

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

AGENDA ITEM NO. 10

DATE: September 10, 2014

TO: Local Agency Formation Commission

FROM: David E. Fey, AICP, Executive Officer

SUBJECT: Calwa Recreation and Park District 

Recommendation: Receive Report, Direct Staff as Appropriate

On August 13, 2014, Calwa Board member Sandra Celedon approached the Commission and formally requested that LAFCo conduct a Municipal Service Review (MSR) to address whether the district is effectively providing services to the community and to ensure that services are being provided effectively, and whether there are sufficient transparency and accountability regarding the use of public funds and whether there is a need to have a special district. Ashley Werner of the Leadership Counsel for Justice and Accountability, also appeared and supported this request. At the request of Commissioner Perea, the discussion was tabled and scheduled for further discussion at today's hearing.

The last MSR for the Calwa Recreation and Park District was considered by the Commission in 2012 placing the nominal five-year cycle of this review in 2017. A MSR is a comprehensive review of an agency's ability to provide municipal service(s) to those persons and businesses within its current boundaries and its SOI through the Commission's determinations with respect to:

1. Growth and population projections for the affected area.
2. The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence.
3. Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence.
4. Financial ability of agencies to provide services.
5. Status of, and opportunities for, shared facilities.
6. Accountability for community service needs, including governmental structure and operational efficiencies.
7. Any other matter related to effective or efficient service delivery, as required by commission policy.

By statute (GC §56430), a MSR is required prior to, or in conjunction with an agency's SOI update.

In addition, the Commission is also authorized by statute to initiate and make studies of existing governmental agencies (GC §56378). On July 15, 2014, the executive officer (EO) concluded such a study and presented a letter to the Calwa Recreation and Park District board, concluding his year-long assessment of the management and operations of the Calwa Recreation and Park District (District) as these relate to the scope, jurisdiction, and authority of the Fresno LAFCo. The

letter contained staff's assessment of the District and presented recommendations for the Board's consideration. The assessments addressed the following topics:

1. Conduct of the Board of Directors during Public Meetings;
2. Staff and Staff Report Procedure;
3. Board Members' Interaction During Meetings and with Park Staff;
4. Administrative Procedures; and
5. Civil Discourse.

The assessments were each followed by three to seven specific recommendations that, in the opinion of the EO, would address the problems observed. The EO's letter represented LAFCo's interests in efficient service delivery and in it, the executive officer addresses issues similar to MSR determinations 4 (Financial ability of agencies to provide services) and 6 (Accountability for community service needs, including governmental structure and operational efficiencies).

On August 14 (and again on August 26), 2014, the EO appeared before the District board and informed it that the question of Calwa would be considered by the Commission and invited to board to attend the meeting and participate in the discussion. At the Board's August 14, based on comments from Board members, it appeared that Ms. Celedon's request was made as a member of the public and did not reflect an official District Board request.

Analysis of District's Compliance with its Principal Act

On several occasions (March 13, 2013, July 17, 2013, August 13, 2014) Ms. Celedon has expressed that the District is not meeting its statutory service obligations, asked the Commission to begin an MSR to evaluate the district, and most recently questioned whether there is a need to have a special district.

It will be instructive to compare the District's performance to the basic legal requirements of the District's principal act (Public Resources Code (PRC) section 5780 *et seq.*)

- The District provides at least a basic level of recreational services. Staff has noticed the park being well-used by a variety of people in a number of active and passive recreational pastimes: soccer practice, basketball, martial arts, children playing, and senior citizens. Though it is likely that if the park were better managed and funded, there could be more people enjoying the park, this consistent level of activity supports staff's conclusion that the park is providing "recreation, park, and open-space facilities and services" consistent with its principal act. (PRC 5780, 5786)
- There are five members of the Board. (PRC 5784).
- The board has met at least once every three months (PRC 5784).
- The board recently approved a balanced annual budget that retires the District's debt to the Elections Department and does not include a loan to cover underfunded operational expenses. (PRC 5788)
- The board is actively seeking a qualified district administrator (PRC 5786).
- Revenue can be generated by charging fees to cover the cost of any service which the district provides or the cost of enforcing any regulation for which the fee is charged (PRC 5789).

In staff's opinion, the District's challenges arise from the result of a long-term lack of competent administration, inexperienced board members, and the pernicious effect of differences of opinion by some members of the Calwa community. Implementation of the recommended actions

presented in the EO's letter to the Board could bring some stability to board meetings and begin to mend community perceptions.

Options Available to the Commission

1. Take no direct action but continue to monitor the District's progress.

Staff recommends that the Commission take no formal action on Ms. Celedon's request to initiate an update of the District's MSR and instead advise the District Board to continue to seek to improve the District's performance, hire a competent district administrator, and direct staff to continue to monitor the District.

Commission comments during the August, 2013 meeting on Calwa reflected concerns by the Commission about how much support there was in the community for a district modification. The 'take no action' option does not preclude community members from circulating a petition proposing a change of organization or reorganization in accordance with GC Section 56700. Such a petition would serve as evidence of support by the larger Calwa community for the proposal.

2. Take action in preparation of a district modification.

Districts may be modified through the following means or combination thereof:

- *Dissolution*, including dissolution with annexation; essentially terminating the District and disposal of its assets; or dissolution of the district and conveyance of its property to the city.
- *Merger* of the district with another agency such as the City of Fresno, Malaga Count Water District, terminating the district and all district funds and property being vested in the other agency.
- *Establishment of a subsidiary district*, that is, a district of limited powers in which a city council is empowered to act as the ex officio board of directors of the district. A subsidiary district may be established if the commission determines that public service costs of the proposal are likely to be less than or substantially similar to the costs of alternate means of providing the service.
- *Consolidation* with another agency, defined as the uniting or joining of two or more districts into a single new successor district.

This option could establish a precedent for other individuals or small groups to request, and obtain, LAFCo-initiated district modification and possibly commit the commission to yet-unknown time, effort, and expense.

District modification would essentially eliminate an independent special district. One of many possible effects could be the marginalization of the District's voting population, shifting the policy and operational decisions to an ex officio board largely elected by voters well outside of the District.

Conclusion

Staff has noted the basic compliance by the District with many of the points in its principal act, the service it provides, and the improvements made by the District Board.

Calls for merger with the city have come from a relatively small number of people. The response, in staff's opinion, is not yet in LAFCo's purview but the District's. There are resources available to the District to improve its policy and operational constraints.

The Following Have Received Copies of This Report:

- LAFCo Commissioners and Alternates
- Ken Price, LAFCo Counsel, Baker, Manock, and Jensen
- Bernard Jimenez, Deputy Director of Planning Public Works and Planning
- Brandi Orth, Fresno County Elections Department
- Calwa R&PD Board, staff, and counsel

July 15, 2014

Ms. Mary Rosales, Chair
Board of Directors
Calwa Recreation and Park District
4545 E Church Avenue
Fresno, California 93725

Chair Rosales and Members of the Board:

Subject: Fresno LAFCo Assessment of the Calwa Recreation and Park District

For over a year, I have been assessing the management and operations of the Calwa Recreation and Park District (District) as these relate to the scope, jurisdiction, and authority of the Fresno Local Agency Formation Commission (Fresno LAFCo). This letter contains my assessment of the District and presents recommendations for the Board's consideration.

On March 13, 2013, Calwa PAC President Sandra Celedon presented a PowerPoint presentation entitled "Calwa Recreation and Park District Community Long-Term Sustainability Strategies" to the Fresno LAFCo. The presentation raised a number of allegations of mismanagement by the Board and ended with a request for timely action by the Commission to "review ways to reorganize, simplify, and streamline Calwa Park's governing structure to ensure long-term sustainability and accountability."

On June 19, 2013, I met with newly-appointed District Administrator Rosie Flores and Assistant Jana Keeley at the District offices to apprise them of the Commission's interest in the community's concerns. Ms. Flores responded with a frank assessment of the District's challenges and acknowledged that improvements to the District's operations, accountability, and management were needed. Ms. Flores committed to working with the Board and community to make these improvements. I understand that Ms. Flores is no longer employed by the District.

On July 17, 2013, staff presented the LAFCo with a "Status Report on Calwa Recreation and Park District; Consider Organizational Options for Calwa Recreation and Park District." No action was taken though the Commission authorized the executive officer to investigate and assist the District in resolving the issues raised at the 3/13/13 meeting.


Based on the Commission's general direction, my objective was to collect information and provide the District and the Commission with an objective assessment of the issues and possible remedies. During the course of the following year I have,

- Reviewed the District's Principal Act;
- Reviewed the 2012 Municipal Service Review for the District;
- Reviewed the 3/13/13 PowerPoint presented to the Commission;
- Attended various meetings of the Board:
 - Regular meeting June 20, 2013;

- Regular meeting July 25, 2013;
- Regular meeting March 20, 2014;
- Regular meeting May 22, 2014;
- Special meeting June 5, 2014;
- Regular meeting June 19, 2014;
- Requested and received a copy of the District's FY 2013-14 and FY 14-15 budget and by-laws;
- Examined materials presented to me including anonymous flyers and posters that had been posted in public places;
- Accessed various websites (State Controller's Office for compliance with state reporting requirements; two YouTube videos posted by CalwaPAC);
- Met with Friends of Calwa/Calwa PAC members Sandra Celedon, Tim Tauvar, Nerissa Richardson, Veronica Garibay, and Sabina Gonzalez-Eraña;
- Met with current Board members, staff, and District counsel;;
- Consulted with Fresno County Clerk/Registrar of Voters Brandi Orth; and
- Met with Fresno City Manager Bruce Rudd to discuss reorganization options.

Fresno LAFCo's interest in the District is orderly, logical, and efficient provision of recreational services. This assessment is limited to those three things. LAFCo's authority is granted under California Government Code section 56000 et seq. LAFCo has the sole authority to create cities and districts, to change their boundaries by annexations and detachments, and to dissolve (terminate), merge and consolidate districts, etc. LAFCo's interests are orderly growth, logical boundaries, and efficient service delivery.

LAFCo cannot alone create districts. By law, a proposal to form a new district must follow the procedure described in the principal act and then be 'formed' (or created) as a district by the LAFCo to make the district effective. In a similar way, LAFCo cannot change districts without taking into consideration the wishes of the registered voters and land owners in a district who have the right to protest proceedings for changes of organization. Finally, and perhaps most important, LAFCo doesn't operate districts; this is the responsibility of the Board of directors and district staff.

The Calwa Recreation and Park District was established in 1955 under authority granted by the California Public Resources Code (PRC) - Recreation and Park Districts - section 5780 *et seq.*, as a special district to provide community recreation, park, and open-space facilities and recreation services within specified boundaries and under local control. This portion of the PRC is known as the District's "principal act," and a copy is attached to this report, with a map of the District, as Attachment 1. 

District is an "independent special district" meaning that it is not governed by the City of Fresno nor by the County of Fresno. It is governed by a five-person elected legislative body known as the Board of directors. The Board establishes policies for the operation of the district and provides for the faithful implementation of those policies which is the responsibility of the employees of the district.

The District includes about 4,437 acres (6.9 square miles) and encompasses the community of Calwa. A significant portion of the District overlaps the City of Fresno but the District contains a large portion of unincorporated areas within the City's Sphere of Influence. The District's boundaries and its Sphere of Influence are the same, as shown on the enclosed map.

The District's annual revenue comes from a portion of the District's share of property tax on properties in the District. The District is also authorized by its principal act to charge fees for use of District facilities and services. The District provides passive and active parks and recreation programs, and provides facilities for the Senior Hot Meals and Summer Youth Lunch Program.

LAFCo conducts a periodic Municipal Service Review (MSR) to evaluate district's operations and efficiency; LAFCo considered the District's MSR on April 12, 2012. In that document, staff observed difficulty in obtaining specific information from the District. For example, under "Financial Ability to Provide Services", the MSR stated, "The District did not provide annual budgets or finance reports. It is therefore not possible to determine at this time whether the District is fiscally solvent or if current and projected financing is sufficient to provide District services," and under "Status of, and Opportunities for, Shared Facilities," the MSR stated, "The District did not provide information regarding opportunities for shared facilities or current activities in which facilities may be shared with other agencies."

The MSR concluded with no specific recommendations, and no changes to the District sphere were made. It is now evident that the MSR failed to take account of the many issues that affect the District.

Based on my investigation, there do not appear to be any structural defects in the principal act that impact the operation of the District as an independent special district and there do not appear to be any problems with the collection of tax revenue to support the District's mission. The problems of the District appear largely, but not exclusively, due to the behavior of the Board, insufficient oversight of past District Administration, and inadequate records management and control by staff.

Contributing to the District's instability is a community group's posting of anonymous flyers in the District and CalwaPAC's posting of YouTube videos seeking to disparage Board members and staff. This, and CalwaPAC president Celedon's presentation to the LAFCo, sought, in my opinion, to direct attention toward governmental reorganization and away from a more local and sustainable response to the District's challenges. To the members of the public that posted the anonymous flyers, I suggest that the only constructive way to air disagreements over policy should be through public and ethical campaigning to the voters in the District.

Without assigning any intent, I conclude that many of the 3/13/13 allegations have merit and can be corrected by better management of the Board meetings, clear delegation of responsibility by the Board to staff/management, and more professional administration of the District. It is clear to me that the Board is aware of the problems and has taken steps to address them. The management and operational issues that are troubling the District and my recommendations to address these problems are further discussed in Attachment 2.

Recall that Fresno LAFCo was initially approached by community members who requested that the LAFCo consolidate the District with the city of Fresno, essentially replacing the elected Board with the Fresno City Council. Though many governmental reorganizational options are available to the LAFCo, there are two significant issues to be considered before proceeding. The first is whether reorganization would be the appropriate way to address the District's problems; the second is whether reorganization would be supported by the voters in the District and the City. The recommendations should be given time to work out before governmental reorganization is pursued.

With this letter I conclude my assessment of the District. I will stay in touch with the Board and the community and evaluate whether to recommend additional actions to the Commission. When the next MSR for Calwa Recreation and Park District is prepared by Fresno LAFCo, it will pay particular attention to what actions the Board has taken to address the issues raised in this letter.

Sincerely,

David E. Fey, AICP
Executive Officer

cc: Calwa Recreation and Park District Board
Paul Pimentel, Esq., District Counsel
LAFCo commissioners
Ken Price, Esq., LAFCo Counsel
Brandi Orth, County Clerk/Registrar of Voters

Attachments

1. Assessment Regarding Conduct of the Board of Directors during Public Meetings

The organization of Board meetings should be improved. The pace of the meetings is frequently interrupted by stretches of silence as the Board members devote their full attention to the written staff report just handed to them; at one meeting each of the multiple gaps averaged four minutes. The public is frequently not invited to comment on Board matters. Board debate on items is unfocused, rarely grounded in fact or policy, and frequently devolves into unproductive personal comments which results in defensive behavior. The chair exercised little or no control of the meeting. Public testimony is frequently argumentative, not on point, and off agenda. These activities do not have a positive effect on public perception, public confidence, or the actual business of the district.

Recommendations:

- 1.1 That each Board member arrives at meetings prepared to discuss and take action on items on the agenda.
- 1.2 That the Chair presides over meetings of the Board of directors and conducts its business in an orderly manner.
- 1.3 That the suggested Rules of Order, or equivalent, be adopted by the Board and enforced by the Chair (Attachment 3).

2. Assessment Regarding Staff and Staff Report Procedure

Staff's interaction with the Board during public meetings is usually informally and familiar, frequently referring to the Board as "you guys." Casual behavior is not consistent with professional conduct of public meetings and doesn't support the purpose of Board meetings which is to take formal and frequently binding actions on matters of policy and to give clear direction to district staff to implement those policies.

Staff's reports to the Board are abrupt and not complete; there is typically no introductory comments by staff, no history of the issue and any previous Board direction, recommendations are minimal, and a formal conclusion of staff's report is generally absent. Without direction or background on the issue, the Board lacks direction and momentum; it frequently wanders around on the topic, each member bringing up issues (related or not) that other Board members react to, taking the issue further afield and not appearing to be seriously concerned that the issue even be resolved. Staff's reports and subsequent Board discussion frequently gets bogged down in the lack of direction: Questions frequently arise about the Board's previous direction to staff. Lack of structure in staff reports does not contribute to a positive debate by the Board, nor does it instill confidence in the Board by attendees.

I attribute these deficiencies to the absence of a District Administrator. Staff may be working beyond their respective position descriptions and may not be trained on how to conduct themselves during public Board meetings. It is also evident to me that staff is versatile, adaptable, and capable of rising to the District's many challenges. The recently-adopted annual budget is an example of achieving a professional-level work product. Overall, staff appears competent but lacks formal training in many district administration matters, though their work in support of the Board agenda strives for a professional level of product.

Recommendations:

- 2.1 That staff prepare a complete report to the Board, present it to Board members well ahead of the meeting, and during meetings make a public presentation of the item, conclude with a recommendation, and address the Board in a professional manner.
- 2.2 That staff and Board members should be offered professional-level training to support the tasks requested of the Board.
- 2.3 That staff's report should refer to the Board formally as, "the Board," "your Board," "Board members," etc.
- 2.4 That staff's report, both written and verbal, should be formally organized, such as:
 - 2.4.1 Issue/Policy/Analysis/Recommendation.
 - 2.4.2 The appropriate statute and /or policy citation that governs district actions should be given in the written and verbal report.
- 2.4. That the Board must give clear direction to staff in the form of a motion.
- 2.5. That prior to the vote on a motion, staff should record the motion/direction, noting the motion-maker and second and repeat it to the Board for confirmation.
- 2.6. That minutes must record the complete motion and should reflect the Board's discussion up to the motion.
- 2.7. That when staff returns to the Board with an item at a later meeting it should include the Board's previous direction in its report.

3. Assessment Regarding Board Members' Interaction During Meetings and with Park Staff

Board members have been criticized for participating in the operational activities of the park, to the extent that their frequent and familiar interaction with the park and staff may blur the line between policy and operations; comments from Board members to other members: "how would you know? You aren't here every day." Board members take pride in their close contact with the park, but their focus should be on the legislative and policy health of the park, rather than its operational nature.

Recommendations:

- 3.1. That Board members should avoid activities that create the appearance of conflicts of interest, including serving on another organization that has, or seeks to have, contracts with the District.
- 3.2. That with all due haste the Board hire a qualified district administrator.
- 3.3. That Board members direct their communications to the District Administrator.
- 3.4. That Board members should avoid frequent and familiar interaction with the park and staff.
- 3.5. That the Board adopt 'Rules of Conduct' to establish clear lines of responsibility between the Board (legislative governing body) and staff (implements policy, manages the day-to-day activities of the park).

4. Assessment Regarding Administrative Procedures

The District suffers from an appearance of a lack of fiscal and operational accountability.

Recommendations:

- 4.1 That contracts between the District and third parties (sports leagues, product vendors, community groups) adhere to standard and acceptable contract management including clear terms of the contract and records of all receipts and correspondence.
- 4.2 That the Board should appoint a person to serve as the finance officer per PRC section 5784.9.

- 4.3 That the Board should budget for and cause to be prepared a comprehensive annual financial report in accordance with PRC 5784.9, or periodic financial audit.
- 4.4 That the Board should avoid loans and repay its debt to the Elections Department with all due haste.

5. Assessment Regarding Civil Discourse

I have witnessed members of the public attending meetings frequently acting in a disruptive and disrespectful manner, speaking out of order, loudly commenting and criticizing the Board members. At virtually every public meeting I have seen members of the public making video recordings of the proceedings. I have viewed YouTube videos of Calwa Board meetings posted by "Calwa PAC:" "Calwa Park Board - Fails to pay some employees, but gives raise to accomplice Jana Keeley," and "Calwa Park Board - Raul Guerra attacks the public." The videos appear to be heavily edited and may not show the complete context of the filmed proceedings. In my opinion, these videos do not support informed debate of District issues as they appear to be selectively edited to conform to a pre-determined narrative.

In and around this last year, anonymous posters were hung in public places in Calwa to defame individual Board members. The parties that issued these posters do not identify themselves.

A story by now Board member, and president of the Calwa PAC, Sandra Celedon titled, "Let's Take Back Calwa Park: A Story of Corruption and Gross Mismanagement" was published in the Community Alliance, July, 2013. Many of the themes in this article are reflected in the YouTube videos and the anonymous posters.

These activities have had a chilling effect on the Board members' behavior during public meetings. Two Board members have advised me that they avoid making any comments that may later be edited and recast in a sinister light. It may also contribute to the Board's lack of interest in public comments. This environment is disruptive to the District because it interferes with the public debate that should be an important part of Board meetings.

Recommendations:

- 5.1 That Board discussion should avoid personal differences or animosities and instead be guided by clear and direct language so that the members may explain their points of view.
- 5.2 That the Chair should provide members of the public with the opportunity to present testimony at public hearings on all matters before the Board. The agenda clearly shows when opportunities for public participation, and lets the public know that they have a defined amount of time to present their testimony.
- 5.3 That if members of the public disrupt proceedings they should be advised by the chair that they are out of order and advised to respect the proceedings. If they persist, the chair can call for a recess.
- 5.4 To the public: Strive to be as accountable to the public as you expect the Board to be; Respect the Board proceedings; Do not print anonymous fliers slandering the Board or post less than complete video of the proceedings.

Attachment 3
Recommended Rules of Order

Calwa Recreation and Park District

1. The Chair announces the item to be considered, reads item number and general subject into the record.
 - Staff presents its report.
 - When staff concludes its report, the Chair asks, "At this time are there any questions to staff from the Board?"
 - When recognized by the Chair, Board members may ask questions to clarify the report and staff's presentation.
2. Chair now announces that the public portion of the hearing is now open:
 - The Chair asks, "At this time are there any speakers in favor of the proposal?"
 - Speakers in favor of the proposal are now recognized and present their testimony.
 - The Chair asks, "At this time are there any speakers opposed to the proposal?"
 - Speakers opposed to the proposal are now recognized and present their testimony.
 - When recognized by the Chair, Board members may ask questions of the speakers to clarify their testimony.

When it appears to the Chair that there are no further speakers, the Chair may ask "are there any other speakers or additional information for the benefit of the Board?" If none, the Chair closes this portion of the hearing and brings the item back to the Board.

- Chair announces that "The public portion of the hearing is now closed and it is now time for Board deliberation."
 - Additional questions or statements from the public at this time are out of order.
3. Board deliberation
 - The Chair asks, "At this time is there any question from the Board?"
 - When recognized by the Chair, Board members may ask questions of staff to clarify information in the report or to address questions raised during the testimony.
 - At the conclusion of questions by the Board members, the Chair asks, "At this time is there a motion by a Board member?"
 - A motion by a Board member is made, and must be seconded by another Board member. If there is no second to the motion, the motion dies.
 - Board members may now be recognized by the Chair to discuss the motion.
 - Chair calls for the question (a vote on the motion).
 - Staff repeats the motion (to verify that the motion has been recorded accurately), identifies the motion maker and second, and calls a roll call vote.
 - A recorded majority vote of the total membership of the Board is required on each action. (PRC 5784.13(c))