pacheco, Lopez, and Silva voted in favor of the motion.

OTHER ITEMS

9. Workshop on Inactive Special Districts

Fey presented staff's report and a PowerPoint presentation. Chairman Silva noted that in the past the Grand Jury had notified LAFCo regarding their concerns with some districts and wanted to know what the Commission's responsibility was for those districts. Fey said that after the Commission responded to the latest Grand Jury Report on the Del Rey Community Services District staff offered to appear before the Grand Jury and talk to it about LAFCo and LAFCo's power and authority. Fey informed the Grand Jury that LAFCo could not merge or consolidate a special district without the district's cooperation and approval. Fey said that staff could make an annual appearance before the Grand Jury, if the Commission wished to provide the necessary context so LAFCo could work together with the Grand Jury if it were something within LAFCo's authority. Chairman Silva said that it creates a lot of extra work every time the Commission has to respond to a Grand Jury Report regarding a special district under LAFCo's authority. Counsel Price said that when the Grand Jury makes a finding, LAFCo by statute must respond within a certain number of days. Counsel Price thought it would be useful for staff to educate the Grand Jury in advance on LAFCo's authority to limit the involvement of LAFCo in their reports. Counsel Price noted that legislation was introduced in 2009 that would allow LAFCos to prepare a report on poorly functioning special districts and use that report for the creation and appointment of a receiver in order to put the special district on sound financial footing, but that the legislation never went anywhere.

Fey said that MSRs are the best tool that this Commission can employ to evaluate the performance of special districts because it happens on a regular basis. Fey said that a MSR is an overview of the performance of a special district, shows if it is in conformance with its principal act, transparency, etc. Fey said staff would appreciate some discussion regarding the Commission's interest in creating clear policies to provide guidance in determining its recommendations. Fey said those recommendations should focus on structural improvements when needed. Fey said the process should be collaborative and instructive to both staff and district and recommended that the Commission use the MSR process to hold the agencies accountable for any improvements. Fey said the MSRs should support the district's efforts to improve their performance and should not be a punitive document but help to identify the particular issues associated with each kind of district and establish recommendations that would also expect accountability. Fey recommended establishing some performance thresholds that would assist with Item No. 7 in the MSR determinations. Fey said these thresholds would be that the district conform to its principal act, has a board of directors, performs a function, provides services, has an annual budget, and as otherwise described by the district's principal act and conform to that basis.

Monica Greenberg with the California Special District Association said the CSDA assists the special districts with all of the above and that only about 50% of Fresno County's special districts are members of the CSDA. Ms. Greenberg said that the CSDA provides all kinds of training for special districts and have a certification program. Ms. Greenberg noted that the Calwa Recreation and Park District has recently joined the CSDA. Ms. Greenberg said that there is an opportunity for the CSDA to work with LAFCo to make sure the districts are doing

the right thing. Chairman Silva asked if the CSDA looks at a district's financial status. Ms. Greenberg responded yes only because the CSDA's dues are based on a district's operating revenue.

Russ Freeman, spoke on behalf of the Broadview Water District and said that he has responded to previous requests from LAFCo for information for their MSR, but that an MSR does not really address a district that is in the process of winding up their operations. Mr. Freeman said he had a couple of thoughts related to the "thresholds" of operation. Mr. Freeman said that the Broadview Water District was created to serve water to agriculture in its territory but no longer provides water because it was acquired by the Westlands Water District, who acquired all of the District's land and purchased the District's water supply. Mr. Freeman said that Broadview Water District only still exists as an entity because it holds the contract for water with the United States. Mr. Freeman said that until the United States can permanently incorporate that contract into the Westlands Water District contract, the Broadview Water District will have to continue to exist. Mr. Freeman said that he hoped LAFCo would take this into consideration when it comes time for the District's next MSR.

Staff asked the Commission to provide comment on staff's recommended "thresholds" for MSRs. Mr. Fey said that if the Commission so directs, staff could start incorporating these thresholds, as well as any additional items into its MSRs, and include them into its determinations.

The Commission came to a consensus for staff to begin incorporating the suggested thresholds into the MSRs.

10. Executive Officer Comments/Reports

Executive Officer Fey reported that the financial statements had been presented to each of the Commissioners, that information on the upcoming CALAFCO workshop had been distributed and if they wished to attend, to let Candie know, and that mileage claims would be mailed to the Commission.

11. Commission Member Comments/Reports

There were no comments from the Commission.

ADJOURNMENT

Commissioner Parra made a motion to adjourn the meeting and Commissioner Lopez seconded the motion. Commissioners Pacheco and Silva voted in favor of adjourning the meeting and the meeting adjourned at 11:42 am. Commissioner Perea had left prior to adjournment.