

FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)

LAFCo MEETING MINUTES MARCH 11, 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
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.

Executive Officer Fey reported that he had been informed that Commissioner Pacheco was running a little late but would be arriving shortly.

2. Pledge of Allegiance

Chairman Silva led the recital of the Pledge of Allegiance.

3. Comments from the Public

There were no comments from the public.

4. Potential Conflicts of Interest

There were no conflicts reported.

CONSENT AGENDA

5. Minutes from the regular LAFCo meeting of February 11, 2015

Commissioner Perea made a motion to approve the Consent Agenda and Commissioner Parra seconded the motion. Commissioners Santoyo and Silva voted in favor of the motion. Commissioner Pacheco had not yet arrived.

PUBLIC HEARING

6. Presentation: Preliminary Budget and Work Plan for Fiscal Year 2015-2016

Executive Officer Fey presented the 2015-16 Preliminary Budget estimates. Fey said staff anticipated that the Commission will be closing Fiscal Year 14-15 below its original projection due to higher than anticipated fee revenue and lower expenditures for legal counsel and employee benefits. Fey said these lower expenditures are expected to continue through FY 15-

16 and currently estimates the preliminary budget to be approximately \$446,000 which is a decrease of \$45,000 from the current fiscal year. Fey presented a slide show that showed the history of LAFCo's budget and expenses.

Fey presented staff's preliminary 2015 Work Plan. Fey reported that staff held a successful workshop for the cities last spring and wanted to offer it annually to all local agencies, the development community and elected officials. Fey said staff planned to review LAFCo's Policies, Standards, and Procedures in its entirety and present recommended revisions for the Commission's approval. Fey said staff was also going to conduct a fee analysis to make sure application fees are up to date and equitable to those paying the fees for the work being done. Fey said before staff presented an ag preservation policy to the Commission for approval he wanted to first get results from the work being done at COG and its member agencies on the issue.

Commissioner Santoyo gave some background as to why the Commission was interested in adopting an ag preservation policy. Commissioner Santoyo said that when the Commission was hearing the City of Fresno's sphere of influence update for the Southeast Growth Area (SEGA) some of the landowners reported that they were having difficulty doing day to day ag operations because of a number of reasons which started the discussion of having an ag preservation policy. Commissioner Santoyo said the Commission had decided that a good place to start would be to identify the COGs that have ag policies in place and put a committee together that could include people in the ag industry and others to get a variety of perspectives to be considered while developing the Commission's policy. Fey said that staff has participated in a committee at COG at a technical level and the recommendations of the committee will then move on to the policy board for their consideration. Fey said if the Commission wished staff could begin the examination of an ag policy and get it started this fiscal year. Commissioner Santoyo said that since Fresno County has typically been Number One in the nation for ag production, we should move forward as soon as possible. Fey said it would be entirely appropriate for the Commission to scope what sort of ag preservation policies or impact mitigation policies would be appropriate at the Commission level which is essentially boundaries as opposed to uses within those boundaries.

Counsel Price said that the Executive Officer had previously circulated a memo regarding some work that was done back in 2008 with respect to the Commission's authority, and if the Commission wanted to adopt an ag preservation policy, it could use its authority to impose conditions to preserve agricultural land. Counsel Price suggested the Commission may want to have a workshop to discuss the policy and legal options of the Commission's conditioning authority.

Commissioner Perea said the Commission had previously discussed the SEGA area and talked about removing some of its territory from the City of Fresno's sphere of influence and asked staff if that could be added to LAFCo's Work Plan. Fey responded that was going to be a contemporary hearing in the next few months and said that staff has received the administrative draft of the City of Fresno's MSR and that once it has been reviewed; staff would be setting up a hearing to discuss the MSR. Fey said that the conclusions or recommendations of the MSR may have a bearing on the sphere of influence in SEGA.

Commissioner Perea reported that Supervisors Pacheco and Mendes are leading the effort on the County's Groundwater Management Plan and asked if it would be appropriate for the LAFCo EO to have a seat on the committee. Commissioner Perea also said that some residents in west Fresno came before the Board of Supervisors yesterday to talk about the impacts that urban farming within the city's sphere of influence is having on domestic water wells and wondered if LAFCo had any authority over the issue. Fey responded yes and no, that once territory is annexed to a city, LAFCo does not have any more authority; however, in the statute under the SOI discussion there is a section that says once the Commission has determined the SOI for a local agency it may also enact policy to promote the growth of that agency within those boundaries. Fey said the Commission's policy is not that strong in that area but could recommend returning to the past practice between the cities and the County where once a SOI was approved, the County would then amend its land use plan within that sphere to match that of the city.

Commissioner Pacheco said that landowners in southwest Fresno are upset because land that was designated for development now has trees, which affects their wells and that residents are blaming their domestic wells going dry on the large wells being drilled to provide water for the trees that have been planted right next to them. Commissioner Pacheco agreed with Commissioner Perea that if you do something inside the sphere it should be considered as a transition toward full development. Fey said the statute is written in a way that gives the Commission the opportunity to balance the interests of the property owners within the spheres. Commissioner Pacheco asked what LAFCo's role in the issue is. Counsel Price responded that LAFCo is prohibited by statute to regulate land use but when an annexation application or sphere amendment comes before the Commission, the Commission is not obligated to approve applications and have discretionary authority with respect to what the Commission believes is an appropriate application for annexation. Counsel Price said that if this Commission is not comfortable with the adherence to its policies, the Commission does not have to approve the annexation or sphere amendment. Counsel Price suggested that the Commission may want to have a workshop to evaluate its policies to determine whether or not they are strong enough or reflect the Commission's policy views.

Commissioner Santoyo said that the environmental review process should identify whether the project would use more water than what was good for the area. Counsel Price said that LAFCo has the authority to review the environmental documents which is a factor to be considered under the LAFCo law. Counsel Price said that LAFCo is also a responsible agency under CEQA and that by law it cannot reject or amend the environmental document; however, LAFCo can place conditions on an annexation, or it does not have to approve the annexation.

Commissioner Parra asked what happens when the Commission approves an annexation and then the scope of the project is changed. Counsel Price responded that the Commission recently addressed this issue in a recent policy change that would require the Executive Officer to evaluate whether there had been fundamental changes to the circumstances in which the Commission considered and approved the application. Counsel Price also said that the policy change would give the Executive Officer some authority to evaluate whether or not the application that was presented to and approved by the Commission is the same application that is being recorded.

Commissioner Pacheco noted that SEGA keeps coming up during the County's talking points and wanted an update on the status of the area. Commissioner Silva agreed that the Commission needs to review the area.

(Commissioner Pacheco had arrived late for the hearing and asked Fey for some clarification on the preliminary budget that was presented before his arrival.)

7. Municipal Service Review (MSR) Schedule

LAFCo Analyst George Uc presented an overview of the Municipal Service Review program and staff's report. Commissioner Perea asked what would happen next with SEGA once the City of Fresno's MSR was complete. Uc responded that a consultant was currently preparing an MSR for the entire City of Fresno that would include the SEGA area. Fey said that once the Commission has reviewed the MSR, the Commission would have the discretion to make the statutory determinations regarding the current sphere of influence and act accordingly. Commissioner Perea asked if the Commission could reduce the SEGA if it was determined that the area was too large. Fey responded that was within the Commission's authority. Counsel Price said the Municipal Service Review would first be presented to the Commission as a draft and the Commission could amend the draft or seek input for the draft for their consideration and then determine to seek a sphere amendment. Commissioner Perea asked when the Commission would be hearing Fresno's MSR and Fey responded within the next couple of months. Counsel Price clarified that the City's MSR had not expired and is still a valid document just that it is due for a new MSR.

Commissioner Silva asked if the City would be able to make comments on the MSR and Fey responded that the City would be invited to participate in the Commission's consideration and the City could be asked to provide additional information or be present to answer questions. Commissioner Santoyo asked if the Commission could direct staff to have a workshop on SEGA prior to considering the City's MSR. Commissioner Silva agreed and directed staff to schedule a workshop on SEGA as soon as possible.

Commissioner Silva asked Uc how does LAFCo fit in with regard to sewer, water, street lighting, storm drainage, etc., and in particular, the communities of Cantua Creek and El Porvenir. Uc responded that services to those communities are provided through County Service Areas and CSAs are Level 2 MSRs. Uc said staff would be evaluating the agencies' projected growth and whether their facilities are adequate to provide the resources and their financial ability to provide those services. Uc said staff would be recommending determinations for the Commission to consider with regard to how the agency is operating and identify any issues.

Commissioner Silva asked if Cantua Creek and El Porvenir received their water from the Westlands Water District. Commissioner Pacheco said Cantua Creek did receive all surface water from the Westlands Water District and that the District does not make any money; it is simply the agency that has the infrastructure to get the water to the community. Commissioner Pacheco said that Cantua Creek has a CSA that administers their water. Commissioner Pacheco said it was his understanding that CSAs have to be stand-alone entities and could not legally be subsidized by the County in any shape or form. Commissioner Pacheco said Cantua Creek is 100% dependent on surface water and last year approved a rate increase; however, 30 days after they approved a rate increase their rates went from \$348 per acre foot to over \$1,100 per acre foot. Commissioner Pacheco said the CSA is currently \$66,000 in the red for providing water and they just had another Prop 218 vote where over 70% of the residents voted against the increase. Commissioner Pacheco said there is a community activist group urging the voters to vote against any increase and that the County was going to meet with the residents because he didn't feel they fully understood when that May 1st comes, their surface water will be

shut off and they will become 100% reliant on bottled water. Commissioner Pacheco said that Assemblyman Perea was currently working with the County to bring more water in but it currently takes about two years to get there.

Commissioner Silva asked at this point, how does LAFCo fit in. Uc responded that LAFCo would be reaching out to the agencies and ask them what they felt their problems are, if any. Commissioner Pacheco noted that several cities within his supervisorial district have MSRs that should have been updated in 2012 and asked how LAFCo can make a City comply to update their MSR. Fey said the statute allows LAFCo to request information and to a certain degree, if an agency does not want to participate then that would be reflected in the MSR. Fey said that if the agency did not want to participate in the MSR, the Commission could deny or place conditions on an application that is brought before the Commission for that agency. Counsel Price said there is an impact for cities because cities often amend their sphere of influence or annex new territory; however LAFCo has no remedy for those small or inactive districts unless there is a new application for annexation.

Fey noted that the MSRs for Cantua Creek (CSA No. 32) and El Porvenir (CSA No. 30), as well O'Neil Community (CSA No. 49) were last updated in 2011, with assistance from the County and that County staff recognized that it would be necessary to increase fees for CSA No. 32 in order for the system to maintain itself. Fey said that the situation in Cantua Creek is different than the situation in El Porvenir and that Cantua Creek did approve a rate increase. Fey said that there are some things that the MSR process can address and there are things staff can't anticipate. Fey said that since many of the previous MSRs were prepared by consultants, the knowledge that was gained during the process left with the consultants. Fey said that by having staff prepare the MSRs, LAFCo can retain the institutional memory/knowledge for subsequent MSRs. Fey said knowing what we know now about the struggles the Board of Supervisors, who sit as the Board of CSA No. 39, has had in communicating with the residents about the issues, LAFCo staff can work with County staff to come up with an MSR that supports positive change the next time staff updates the MSRs.

Commissioner Pacheco agreed that it would be beneficial for staff to prepare the MSRs and said he didn't think anyone could have predicted that the price of water would go up from \$300 per acre foot to \$1100 per acre foot in less than a 12-month period. Commissioner Pacheco said the residents did everything they could but couldn't absorb a three-fold increase and there was no way to stop that. Commissioner Santoyo their issue is quasi-temporary and the reason for the high cost is because we are in the fourth year of a drought but when it's over, the rates should go back down. Commissioner Silva asked what LAFCo can do and Commissioner Santoyo responded that the only thing that can be done legislatively is to bring in temporary relief. Commissioner Santoyo said Governor Brown has a drought plan and Prop 1 has money that can go to these communities and that it was just a matter of figuring out how to qualify for the projects to get the funds.

The Commission agreed that LAFCo should, if possible, participate in the County's Groundwater Management Plan.

Jeff Roberts spoke on behalf of Copper River Ranch LLC, who developed the Copper River Ranch Master Plan in the City of Fresno. Mr. Roberts wanted it to be on record that he has been talking to Executive Officer Fey about a change in the City's sphere to include a little strip of land that is a trail facility adjacent to Friant Road in the City's MSR.

8. Executive Officer Comments/Reports

Fey reminded the Commission that the Form 700s were due April 1st and that the City Selection Committee was going to meet on March 26th to make appointment to the Commission.

9. Commission Member Comments/Reports

There were no comments from the Commission.

CLOSED SESSION

10. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: Executive Officer

Counsel Price reported that in Closed Session the Chair appointed an ad hoc committee for the Executive Officer's compensation comprised of Chair Silva and Commissioner Santoyo.

ADJOURNMENT

Commissioner Perea made a motion to adjourn the meeting and Commissioner Santoyo seconded the motion. Commissioners Pacheco, Parra, and Silva voted in favor of adjourning the meeting and the meeting adjourned at 11:46 am.