

FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)

LAFCo MEETING MINUTES AUGUST 12, 2015

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

Members Absent: None

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

1. Call to Order and Roll Call

Chairman Silva called the meeting to order at 1:30 p.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

Commissioner Perea recused himself from Public Hearing Agenda Items No. 6 and 7.

Executive Officer Fey informs commission regarding correspondence from the applicant for Item 5C (Indianola-North project); continued from July to August, applicant requesting the item be continued to the September meeting and the City is in agreement. Staff recommends this item be continued to September 9, 2015.

CONSENT AGENDA

5. Consider Approval of Items A through D

- A. Minutes from the July 8, 2015 LAFCo meeting**
- B. City of Kingsburg “Mendocino-Klepper Northwest Reorganization”**
- C. City of Sanger “Indianola-North Reorganization”**

D. Raisin City Water District Progress Report

No members of the public wished to address any items on the consent agenda; Chairman Silva calls for a motion to approve the consent items, Commissioner Perea motions to approve with Commissioner Santoyo seconds. The Commission voted in favor of the motion that passed 5-0.

PUBLIC HEARING

6. Request for Extension of Time to Complete Proceedings for the City of Fresno “Whitesbridge-Valentine Southwest Reorganization”

Executive Officer Fey states that staff received a request from the current owner of the property to extend this approval; however, he notes that in the report that this is the 9th request for a one-year extension. Fey also calls attention to the recent amendment of policy 315, which restricts the number of extensions allowed. The information provided to staff indicated a longer timeline, and therefore staff is recommending denial of the request. The consultant to the project, Mr. Ed Dunkel, states that with their application they had hoped to have a development agreement with the City of Fresno, but now sees this will be more difficult than he anticipated. He explains that they do have a tentative map and that his client is moving forward with plans and is working on a final map.

At this time, LAFCo Counsel Ken Price informs the Commission that Commissioner Parra has recognized a potential conflict of interest in the item (in regard to government code section 84308) and recused himself from further discussion of the item.

Chairman Silva points out that the extension is not supported by the City of Fresno. Mr. Fey responds that the City Manager has taken the position to not support extension of annexation approvals and that the City would rather the projects start over. Mr. Dunkel replies that he is aware of the City’s new position on extensions, but the tentative map is active through 2017.

Commissioner Santoyo states to that he doesn’t think that the Commission needs to be a part of the City’s decision whether to support the extension. Mr. Fey replies that it is a discretionary decision on the part of the Commission, and that the information being used has been evaluated through LAFCo policy. He points out that the policy does require a comment from the affected agency and that generally when an annexation is approved it is based on evidence that the development is imminent. With a tentative map, and an application that is dormant, there is no proof of imminent development.

Commissioner Santoyo recalls that he and Commissioner Perea were very active in the policy Mr. Fey mentioned, in order to limit the number of extensions because most of them were never going anywhere. He then asks Mr. Dunkel, with his experience and to the best of his knowledge, how does he see this development occurring relevant to time. Mr. Dunkel replies that he has been given the go-ahead to move forward on the mapping and improvement drawings. Commissioner Santoyo clarifies that the Commission has the opportunity to authorize an extension, and that it’s just a matter of how much time to authorize.

Mr. Fey agrees that the Commission does indeed have the discretion to set a time, and that Mr. Dunkel has asked for two years. Fey notes that by policy this is the last extension, if approved. Commissioner Santoyo agrees and states that this seems reasonable because these applicants are coming into a new policy that LAFCo has established regarding annexation extensions, that they know they now only have a determined time to complete the project. Chairman Silva agrees, and appreciates the idea of progress and job creation, but states that it needs to happen faster and without as many extensions.

Commissioner Pacheco asks if this is the first request for an extension, to which Mr. Fey replies it is the ninth. Commissioner Pacheco clarifies his question, asking if this is the first request since the new policy took effect to which the answer is yes. Counsel Price clarifies that by statute the applicant has one year to complete all of the conditions and if they don't complete it within one year then the Commission may grant an extension, and the extension can be at a time period determined by the Commission.

Upon clarification of the policy, Commissioner Pacheco states that he is not in favor of extending any more applications, but if this applicant falls amongst the new guidelines he is willing to allow it. Commissioner Pacheco states that he will vote no if the application was to come before the Commission again. Commissioner Pacheco then asks why staff's recommendation was for denial if it was within all of the parameters for the new policy. Mr. Fey responds that staff did not feel there was sufficient evidence of imminent development which is a criterion for the Commission's initial approval of applications. Mr. Dunkel replies that he is the consultant but they are doing drawings and the map will be submitted. Commissioner Pacheco asks Mr. Fey if this is sufficient, to which Mr. Fey responds that he is viewing them as professionals presenting before the Commission and will take their words at face value. John Peterson, Development Manager for Fagundes Dairies, states he put Mr. Dunkel under contract for this project and thinks the market is improving and it is his hope that it will improve enough by 2017 to get the project off the ground and going forward. Commissioner Pacheco asks if Mr. Peterson is aware that if for any reason the project does not begin to move forward, that the Commission will not approve another extension, to which Mr. Peterson replied that they were aware of the new rules and regulations.

Chairman Silva addresses the public and asks for public comment, there is none. Commissioner Santoyo articulates his agreement with Commissioner Pacheco: that the rules are set for a reason although those affected by the new rule should have a chance. He then questions Fey about how long the extension should be, and Fey references the letter that the applicant sent, requesting the map to be extended until April 15, 2017. In agreement with this, Commissioner Santoyo makes a motion to approve with Commissioner Pacheco seconding the motion, at which point Mr. Peterson speaks up to clarify that the map was good until April 25, 2017. The motion is changed to reflect this date, the second concurs, and the motion passed 5-0.

7. City of Fresno “Locan-Fedora Northeast Reorganization” (Petition)

Continued from July 8, 2015; Fey states that this item was initially heard last month, with the issue being a lack of a fire transition agreement between the Fresno County Fire Protection District and the City of Fresno. At that time the Commission continued the item to August; since that time staff has been a part of several meetings with the City and District, culminating what he hopes is an agreement between those parties to ratify a fire transition agreement. The City of Fresno has given the City Manager the authority to sign the agreement and the District will consider the item on the 19th. Staff recommends that because the agreement has not yet been signed, the item be continued to next month, at which point the transition agreement should be signed and in effect. Chairmen Silva then opens the item to the public, at which point the applicant, Mr. John Bonadelle states that he agrees with the recommendation to continue. Commissioner Parra moves to continue the item to the September meeting, Commissioner Santoyo seconds; the motion passes 5-0.

8. Municipal Service Review and Sphere of Influence Update prepared for the Panoche Water District.

LAFCo analyst George Uc explains the purpose of an MSR and gives staff's report. Mr. Uc states that this MSR and SOI update is a reaffirmation of the current Sphere of Influence. Commissioner Santoyo questions if he is missing something because he couldn't see anything negative. Uc responds that he is correct, that the consultant, as well as the District, was both professional and easy to communicate with. Chairman Silva questions how close Eagle Field is to the DUC Mr. Uc mentioned in the MSR and upon looking at the maps they located the park. Commissioner Silva then asks what the District-owned property was, to which Mr. Uc explains that the District owns these homes in order to provide for their employees. Commissioner Silva opens the item to the public, and upon hearing no comments, Commissioner Santoyo moves to accept staff's recommendations. The motion is seconded by Commissioner Perea and is passed 5-0.

OTHER MATTERS

9. Progress Report on the Status of the Lanare Community Service District

Mr. Fey begins by noting he received some late correspondence from Betsy Lichti of the State Water Resources Control Board to clarify that staff is not using the recent consolidation bill to force consolidation between Riverdale PUD and Lanare CSD. Ms. Lichti articulated that the State may pursue other options for ownership of the Lanare water system should the District be unable to demonstrate the proper capacity. Fey states that these are Ms. Lichti's opinions, however they do reinforce staff's position in the report. He continues to discuss another late correspondence from Sue Ruiz, from Self-Help Enterprise, who states that her organization is ready and willing to aid the CSD contingent upon funding.

Fey explains that this progress report began as staff began preparing for the District's MSR. As information was being collected, Staff grew concerned that further work on the MSR with a

positive result was doubtful. He states that this is a very problematic progress report, due to the fact that he cannot simply say “fix this” or “do that” in order to move forward; the changes that need to be made are going to require time and coordination.

Commissioner Santoyo asks why, with this new water bond, does the District not have the revenue to move forward, and if during any of the discussions with the District, was there any explanation or attempt to take advantage of some of the available funds. Mr. Fey replies he does not know of any, however he notes that Ms. Lichti has observed that if the water system doesn't return to the CSD, it is her opinion that dissolution of the CSD would be followed by the formation of a CSA or they would find a privately owned corporation interested in ownership of that system. Chairman Silva asks who would apply for the money and Commissioner Santoyo replies it would be the District itself, stating that there was a lot of money in there and he doesn't see why it isn't being used. Mr. Fey said it is not LAFCo's responsibility to apply for these funds and that the District has not demonstrated sufficient technological, managerial or financial capability, which is critical to establishing the competency that supports the applications for funding. Commissioner Parra points out that in these communities, more often than not, the citizens do not have the knowledge or capability to access the applications for such funds, and questions if there is anything LAFCo could do about that. Commissioner Santoyo addresses this, stating that they recognized this as the biggest issue, so in the Water Bond, there is a section of dollars allotted specifically for the cities or districts to hire staff to do said applications.

Veronica Garibay with Leadership Counsel interrupts to clarify that the money is indeed there, and that is the money that Self Help Enterprises goes after. Once they secure it, it becomes Self Help Enterprise's or another organization, RCAC and this is how many of the projects in disadvantaged communities are funded. Commissioner Pacheco asks whether she is aware that Mr. Fey recommended two options and that the County is more than reluctant to form any additional CSAs. Garibay responds that she was unaware that correspondence between Mr. Fey and Ms. Lichti had begun. Commissioner Pacheco states that he is confident in the fact that the County is trying to decrease the number of CSAs because the County is overburdened and if the people want it then the people need to step up and do the work to maintain their CSD. Ms. Garibay states that Lanare wants to manage their own system, and states that she will hold the rest of her comments until the Commission finish their portion.

Commissioner Perea questioned if the District could merge with the Riverdale PUD. Mr. Fey responds that informal discussion has occurred but nothing formal. He attended the last SGMA meeting and asked a Riverdale board member, conceptually, what his opinion was and it was not favorable to this. Perea asks what LAFCo's authority would be in terms of pursuing consolidation, to which Fey replies that there are ways to get there, if so directed by the Commission, but it would require finesse. Perea speculates that it is too soon to pursue this and Chairman Silva agrees but states no doors should be shut: we should look around and see where we can get them some help. Fey notes that there are two new wells being developed and an improvement of the water system for the CSD that the state is currently managing. Silva asks about the response from the Riverdale Board member, and Fey clarifies by stating that discussion of consolidation has occurred in the past, the Riverdale PUD is not interested in

consolidation. Commissioner Santoyo suggests that if looking from the Riverdale PUD's perspective, Lanare's request may seem a little one-sided, and that if they found a win-win situation instead, things would go more smoothly. He points out that the money that could be awarded to Lanare could be shared with Riverdale, if consolidation were to happen; he asks for more exploration into ideas similar to this.

Commissioner Perea questions Fey's report for clarification, referencing a statement in the report that the effects of poverty, crime, lack of property maintenance and general disrepair of Lanare suggesting limited community capacity to serve on the CSD Board; states he is uncomfortable with the idea of saying that just because a community is poor doesn't mean they are incapable. Fey responds that this was not his intention to imply this, however he was expressing his concerns, without judgement, that the community of Lanare has not currently stepped up to serve on the Board and these could be reasons as to why. Perea asks if Mr. Fey knows of any criminal wrongdoings going on in the community and Mr. Fey replies that other than the knowledge related to discussions with law enforcement, these concerns were expressed by Lanare residences at the recent community meeting with Supervisor Mendes.

Mr. Uc elaborates on his meeting with the Lanare community and Supervisor Mendes on July 10, 2015. The concerns expressed by the community included possible prostitution and drug operations being run out of the area, so public safety was a main issue discussed at this meeting. Commissioner Perea asks, then, why was it deemed necessary to copy the District Attorney and Grand Jury, if the District is not involved in any criminal acts. Mr. Fey replies that it was sent to these parties for their information, in order to illustrate an example of the work of LAFCo. Commissioner Perea requests a follow-up email be sent in order to emphasize the "FYI" aspect of the message, to which Fey states he already has and will send copies to the Commission.

Isabelle Solario, President of Community United Lanare, gets up to speak, with Ms. Garibay as her translator. Ms. Solario explains that she is frustrated and sad about the way her community is being described. She states that some of the information she reads in the report is wrong, and if they wanted to know what was going on in the community they should at least contact a community leader, such as herself. They are working to make the community successful and move forward. Commissioner Santoyo asks why it is so difficult to find people willing to serve on the board of this District, and she replies that it is because a lot of the citizens in that area are older and have health issues that will not allow them. She states that currently there are three people who have submitted applications that do live within the boundary, and they are simply waiting for the paperwork to go through. Ms. Solario said that part of the problem with the last members was that, upon leaving, they did not file the proper paperwork, leaving much work to be done before new members can be appointed. She states that her husband is on the board and she supports him with the community center as they can.

Chairman Silva asks if there are any other members that wish to speak, and Connie Hammond steps forward to speak. She states that she has been working alongside Ms. Solario for two months, and that a lot has been going on in the area. The question she raises is why she was never notified of the District boundary change some years ago. Mr. Fey points out that those

specific parcels received an extension of service without undergoing any of the procedures required through LAFCo. Referencing the picture of the District, Mr. Fey shows which parcels are inside the boundary and which have been receiving services for some time without any prior authorization.

Mr. Uc explains how these issues relate to the Municipal Service Review, referencing the section titled *Accountability for Community Service Needs, Including Government Structure and Operational Efficiencies*, where determinations are made in regards to the community and its ability to provide the services it is authorized to provide. Uc said that with no board or quorum, there is no point of contact; with no point of contact, there is no one to send the initial MSR questionnaire to.

Chairman Silva then asks Ms. Garibay if this was all of the members of her group that were going to speak, to which she replied that she too would be speaking on behalf of the Leadership Counsel and the community. She states that she has been working with this community for six years, and she would be submitting a follow up informational letter in order to clear up some of the assumptions made in the report. She states that the community is very committed to developing their own capacity in order to run their own system. She argues that LAFCo and the Commission has not put forth the full effort she thinks they should, that they should “step-up” to this situation to help.

Commissioner Pacheco states that he takes exception to some of what she’s saying. He agrees that perhaps that email did not need to be sent to the D.A; however, he does feel that LAFCo has done its duty, that it is the community’s responsibility to point out the problems and that the people are supposed to fix them. He points out that she stated all of her involvement for all this time and yet she can’t even get three people to make a quorum for the District. He tells her that the things said should match the actions done, and that LAFCo has done its job and that the people need to “step-up” as well. He asks for balance, and that they need to find more of a compromise. Ms. Garibay replies that although many things are not LAFCo’s responsibility, she asks that it recognize that it is in LAFCo’s authority to initiate an MSR and an SOI update and that this is how LAFCo can help this community. Mr. Uc repeats this earlier statement: without a board or staff, there is not a point of contact; with no point of contact, there is no one to send the initial questionnaire to, leaving the MSR at a standstill. Commissioner Perea questions why they cannot just annex the specific parcels, to which Commissioner Pacheco replies that he feels they would be usurping another board’s responsibility and he doesn’t know if that is proper or legal to do. Mr. Price states that this Commission has the authority to initiate a SOI update; however that is not the issue to him. He concurs with Mr. Uc that the parcels receiving unauthorized services should have come before the Commission a long time ago, and points out that the next item on the agenda will be to discuss this very issue. Commissioner Pacheco asks whether or not the citizens are paying for the service, to which Mr. Fey replies yes, however, Mr. Price states that in order to provide authorized service in the sphere, LAFCo has to amend the sphere. He says that if the Commission is attempting to provide service outside of that sphere, it can only do so if it determines that it is necessary for the health and welfare of the public. He states that the reality is that the District never requested that determination. This

would have been information necessary for an SOI update and Mr. Price agrees with Mr. Uc, pointing out the difficulty of contacting a body that does not technically exist. Commissioner Santoyo observes that the situation seems like a Catch-22, and seemingly the only way to perhaps fix it would be to extend the boundary to include the territory already being served in order to open the “pool” of citizens able to become board members. He states that the Commission should give Staff some direction to do a little more analysis on what could perhaps be done in order to aid this community.

Mr. Fey clarifies that this was simply a progress report, not a final determination; that the speakers seemed to be under the impression that he was stating that this was all LAFCo was going to do. He continues that LAFCo staff is willing to help as it can, however the District’s MSR is impacted by the circumstances described in the report.

Commissioner Perea asks Ms. Garibay how many people are currently on the board, and she replies that there are two current and three applicants in the works. He asks that upon these appointments, could the MSR process begin, to which Mr. Uc replies that yes he could establish initial contact with the District.

10. Executive Officer briefing on 56133 Extension of Services Worksheet; provide direction as necessary

Mr. Fey explains that the statute requires authorization for an agency to serve outside of its service area, or sphere of influence. The intent of this is to prevent unauthorized/unanalyzed growth of an agency. In response to the frequency of this request, Staff has prepared an extension of services worksheet for the Commission’s approval.

11. Executive Officer Comments/Reports

In regards to the Ag Sub-Committee, Mr. Fey states that he has met with all but one of the members and that he will be presenting an outline for the sub-committee.

12. Commission Member Comments/Reports

There were no comments by the Commission.

ADJOURNMENT

Commissioner Santoyo made a motion to adjourn the meeting and Commissioner Perea seconded the motion. The motion passed 4-0 with Commissioner Parra being absent. The meeting was adjourned at 3:15 p.m.