

# FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)

## “MINUTES”

### LAFCo MEETING – SEPTEMBER 10, 2014

**Members Present:** Commissioners Phil Larson, Mario Santoyo, Armando Lopez, 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 10:00 am.

#### **2. Pledge of Allegiance**

Chairman Silva led the Pledge of Allegiance.

#### **3. Comments from the Public**

There were no comments from the public.

#### **4. Potential Conflicts of Interest**

Commissioner Lopez asked LAFCo Counsel Price if there would be a conflict for him to vote on Item No. 8 which was a request to waive the filing fee for annexation of the City of Parlier to the Fresno County Fire Protection District. LAFCo Counsel Price responded that the request was made by the Fresno County Fire Protection District and not the City of Parlier. Council Price also said that there was a specific provision in the LAFCo law that says that each Commissioner sits independently on LAFCo which means that there is not necessarily a conflict unless a Commissioner's own personal financial interests are involved. Counsel Price concluded that he didn't believe that Commissioner Lopez had a legal conflict.

### **CONSENT AGENDA**

- 5. Consider Approval:** Approve Minutes from the regular LAFCo meeting of August 13, 2014.

6. **Consider Approval:** Request from the City of Fresno for one-year extensions for the following:
- A. "Kings Canyon-Minnewawa No. 3 Reorganization"
  - B. "California-Temperance No. 3 Reorganization"
  - C. "Shields-Polk No. 4E Reorganization"
7. **Consider Approval:** Request by the Executive Officer to change the October 8<sup>th</sup> LAFCo hearing to October 1<sup>st</sup>.

Commissioner Lopez made a motion to approve the items on the Consent Calendar and Commissioner Santoyo seconded the motion. Commissioners Larson and Silva voted in favor of the motion. Commissioner Perea was absent.

## **PUBLIC HEARING**

8. **Consider Request:** Waive LAFCo filing fees for the Fresno County Fire Protection District

Executive Officer Fey reported that the Fresno County Fire Protection Districts submitted an application to annex the territory within the City of Parlier to the District and said the filing fee for this annexation would be \$16,800. Fey reported that staff received a letter from Chief Johnson that payment of the fee would be contrary to the public's interest and provided his reasons in the letter. Fey concurred with the District's request and reported that the District agreed to cover some of LAFCo's hard "costs" which were estimated to be around \$3,000.

Commissioner Larson made a motion to approve the fee reduction to \$3,000 and Commissioner Santoyo seconded the motion. Commissioners Lopez and Silva voted in favor of the motion. Commissioner Perea was absent.

9. **Consider Request:** Waive LAFCo filing fees for the Sierra Resource Conservation District.

Executive Officer Fey reported that the Sierra Resource Conservation District submitted an application to revise their sphere of influence to remove District territory from Tulare County and the LAFCo fee would be \$16,800. Fey reported that the District has no assets, no regular funding source, does not provide municipal services and is a special district that was formed to receive grants and other forms of funding and technical assistance related to resource conservation. Fey reported that staff reviewed the request which is consistent with past Commission action that waived filing fees for the District and said that staff recommended approval of the request to waive the filing fee.

Commissioner Lopez made a motion to waive the filing fee and Commissioner Santoyo seconded the motion. Commissioners Larson and Silva voted in favor of the motion. Commissioner Perea was absent.

Steve Haze, representing the Sierra Resource Conservation District thanked the Commission for their support and for waiving the filing fees.

**10. Consider Request: Calwa Recreation and Park District Municipal Service Review**

Executive Officer Fey reported that at the August hearing, Sandra Celedon-Castro requested the Commission conduct a municipal service review (MSR) for the Calwa Recreation and Park District. Fey reported that the District's last MSR was completed in 2012 and wasn't due again until 2017. Fey said that staff has been communicating with the District for over a year and had provided his assessment and recommendations to the District in July. Fey said that the District is principally in compliance with its principal act. Fey said that staff was not recommending any direct action.

Commissioner Silva asked if there was a district administrator or if the District was seeking an administrator. Fey responded that the District had an interim administrator, Danielle Kramer, who was in the audience, as well as another board member. Commissioner Santoyo said the Commission's role in conducting MSRs is somewhat defined and didn't feel the Commission should be getting too involved with the day-to-day operations of special districts because it is outside of the Commission's authority.

Fey said last year staff was given direction to work with the District to lend its support and that staff has been following through with that direction. Fey said the statute is clear about what LAFCo's authority is regarding boundaries, but in terms of how individual districts behave or how efficiently they operate, The Commission's authority to intervene is less clear. Fey said that the purpose of MSRs will be defined when the Commission adopts its policies on MSRs. Fey said the policies would give staff direction on how much assistance the Commission should give to a special district. Commissioner Larson felt that the Commission was going beyond what it is required to do and is being asked to micro-manage the District and didn't feel that the Commission should be doing that.

Counsel Price clarified the role of a municipal service review and said it was a tool to determine if a district is meeting its obligations within its sphere. Counsel Price said that the last MSR for the District was prepared in 2012 and the Commission could choose to modify the MSR, but the MSR was not the only method the Commission could use to articulate its concern or support for the District. Counsel Price said that Executive Officer Fey drafted a very detailed letter providing his observations as the result of his independent investigation that one could argue acts in the same fashion as a modification to the MSR because it is in the record as observations by the Commission. Commissioner Santoyo asked Counsel Price if he meant staff's letter to the Calwa Board could act as a modification to their MSR. Counsel Price responded that the analysis is similar but not officially an MSR but speaks to observations by LAFCo as to the activity of the District.

Sandra Celedon-Castro spoke as a resident and concerned citizen who also is a Board member, but said that all of her comments were her own and not the Board's. Ms. Celedon-Castro said that in 2013, she and other residents were asking for an assessment as to whether the District was acting effectively and efficiently and providing the services they were intended to provide. Ms. Celedon-Castro said that it was never their intent to ask the Commission to

micro-manage the District. She said that since that time the District gained two new Board members, one being herself, and the community has been actively engaged with having a positive impact on the District. Ms. Celedon-Castro said there were no policies or procedures in place which makes it very difficult for the citizens to use the facilities. Ms. Celedon-Castro said that that Mr. Fey's letter to the District acknowledged that the MSR conducted in 2012 failed to consider many issues that affected the District. Ms. Celedon-Castro asked to have LAFCo assess the District to ensure that the District is effectively providing services to the public.

Commissioner Santoyo said now that LAFCo has fulfilled its obligation to the District he felt it was the responsibility of the Board to analyze and resolve their issues. Commissioner Santoyo said that now that Ms. Celedon-Castro was on the Board it was up to her to make a difference for the District. Ms. Celedon-Castro said she appreciated the time staff has spent on the District but felt it was LAFCo's obligation to oversee special districts and asked that LAFCo conduct an MSR that was complete and accurate. Commissioner Santoyo said the time staff took to assess the District and make its recommendations was better than a general MSR and that another MSR would not change anything.

Ms. Celedon-Castro asked Executive Officer Fey how many of staff's recommendations have been adopted by the District. Fey responded that as far as he could tell, the District has not taken any official action to implement the recommendations. Commissioner Lopez asked Ms. Celedon-Castro if she is lacking a majority of the Board to follow up on the recommendations and Ms. Celedon-Castro responded that was correct and that even small issues have become challenging. Ms. Celedon-Castro asked if there is anything further that LAFCo can do since staff made its recommendations. Commissioner Larson said that it was up to the District Board to follow through with the recommendations and wondered how much an MSR would cost. Fey responded that an MSR could cost several thousand dollars in addition to staff's time. Commissioner Larson said that he sympathized with Ms. Celedon-Castro but agreed with Commissioner Santoyo that it was really up to the Board to follow through with LAFCo's recommendations.

Timothy Tauvar, former Board member of the Calwa Recreation and Park District, spoke in agreement with Ms. Celedon-Castro and that it was very difficult to encourage the public to attend the Board meetings. Mr. Tauvar wondered how two Board members could make changes if the majority of the Board members were not willing to make changes. Mr. Tauvar was also concerned that he had requested notification of the meetings by e-mail but has not yet received any e-mail notices. Commissioner Larson said that it seemed to be a breach of responsibility by the Board members if they were not providing that information. Counsel Price said that there were requirements under the Brown Act for notifications and agendas and said that when there was a violation of the Brown Act there were two ways to remedy it: through a Citizen/Attorney General Suit or the California Attorney General's Office can get involved. Commissioner Santoyo asked if the District Board had legal counsel that could tell them if they were in violation of the Brown Act. Executive Officer Fey said the District is represented by legal counsel and that he was in the audience. Fey said that he didn't have any information about Mr. Tauvar's allegation. The Commission asked to hear from Calwa's legal counsel on the issue of the Brown Act.

District legal counsel Paul Pimentel said that for every meeting that has occurred written notice has been provided as well as outside posting of the meetings. Counsel Pimentel said that there have been no secret meetings and every meeting has occurred in compliance with the Brown Act. Counsel Pimentel said what he thought Mr. Tauvar was referring to was electronic notification, but he was not privy to how that process has occurred. Commissioner Santoyo asked if the public has had access to the meeting minutes and Counsel Pimentel responded that they are all at the office and available upon request. Commissioner Silva asked Fey if he has touched basis with the District's Counsel on legal issues and Fey responded that he has.

Mr. Tauvar said it was made clear to the District by Counsel Pimentel that the Board must give e-mail notice if requested. Mr. Tauvar also said the marquis outside of the District's office has not been kept up to date and still shows June's meeting date. Commissioner Santoyo asked if sending out notification of meetings electronically was part of the Brown Act and Counsel Price responded that under the Brown Act the agenda must be posted outside of the meeting place as well as at the district office and the minutes need to be made available to the public. Counsel Price said that if the agency has a website then the information must be available on their website. Counsel Price said that it was his recollection that if a person requested a notice then the agency must provide notice. Mr. Tauvar said that it was agreed that if he were to provide a written request for an e-mail notification, then it would be provided; however, it has been several months and he has not received an e-mail notification.

Sandra Celedon-Castro said that one of Mr. Fey's recommendations was for the District to comply with the Brown Act. Ms. Celedon-Castro said that there are several other issues that the Board is trying to address through other venues that are available to them. Ms. Celedon-Castro said that all Board members are notified by e-mail of the meetings but could not say if other members of the public were receiving e-mail notifications. Commissioner Santoyo asked Ms. Celedon-Castro if she, as a Board member, has asked staff to establish a policy for communicating notices and agendas and she responded that she has.

Commissioner Larson made a motion to deny the request for another MSR but advised staff to make the Board aware of the seriousness of withholding any information electronically from the constituents. Commissioner Santoyo said that since Executive Officer Fey had created a list of necessary action items, the Commission should think about having LAFCo send an official list and say here are our recommendations and now it is up to your Board to act on them. Commissioner Larson clarified his motion that was to deny the request for an MSR and direct staff to take the actions stated by Commissioner Santoyo. The motion was seconded by Commissioner Santoyo with Commissioners Lopez and Silva voting in favor of the motion. Commissioner Perea was absent.

#### **11. MSR Schedule Policy:** Brief Commission on range of options

LAFCo Analyst George Uc presented a PowerPoint presentation on MSRs. The PowerPoint was presented for the purpose briefing the Commission on staff's activities regarding MSRs and to ask for direction for updating the Commission's MSR policies. Uc noted that MSRs are to oversee and approve the expansion and/or reduction of a city or special district's sphere of influence, not to address dysfunctions within their boards. Uc said when a city or district applies for a sphere of influence revision the Commission must prepare a municipal service

review and make seven determinations to support the sphere revision. Commissioner Larson noted that in one of Uc's slides the focus of an MSR should be on the adequacy of providing services. Counsel Price said that an MSR is a tool to make an analysis that is a means to an end and said that if consolidation, merger or dissolution of a sphere is the end result, then an MSR would be appropriate. Counsel Price said there is nothing in the MSR that forces an agency to respond to the recommendations contained in a MSR and the agency is not required to implement the recommendations and an MSR is designed to be a vessel for a specific action.

Commissioner Santoyo said that with respect to Calwa, the end game had to do with the Board and not the District's boundaries and any further action would be out of what LAFCo's focus should be. Counsel Price said that was correct but if the Commission determined to consolidate the district or take a similar action, then the Commission would be required to conduct an MSR to evaluate the level of services provided to the residents.

Uc said that the present guidelines for the Commission's MSRs were written in 2003 and most of Fresno LAFCo's MSRs were conducted quickly to comply with the law. The Commission agreed that with 15 cities and 133 special districts, staff time was valuable and couldn't afford to get involved with a district's day-to-day functions. Fey said the direction given to staff at last month's meeting was to look into how staff could better manage the MSR workload. Fey said staff has been looking at how other LAFCo's manage their MSR workloads and that this would be a good opportunity to determine how involved the Commission wants to get with struggling districts by creating its own policies.

Commissioner Lopez noted that in previous testimony it was stated that some of the members were doing repairs to the facility without authorization of the board and asked if there was anyone who could find out who authorized the work, how much the expense were, and how do they account for the work. Counsel Price responded that there are requirements in the Government Code with respect to governmental audits and that would be the place where that kind of thing should be called. Counsel Price said that in the event the audit finds there is criminal wrongdoing or a violation of breach of duty by the Board, then those issues could be addressed by the Fresno County District Attorney's Office Public Integrity Unit or usually the California Attorney General's Office.

Uc said that staff looked at other San Joaquin Valley LAFCo's policies and said some adopted the OPR's August, 2003 guidelines, and others created several tiers that determined the level of focus the MSR would provide and is what Fresno LAFCo is looking at doing. Uc said that some districts were more active than others and described what services the different kinds of districts provided. Mr. Uc suggested creating different levels of MSRs by dividing the districts into groups with similar services, level of activity, and larger districts that function well. Uc said based on the Commission's direction, staff was looking to update the MSR policies and to develop a list of MSRs based on the OPR's "Growth Within Bounds" report that would help staff identify what the key municipal services that the Commission should be focused on and to develop a tier of districts that would help staff update and address a lot of the MSRs that are pending. Uc said staff was looking for direction, as deemed necessary, by the Commission.

Commissioner Silva asked if any changes to the Commission's MSR policies would be required to be made at a public hearing. Fey responded that based on the Commission's direction, staff would probably bring the MSR policy back to the Commission at a public hearing in November. Commissioner Santoyo thought the tier system was good but shouldn't be limited to just two tiers. Commissioner Santoyo said that the Commission's direction should be to ask staff how to best utilize staff time and save money and come back with a proposal.

There was a consensus by the Commission to direct staff to follow staff's recommendations regarding a tier system for MSRs.

## **12. Executive Officer Comments/Reports**

Executive Officer Fey had no comments

LAFCo Counsel Price introduced Craig Armstrong who was in the audience as a new member of Baker, Manock and Jensen and that he would be working with him.

## **13. Commission Member Comments/Reports**

There were no reports from the Commission.

Executive Officer Fey reminded the Commission that as part of the consent calendar, they voted to move the October meeting up a week to October 1<sup>st</sup> at 10:00 which would be held in the Council of Governments Sequoia Room.

## **ADJOURNMENT**

The meeting adjourned at 11:25 am.