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

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AGENDA ITEM NO. 7

**DATE:** August 14, 2019

**TO:** Fresno Local Agency Formation Commission

**FROM:** David E. Fey, Executive Officer 

**BY:** Juan Lara, LAFCo Analyst II

**SUBJECT:** Adoption of Resolution for the Dissolution of Silver Creek Drainage District and Firebaugh Resource Conservation District in Accordance with SB 448.

**RECOMMENDATIONS:**

1. Adopt a resolution for dissolution of the two affected inactive special districts in accordance with SB 448.

**Executive Summary**

On June 12, 2019, the Commission conducted a public hearing to consider the dissolution of County Service Area 18 ("CSA 18"), Silver Creek Drainage District, Poso Resource Conservation District, and Firebaugh Resource Conservation District in accordance with SB 448. Upon conclusion of testimony, the Commission adopted a resolution for the dissolution of CSA 18 and Poso Resource Conservation District.

The Commission resolved to continue its hearing on the dissolution of Silver Creek Drainage District and Firebaugh Resource Conservation District to August 14, 2019, to provide time for the Firebaugh Canal Water District to take action to reactivate the Silver Creek Drainage District and the Firebaugh Resource Conservation District.

Staff has continued dialog with staff of the Firebaugh Canal Water District who is attempting to reactivate the Firebaugh Resource Conservation District and the Silver Creek Drainage District, and with other interested parties. However, as of the writing of this report, staff has not received any evidence to presume active status for any of the two affected inactive special districts. (Please refer to "Recent Correspondence" section of this report.)

Staff recommends the Commission approve the dissolution of the two affected inactive special districts in accordance with SB 448.

**Background**

The State Controller's Office ("SCO") based its determination of the special districts' inactivity solely on not receiving a report of all the financial transactions of the local agencies during the

preceding fiscal year as required by GC sec 53901. The SCO provided Fresno LAFCo with the following list of inactive special districts: (See Attachment A, Summary of Potentially Inactive Special Districts and attached maps).

- Poso Resource Conservation District
- Firebaugh Resource Conservation District
- Silver Creek Drainage District
- County Service Area No. 18

GC sec. 56042 now defines "inactive district" as a special district that meets all of the following:

- (a) The special district is as defined in section 56036.
- (b) The special district has had no financial transactions in the previous fiscal year.
- (c) The special district has no assets and liabilities.
- (d) The special district has no outstanding debts, judgments, litigation, contracts, liens, or claims.

SB 448 included streamlined provisions for the dissolution of an inactive district. One public hearing is required, and the dissolution is exempt from protest proceedings and elections.

On November 14, 2018, staff presented the SCO inaugural list of inactive districts pursuant with Senate Bill 448 (2017). Staff verified each special district's inactivity including, but not limited to, the criteria of SB 448, and returned to the Commission within 90 days with the preliminary findings and recommendations.

Based on staff's report, on January 9, 2019, the Commission adopted a resolution finding CSA 18, Silver Creek Drainage District, Poso Resource Conservation District, and Firebaugh Resource Conservation District as inactive districts as defined in GC sec. 56042 and initiated their dissolution proceedings.

On April 3, 2019, the Commission conducted a noticed public hearing and upon conclusion of public testimony resolved to continue its hearing on the four SB 448 inactive special districts to June 12, 2019. This action was to provide time for the Firebaugh Canal Water District Manager to reactivate the Silver Creek Drainage District and the Firebaugh Resource Conservation District. Based on his testimony, the Firebaugh Canal Water District Board intends to support the reactivation of the Silver Creek Drainage District and the Firebaugh Resource Conservation District.

On June 12, 2019, the Commission conducted a public hearing to consider the dissolution of CSA 18, Silver Creek Drainage District, Poso Resource Conservation District, and Firebaugh Resource Conservation District in accordance with SB 448. Upon conclusion of testimony, the Commission adopted a resolution for the dissolution of CSA 18 and Poso Resource Conservation District and resolved to continue its hearing on the remaining two SB 448 inactive special districts to August 14, 2019. This action was to provide time for the Firebaugh Canal Water District to take action to reactivate the Silver Creek Drainage District and the Firebaugh Resource Conservation District.

On February 22, 2019, LAFCo issued a notice for jurisdictional change under revenue and tax

code section 99 (b) to the Fresno County Assessor-Recorder and the Fresno County Auditor-Controller/Treasure-Tax Collector. This notice is intended to notify the two departments of the jurisdictional change and upon receiving the notice these agencies are to commence calculations and negotiations to determine the amount of property tax revenues to be exchanged between the local agencies whose service area or service responsibility will be altered by the change. Staff received no response from those departments. Staff concludes that because the affected inactive special districts do not collect property tax revenue, there is no basis for a property tax revenue exchange negotiation.

### **Evidence of Financial Transactions**

The Fresno County Auditor-Controller's Office has verified that the Poso and Firebaugh RCDs had financial transactions in their respective accounts in the Fresno County Treasury last year. However, these transactions reflect activity on the part of the County Auditor-Controller staff to account for accrued interest for funds already in the account within the County Treasury and not of the affected inactive special districts. The Commission is recommended to exercise its broad authority under GC sec. 56107(a) and consider that these transactions do not meet the criteria of GC 56042 because the financial transactions were on the part of the County Auditor-Controller and not on the part of the special districts.

The Fresno County Auditor-Controller's Office verified that no funds exist for CSA 18 nor for the Silver Creek Drainage District.

### **Notice to Affected Special Districts**

On December 3, 2018, staff issued a letter to each general manager of the affected special districts listed as inactive by the SCO. The letter notified each general manager that Fresno LAFCo received notice from the SCO identifying their district as inactive pursuant with SB 448. If the general manager believed their district did not meet the criteria set forth in GC sec. 56042 and wished to object to the Commission proceedings initiating the dissolution, they were instructed to provide appropriate documentation to LAFCo no later than December 24, 2018.

On March 13, 2019, staff again sent notice to each general manager of the affected special districts. The letter notified each general manager that Fresno LAFCo would consider the dissolution of each affected inactive district, listed on the SCO list in accordance with SB 448 on April 3, 2019. Notice of hearing was sent to all registered voters and landowners within the boundaries of CSA 18 and posted in *The Fresno Business Journal* and *The Merced Sun Star* pursuant to the requirements of GC sec. 56157(h).

On July 24, 2019, staff sent notice to each general manager of the remaining affected inactive special districts. The letter notified each general manager that Fresno LAFCo would consider the dissolution of each the remaining affected inactive districts listed on the SCO list in accordance with SB 448 on August 12, 2019. Notice of hearing was sent to interested parties, affected special districts, and posted in *The Fresno Business Journal* and *The Merced Sun Star* pursuant to the requirements of GC sec. 56157(h).

## **Correspondence from Affected Special Districts**

On December 17, 2018, staff received a letter sent by Attorney Paul R. Minasian representing the Firebaugh Resource Conservation District and Silver Creek Drainage District stating his concerns about the potential dissolution of these special districts (Attachment B). Mr. Minasian's primary concern was that these districts fall under the umbrella of an assessment district or an improvement district and are exempt under GC sec. 56879.

Staff does not concur with Mr. Minasian's conclusion. Resource Conservation Districts ("RCDs") and Drainage Districts ("DDs") fall under the definition of a special district in GC sec. 56036(a) in that they are agencies of the state formed pursuant to general law (Public Resources Code (sec. 9151 *et seq.*) and County Drainage District Act of 1903 Water Code (sec. 5600 *et seq.*) for local performance of governmental or proprietary functions within limited boundaries and in areas outside district boundaries when authorized by the Commission pursuant to section 56133.

Further, RCDs and DDs are not enumerated as "non-districts" in GC sec. 56036.6 that fall outside of LAFCo's jurisdiction.

On February 21, 2019, staff had a phone call with Mr. Minasian and Firebaugh RCD and Silver Creek DD General Manager Jeff Bryant. Mr. Minasian expressed that his client districts did not want to dissolve. LAFCo staff responded that the affected special districts need not be dissolved if they demonstrated a reasonable degree of activity.

On March 1, 2019, staff received a follow up letter from Mr. Minasian addressing additional concerns (Attachment C). Mr. Minasian stated his position that inactivity is a sign of governmental efficiency, not a lack of efficiency or need.<sup>1</sup> Mr. Minasian also asserted that protest proceedings described in GC sec. 57077.2 were applicable to this project.

Staff does not concur with Mr. Minasian's statements. A special district is active when, among other things, it provides services that it was formed to perform, maintains an active board of directors, and submits its financial records as required by law. Further, an inactive special district creates governmental inefficiencies because of work required by LAFCo (to perform MSRs), the Clerk to the Board of Supervisors (to maintain up to date inventory of Forms 700), and the Registrar of Voters (to prepare for regular elections of ostensibly active special districts).

Additionally, SB 448 is clear that the dissolution of an inactive district shall not be subject to protest proceedings:

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<sup>1</sup> This position is consistent with 10/3/17 correspondence received from the Firebaugh RCD, in response to a Public Records Act request from Fresno LAFCo. Ms. Madison Medeiros with FRCD wrote, "FRCD is in fact an inactive district."

In addition, staff of the Clerk to the Board of Supervisors emailed Fresno LAFCo on 8/11/16 that "the following districts have notified our office that they are inactive:

- Firebaugh Resource Conservation District
- Silver Creek Drainage District

GC sec. 56879(c)

The dissolution of an inactive district shall not be subject to any of the following:

- (1) Chapter 1 (commencing with section 57000) to Chapter 7 (commencing with section 57176), inclusive, of Part 4.
- (2) Determinations pursuant to subdivision (b) of section 56881.
- (3) Requirements for commission-initiated changes of organization described in paragraph (3) of subdivision (a) of section 56375.

On April 2, 2019, staff received a third letter from Mr. Minasian addressing additional concerns. Mr. Minasian's primary concern was that Silver Creek DD and Firebaugh Resource Conservation District do not meet the criteria under GC sec.56042 (d) due to the Firebaugh Canal Water District maintaining funds for Silver Creek DD under a contract and monitoring resource conservation districts for its area (Attachment D).

Staff has not received formal or appropriate documentation related to any debts, judgments, litigation, contract, liens, or claims for the Silver Creek DD or the Firebaugh Resource Conservation District.

On April 8, 2019, in support of Mr. Bryant's stated efforts to reactivate the Silver Creek Drainage District and Firebaugh Resource Conservation District, staff provided Mr. Bryant with an outline of the districts' respective principal acts, board requirements, and related matters.

On May 10, 2019, staff again reached out to Mr. Bryant to ask if any assistance was needed. Mr. Bryant responded that none was needed, and the process was moving along smoothly.

On July 22, 2019, staff received information from Supervisor Pacheco's Chief of Staff Marc Benjamin explaining that employing/appointing the same board members from the Firebaugh Canal Water District to serve on the Silver Creek Drainage District and Firebaugh Resource Conservation District board is likely to raise a government code 1099 "incompatible office" issue.

### **Recent Correspondence**

On August 2, 2019, staff received documentation from Mr. Bryant. The documents submitted included a list of possible board members, and supplemental application materials for the Silver Creek Drainage District and the Firebaugh Resource Conservation District boards. This documentation was also submitted to the Clerk to the Board of Supervisors on August 1, 2019.

After review of the documents, LAFCo staff noted that some of the information was inconsistent with respect to district type. Additionally, the applications submitted did not include written evidence of designation for the legal representative of a holder of title to land within the district. In order for the legal representative to be eligible to serve as a board member evidence of designation must be filed with the district. (Attachment E).

## **Effects of Dissolution and “Successor Agency”**

Once a dissolution is effective, “the district shall be dissolved, disincorporated, and extinguished its existence shall be terminated, and all of its corporate powers shall cease, excepts as the Commission may otherwise provide pursuant to GC sec. 56886 or for the purposes of winding up the affairs of the district,” pursuant to GC sec. 57450.

Pursuant to GC sec. 56886(m) and 57451, the Commission designates a “successor agency” to wind up affairs of the dissolved district upon the dissolution of an independent special district. GC sec. 57451 dictates that the Commission can only designate a successor agency that is a public agency. Staff recommends that the Commission designate the County of Fresno as the successor Agency, for the reasons below:

- Pursuant to GC sec. 57451(b) if the territory of a dissolved district is located entirely within the unincorporated territory of a single county, the county is the successor.
- Pursuant to GC sec. 57451(c) if the territory of a dissolved district is located within the unincorporated territory of more than one city of the unincorporated territory of more than one county, or any combination of the incorporated or unincorporated territory of two of more such cities and counties, the successor is that city whose territory or that county who’s unincorporated territory shall upon the effective date of dissolution, contain the greater assessed value of all taxable property within the territory of the dissolved district, as shows on the last equalized assessment roll or rolls of the county of counties.
- Fresno County is the principal County of the affected inactive special districts.
- Pursuant to GC sec. 57452 upon the effective date of the dissolution control over all of the moneys or funds, including cash on hand and moneys due to but uncollected, and all property, real or personal, of the dissolved district is vested in the successor for wining up the affairs of the district.

## **Environmental Determination**

Fresno LAFCo is the “Lead Agency” under the California Environmental Quality Act (“CEQA”). A draft Negative Declaration has been prepared and is recommended for approval.

The Initial Study and Negative declaration was posted for review at [www.fresnolafco.org](http://www.fresnolafco.org), under the documents for public review tab for the review period that extended from March 13, 2019 – April 1, 2019, consistent with requirements of CEQA.

The Fresno Local Agency Formation Commission adopted a Negative Declaration on June 12, 2019, for the dissolution of the four SB 448 affected inactive special districts filed with the Fresno County Clerk’s Office on June 13, 2019.

### **Additional Information/Other Matters Relevant to the Proposal**

An invoice for fees attributed to noticing requirements was sent to Firebaugh Canal Water District Manager Mr. Jeff Bryant on August 7, 2019.

### **Individuals and Agencies Receiving a copy of this Report**

Ken Price, LAFCo Counsel

Jeff Bryant, Firebaugh Canal Water District

Derek Miller, State Controller's Office

Amina Flores-Becker, Division Manager, Department of Public Works and Planning, Resources Division

Brandi Orth, Clerk/Registrar of Voters Fresno County Elections Department

Marc Benjamin, Chief of Staff, Fresno County Board of Supervisors District One

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