

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

AGENDA ITEM NO. 9

DATE: August 12, 2015

TO: Fresno Local Agency Formation Commission

FROM: David E. Fey, AICP, Executive Officer 

SUBJECT: Progress Report on the Status of the Lanare Community Service District

Executive Summary

This progress report has been developed pursuant to the Commission's May 6, 2015, discussion of the Lanare Community Service District's Municipal Service Review.

This report concludes that a Municipal Service Review in the near-term will do little to resolve the extensive, systemic challenges to the LCSD. These challenges are best resolved through a combined-agency approach. Staff will continue to monitor the LCSD and cooperate with agencies and interested parties.

Background

At its May 6, 2015, meeting, the Commission discussed correspondence from Leadership Counsel requesting that LAFCo begin work on the Lanare Community Service District (LCSD) Municipal Service Review (MSR). Staff observed that the LCSD MSR was scheduled for FY 15-16. During this discussion, the Commission expressed an interest in Fresno County's Lanare Community Plan and how it related to the LCSD. Commissioner Pacheco said that he and Commissioner Perea would work with the County to get the Lanare Community Plan updated. Commissioner Santoyo suggested that the Commission direct staff to look at not limiting the District's boundaries to the existing homes outside its boundaries but to look at setting the boundaries to allow for growth.

The Commission directed staff to scope out the responsibilities of LAFCo and the issues in Lanare and brief the Commission in June to make sure it is kept abreast of the developments that are occurring in Lanare and to begin the MSR process based on the update in June.

Staff provided an update on its progress at the June 3 meeting, noting that it had reached out to Leadership Counsel to discuss the LCSD. On June 8, 2015, staff met with Leadership Counsel staff and distributed a draft report of the various issues and challenges facing the LCSD.

At the Commission's July meeting staff reported its continued work on the LCSD report that outlines the LAFCo issues and describes what steps are necessary in order for that district to continue to function.

Since that time, staff attended a July 10, 2015 community meeting with the Lanare residents hosted by District 4 County Supervisor Buddy Mendes, and conducted a field review of the Lanare Community on July 21, 2015.

Progress Report on the Lanare Community Service District

The Commission is aware that the issues facing the District and the Lanare community are not restricted to LAFCo issues. However, this report outlines the current issues relevant to Fresno LAFCo's authority. It is in the interest of continuing interagency cooperation on these issues and to spark constructive interaction among other agencies,

The topics addressed are divided between the following headings, though each topic may share common characteristics with another:

- Lack of a District board quorum;
- Competent and Responsible District Management;
- Unauthorized Extension of Water Service;
- Sphere of Influence Expansion
- Municipal Service Review (MSR) Update;
- Relationship of District to the County Community Plan; and
- Effect of Water System Consolidation Bill.

Lack of a Lanare CSD board quorum

Summary: From an operational perspective, LAFCo concludes that the most important current issue is the lack of a District board quorum. This situation contributes to multiple long-term negative influences, and should be resolved as soon as possible and prior to the MSR/SOI update.

The District's "principal act" – the Community Services District Act (Govt. Code §61000) -- clearly calls for "a legislative body of five members known as the board of directors (to) govern each district. The board of directors shall establish policies for the operation of the district. The board of directors shall provide for the implementation of those policies which is the responsibility of the district's general manager." (GC §61040 (a))

Lack of a quorum results in an inactive board and a District that is unable to conduct business. The inactive status impedes several critical District functions to the degree that no public business can be transacted, communication with constituents is non-existent, and opportunities are missed for the agency to pursue available grant funding for desired community improvements.

Most important, any request made to LAFCo to activate a District's latent power must be by an active board. Many of the service needs expressed by Lanare residents during the July 10, 2015, meeting with Supervisor Mendes are latent powers that an active board could consider activating including wastewater management, solid waste management, street lighting, street maintenance, and an enhanced law enforcement presence. Further, an active board could also request that the Commission authorize the extension of services in anticipation of a later change of organization pursuant to GC §56133.

The District's primary asset, the public water treatment system, is currently in receivership. Staff anticipates that the Court's decision whether or not to dismiss the receiver and return the public water system to the District—which may occur in 2017—will undoubtedly rely on a record of credible Technical, Managerial, and Financial (TMF) capacity on the part of the District. The

longer an inactive board persists, the more effort will be required to establish an adequate TMF record.

Finally, the Commission's determination whether to expand the sphere of influence (SOI) and service area to include existing unauthorized out-of-District service connections must take account of the "present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide."

Because the presence of a district board is essential to the orderly and efficient operation of the District, the Lanare community, and those non-profit corporations interested in Lanare, should be urged to make their highest priority to assist Supervisor Mendes to appoint eligible registered voters that reside in the current district service area to the LCSD board of directors.

Competent and Responsible District Management

Summary: Upon the seating of a full board, or at least a quorum of members, the next important step is to hire or contract competent and responsible District general manager.

"General Manager" refers to the highest level management appointee who is directly responsible to the board of directors for the implementation of the policies established by the board. A competent general manager is absolutely essential for the District's community needs assessment: this person serves as the point of contact between the District operations and the customers served and is vital for the orderly and efficient operation of the District. Hiring a general manager also contributes to a record of the District's TMF capacity.

Note that a "member of the board of directors shall not be the general manager, the district treasurer, or any other compensated employee of the district...." (GC §61040(e))

Unauthorized Extension of Water Service

Summary: The District has extended water service to several properties outside of its service area and the SOI without LAFCo authorization under GC §56133. Options to address this include amending the SOI to include these properties or authorizing these service extensions. Both of these options are not without their complications.

The District has extended water service to several properties outside of its service area and the SOI without required LAFCo authorization under GC §56133. Notwithstanding, staff understands from the State Water Resources Control Board that the court-appointed receiver is currently managing the service delivery to all existing customers, authorized or not (see attached map of LCSD).

Options to address this unauthorized service, including LAFCo authorizing these connections after the fact via GC § 56133(c), are impacted by the lack of a board quorum. For example, the Commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries or outside its SOI in response to an existing or impending threat to the public health and safety of the residents of the affected territory if both of the following requirements are met:

- (1) *The entity applying for the contract approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.*

(2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

Italicize text illustrates where the lack of a board quorum prevents this option. Without a quorum the board cannot conduct business and make application to LAFCo in the event of an emergency that threatens the public health and safety of the residents of the affected territory. In the short-term it may be advisable to not pursue authorizing these service extensions. The deed has been done and these customers are receiving service and paying the water rate. LAFCo should be cautious of this approach so as to not establish a precedence of special districts seeking "permission rather than forgiveness" with respect to out of area service agreements. The next option may be revising the SOI and service area to include these properties. This option is not without its complications, namely, the Municipal Service Review (MSR) and CEQA.

In order to revise the District's SOI an MSR must be completed (The MSR process is discussed in greater detail later in this report). Notwithstanding, the completion of the MSR is compromised by the lack of a board and absence of a general manager. In this case, LAFCo staff will likely approach the Court-appointed receiver to assist in the data collection for the water system but information related to the LCSD community center may be difficult to obtain without an official District contact to gather record of the agency's operation.

A second challenge for the SOI revision is that it is a "project" under CEQA (GC § 15378). An SOI revision, either an expansion or reduction is normally initiated by a local agency as part of its growth plans, and as such, that agency is the "lead agency" under CEQA, and LAFCo is identified as a "responsible agency." It is possible that LAFCo could be the lead agency but this is not preferred given it is not the practice of the LAFCo to undertake a project without formal support of the affected agency. Further, in 2012, the Commission waived application fees at the request of Lanare CSD board member Solario, fees estimated by staff to be \$4,000-\$15,000.

In any event, the District board would need to be active in order for the District to make the application to LAFCo.

Sphere of Influence Expansion

Summary: the District's current challenges do not support the required SOI determinations.

An SOI expansion must be accompanied by several determinations that are supported by facts. (GC §56425) The determinations are now presented with a summary analysis of the challenges facing LCSD.

Determination 1) The present and planned land uses in the area, including agricultural and open-space lands; and

Determination 2) The present and probable need for public facilities and services in the area.

The document normally used to establish the probable need for facilities is the planning agency's general, community, or specific plan. In light of the past unauthorized extension of service, there does not seem to be sufficient fidelity to the Fresno County Lanare Community

Plan (LCP) to make this a supportive determination. Even if the LCP is not updated (see later comments), it may be necessary for the Fresno County Board of Supervisors to adopt land use policies that address the District's limitations once the District is ultimately able to compose itself and conduct normal operations.

Determination 3) The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.

This determination will be supported by information about current and future capacity of the public water system currently being developed. Additionally, staff understands that the residents of Lanare have expressed the importance of maintaining the Lanare Community Center. Because of this community need, it will be necessary to have data on the community center's operational and maintenance expenses. Like the public water system, the community center appears to be a key District asset impacted by a lack of a board quorum which basic maintenance and upkeep of the community center. Staff's July 22, 2015 visit to the Lanare community revealed a shuttered community center's building and a park/playground in stark disrepair.

Determination 4) The existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency.

The LCSD service area lies in a known disadvantaged unincorporated community (DUC) pursuant to SB 244 and Fresno LAFCo policies. The purpose of SB 244 is to begin addressing the long term complex legal, financial, and political barriers that contribute to regional inequity and infrastructure deficits within DUCs. According to the legislative findings in SB 244, hundreds of unincorporated communities located throughout California, such as Lanare, lack access to basic community infrastructure such as sidewalks, safe drinking water, adequate sewer systems, and lighting.

From a LAFCo perspective, the Community Service District is the primary local government currently in place that is responsible for the public services and public improvements to support the planned land uses of the Lanare Community Plan. Even though Lanare is located in unincorporated Fresno County, it is fortunate to have a Community Service District in place that can provide many of the municipal services that Lanare residents have expressed their exigent need for. In the absence of a board quorum, this first form of local government is operationally paralyzed; it cannot fulfill its governmental responsibility within its service area, let alone assist any social or economic issue relevant to the community. The District's inactive status simply aggravates its inability to comply with SB 244.

Determination 5) For an update of a sphere of influence of a city or special district that provides public facilities or services related to sewers, municipal and industrial water, or structural fire protection, that occurs pursuant to subdivision (g) on or after July 1, 2012, the present and probable need for those public facilities and services of any disadvantaged unincorporated communities within the existing sphere of influence.

LAFCo is required to adopt determinations for an SOI update of a city or special district that provides public facilities and services related to sewer, water, and fire protection, when that local agency is proximate to a DUC. As previously noted, the Lanare community meets the DUC criteria pursuant to SB 244 and Fresno LAFCo policies. It is unfortunate that the local government that should be poised to address the Lanare community's challenges is the LCSD.

Staff's impression of the Lanare community is that few residential properties appear well kept. The challenge is whether the community can muster and maintain the civic spirit to operate and the CSD even with a quorum.

The "present and probable need" will be discussed further in the Community Plan section of this document.

Municipal Service Review (MSR) Update

Summary: The MSR for the LCSD is scheduled to begin in FY 15-16. The actual timing of this report will depend on both the completion of the MSRs currently under development and the District's ability to respond to several critical steps in the MSR process.

A generalized MSR process is now described to show the steps LAFCo staff will take in initiating and performing the MSR process:

1. LAFCo contacts the District to establish a legitimate point of contact;
2. LAFCo sends the Commission's MSR questionnaire to the District;
3. District is requested to participate and respond in three weeks but more time is allowed if the District requests the time and can commit to a response date;
4. LAFCo reviews District responses to the questionnaire and prepares draft MSR;
5. Draft MSR is provided to the District for comments/corrections;
6. Draft MSR is returned to LAFCo who considers comments/corrections; and
7. LAFCo prepares a Final MSR and includes determination and recommendation; optionally provides a 21-day public comment period which may run concurrently with notice of Commission hearing.

At this point, the District's primary challenge is that it has no board quorum, no staff to represent the District in the MSR, no legal counsel, and no consulting staff, which leaves no one to accept the responsibility of completing the MSR questionnaire. LAFCo staff may consider requesting authorization from State Water Resource Control Board to approach the court-appointed receiver as an interim first step for initiating the MSR process, although the lack of a board quorum indicates operational challenges within the District.

Relationship of LCSD to the Fresno County Lanare Community Plan

Summary: There is a potential benefit from the coordination of the LAFCo's MSR/SOI process with an update of the Lanare Community Plan.

Aside from common geography, there appears to be little to no engagement between the District and the policies of Fresno County's Lanare Community Plan (see attached Community Plan). This raises the question what could be accomplished by a stronger policy relationship between the two agencies?

Some principal land use planning responsibilities under GC §65000 et seq. are now presented to provide a context for the long-range planning relationship between the LCSD and Fresno County. Pursuant to GC §65103, Fresno County is the planning agency for the unincorporated land in the County and it prepares and periodically reviews (revising as necessary), the general and community plans. These plans are implemented by the County through actions including

but not limited to, the building permit activity, administration of the general plan, specific plans, community plans, zoning regulations, and subdivision ordinances.

Optimally, a capital improvement program and the local public works projects of other local agencies should be reviewed annually for their consistency with the County's general plan.

Pursuant to government code, the County should also:

- Consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and citizens generally concerning implementation of the general plan;
- Promote the coordination of local plans, housing element, and programs with the plans and programs of other public agencies. The County also carries major responsibility to comply with SB 244-Disadvantages Unincorporated Communities, pursuant to GC section 65302.10.(a); and
- Perform other functions as the legislative body provides, including conducting studies and preparing plans other than those required or authorized by this title.

The District was formed in 1971 an independent special district governed by a five-member board of directors and managed on a day-to-day basis by a general manager. The District is not governed by other legislative bodies such as a city council or board of supervisors. The District does not have land use authority, which is exclusive to Fresno County. However, the County's planning obligations clearly extend to cooperating with the District as another public agency that can provide direct municipal services to the Lanare community.

The LCSD sphere of influence can play an instrumental role in this coordination. A sphere of influence is "a plan for the probable physical boundaries and service area of a local agency, as determined by the commission." SOIs are determined by the Commission for each local agency,

"in order to carry out its purposes and responsibilities for planning and shaping the logical and orderly development and coordination of local governmental agencies subject to the jurisdiction of the commission to advantageously provide for the present and future needs of the county and its communities." (GC §56425(a))

Once the Commission has determined a sphere of influence for a special district, it shall "enact policies designed to promote the logical and orderly development of areas within the sphere." (GC §56425(a))

The Commission has the authority to condition its approvals on policies that enhance the order, logic, and efficiency of the services the District provides or could activate. Such conditions can be developed in cooperation with the LCSD, the Lanare community, and an update of the Lanare Community Plan, to coordinate their respective activities with the goal of improving the property conditions and public services.

Compounding the problems addressed in this report are other issues of concern. The Lanare community has complained about poorly-maintained private septic systems, building code violations, and poorly maintained residential properties. Comments from Lanare residents at the July 10 community meeting hosted by Supervisor Mendes also indicate road maintenance problems as well as law enforcement problems associated with drug dealing and prostitution in the Lanare community.

Remediation of these issues cannot be completed solely by a functioning CSD even with an updated community plan. Rather, they can only be addressed by a coordinated commitment of time and resources from county and state government. In this scenario, the community planning process could serve as a catalyst for such a coordinated effort.

The challenge presented by any community plan is that it largely functions to guide *market-driven* growth and development, and in the case of the Lanare community, this driving force is relatively weak. Further, if the planning process concludes that systemic enforcement of the zoning code and building code, and increased law enforcement is needed to address community problems, two actions need to occur. The first is extensive outreach to the Lanare community to ensure that these efforts are understood and supported; the second is the Board of Supervisors budgeting and programming these efforts.

Effect of Water System Consolidation Bill

Summary: Consolidation of the LCSD with another special district is not without its complications.

AB 115/SB 88 authorizes the state water resources control board to order consolidation with a receiving water system where a public water system or a state small water system within a disadvantaged community consistently fails to provide an adequate supply of safe drinking water. Given the relative haste to produce this legislation, and unresolved questions about funding and implementation, staff has no forecast whether this will be of benefit to the LCSD in the near term any more than the status quo.

Because it currently has a Community Service District, the Lanare Community is theoretically one step ahead of state-wide efforts to provide domestic water service to disadvantaged communities. The June, 2015, Safe Drinking Water Plan for California recommends,

As resources allow, the State Water Board will coordinate with local county and city planning departments, LAFCOs, and LEHJs to identify: 1) areas currently developed without safe drinking water to determine *where Community Services Districts could be created* or where other actions could be taken, ... (italics added)

However, the pervasive effects of poverty, crime, lack of property maintenance, and general disrepair of the Lanare Community suggest limited community capacity to serve on the CSD board. This is supported by the complications incurred over several years by non-profit activists to motivate community members to serve on the CSD board, including soliciting customers who aren't even living in the District.

The likely scenario for the LCSD is that its resources are consolidated with the Riverdale Public Utilities District whether by the State Water Board through SB 88 or by LAFCo. Though believed by some to be an optimal solution to the LCSD's historic problems, this option is not without its consequences including a diminishment of the District's local autonomy and no guarantee that rates won't be raised to account for the expenses of operating the District's water and community center resources.






Individuals and Agencies Provided this report

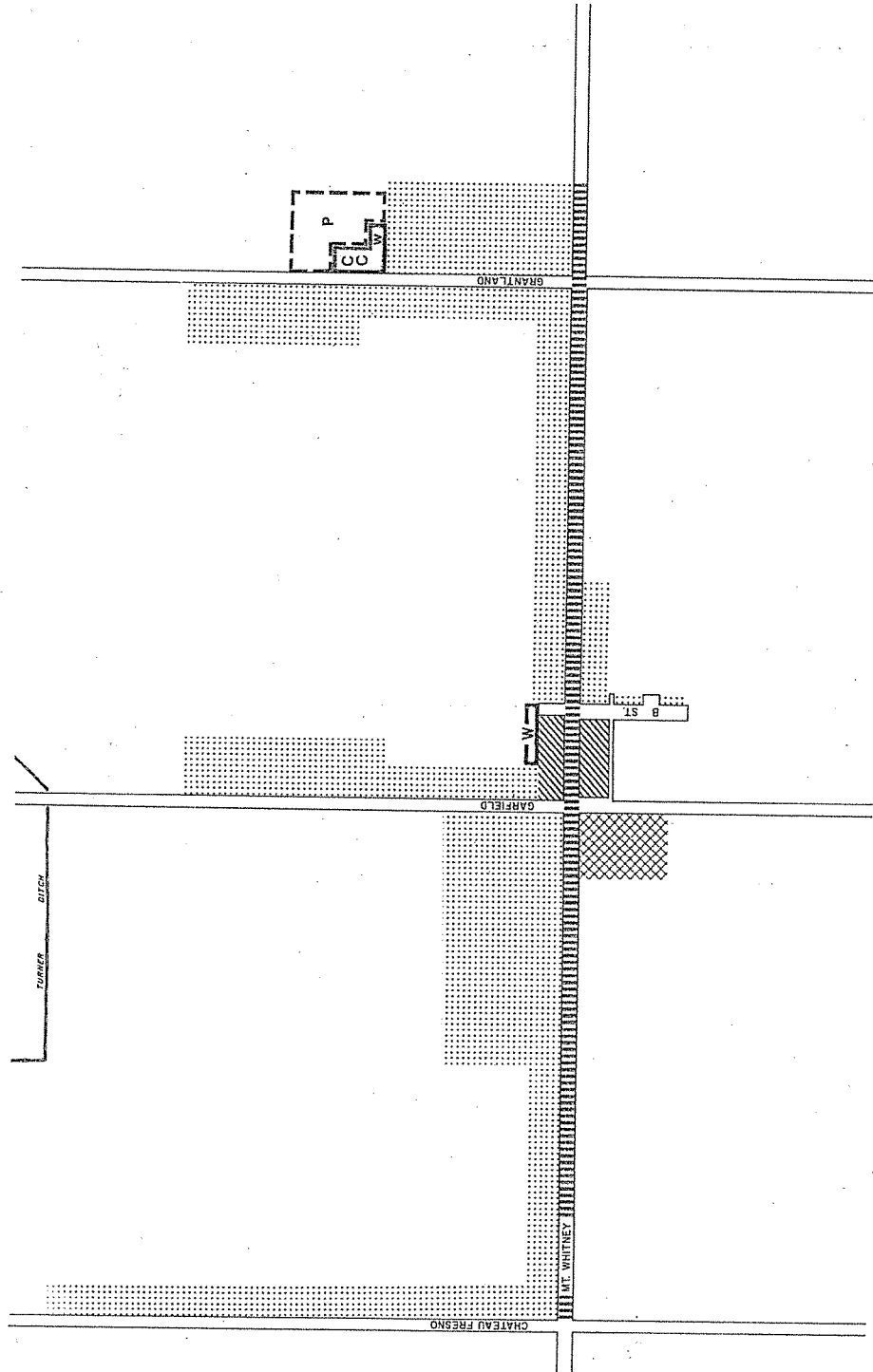
Supervisor Debbie Poochigian, District 3, Chair, Board of Supervisors
Supervisor Buddy Mendes, District 4
Brandi Orth, Registrar of Voters

Bernice Seidel, Clerk to the Board of Supervisors
Matthew Johnson, Deputy District Attorney, Public Integrity Unit
Fresno County Grand Jury
Betsy Lichti, PE, District Engineer, Fresno District, SWRCB
Bernard Jimenez, Fresno County Public Works and Planning Department
Veronica Garibay, Leadership Counsel
Sue Ruiz, Self Help Enterprises
Cesar Campos, Fresno Environmental Reporting Network
Janaki Jagannath, California Rural Legal Associates

COMMUNITY PLAN LANARE

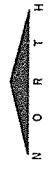
LAND USE AND CIRCULATION ELEMENTS

AGRICULTURE	
RESIDENTIAL LOW DENSITY	
COMMERCIAL SERVICE	
INDUSTRIAL LIMITED	
PUBLIC FACILITIES COMMUNITY CENTER	
PARK (PROPOSED)	
WATER WELL AND PUMP SITE	
CIRCULATION EXPRESSWAY	



FRESNO COUNTY BOARD OF SUPERVISORS			
AMENDMENT ADOPTED DECEMBER 20, 1977			
AMENDMENT	DATE	AMENDMENT	DATE
LAND USE MAP TEXT	12-21-82		

FRESNO COUNTY PLANNING DEPARTMENT



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SCALE IN FEET