

BUTTE LOCAL AGENCY FORMATION COMMISSION
Minutes of August 4, 2011

1. CALL TO ORDER

Chair Leverenz called the meeting to order at 9:00 a.m., on August 4, 2011, in the Butte County Board of Supervisors Chambers, 25 County Center Drive, Oroville, California.

1.1 Roll Call

Present: Commissioners Scott Lotter (City), Larry Duncan (Special District), Bill Connelly (County Alternate), Mark Sweany (Special District), Jerry Fichter (City), Kim Yamaguchi (County - Alternate) and Chair Carl Leverenz (Public); Alternate Commissioners Ann Schwab (City) and Greg Steel (Public)

Absent: Commissioner Lambert (County) and Alternate Commissioner Loren Gill (Special District)

Others Present: Stephen Lucas, LAFCO Executive Officer
Stephen Betts, LAFCO Deputy Executive Officer
Jill Broderson, LAFCO Management Analyst
Scott Browne, LAFCO Legal Counsel

2. CONSENT AGENDA

2.1 Approval of the Minutes of July 7, 2011

Commissioner Lotter made a motion to approve the consent agenda. The motion was seconded by Commissioner Sweany.

The motion was carried by the following vote:

AYES: Commissioners Lotter, Duncan, Connelly, Sweany, Fichter, Yamaguchi and Chair Leverenz

NOES: None

ABSENT: None

ABSTAINS: None

3. NOTICED PUBLIC HEARINGS –

3.1 11-09-S – Paradise Irrigation District Sphere of Influence Amendment and 11-09 – Town of Paradise/Paradise Irrigation District – Prospect Lane Reorganization No. 1

Steve Betts stated that this was a noticed public meeting and staff has not received any comments regarding this annexation and sphere amendment.

Chair Leverenz opened this item for public comment.

Eric Robertson, a civil engineer representing Mr. Mooney [property owner], stated the Mooney home burned down in the Humboldt Fire of 2008 and Mr. Mooney wants to extend the PID water line about 600 ft. to his house and install the facilities to help ensure that doesn't happen again.

Chair Leverenz closed the public portion of the hearing.

Commissioner Lotter moved to adopt Resolution No. 04-S 2011/12 approving the Sphere of Influence Amendment. The motion was seconded by Commissioner Yamaguchi.

The motion was carried by the following roll call vote:

AYES: Commissioners Lotter, Duncan, Connelly, Sweany, Fichter, Yamaguchi and Chair Leverenz
NOES: None
ABSENT: None
ABSTAINS: None

Commissioner Lotter moved to adopt Resolution No. 04 2011/12 approving the annexation to the Town of Paradise and the Paradise Irrigation District. The motion was seconded by Commissioner Duncan.

The motion was carried by the following roll call vote:

AYES: Commissioners Lotter, Duncan, Connelly, Sweany, Fichter, Yamaguchi and Chair Leverenz
NOES: None
ABSENT: None
ABSTAINS: None

4. REGULAR AGENDA

4.1 Items Removed from the Consent Agenda – None

4.2 11-07 – City of Chico – Master Extension of Sewer Services

(Continued from the July 7, 2011 meeting)

Steve Lucas highlighted key points discussed at the July 7th LAFCO meeting regarding the Commission authorizing the extension of services that would largely be contingent upon: 1) The individual landowner signing a covenant in support of annexation; 2) The City agreeing to an annexation plan; and 3) the City utilizing the island annexation law provisions wherever applicable. Staff attended a meeting on July 19th with the City of Chico, County staff, LAFCO staff and LAFCO Commissioners Sweany and Leverenz. The City stated that due to the City's economic hardship, the City is not in a place where they can financially annex these parcels in a rapid fashion and assume the cost burden.

Steve Lucas stated the proposal today provides an interim authorization that would allow a fixed number of parcels to connect over a fixed period of time. In order for this to go forward, they [property owners] would be required to sign a LAFCO covenant that would ensure their support for future annexation. This process would allow more time for the annexation plan to be worked through with the City, the County and with LAFCO. There's an opportunity for us to look at an interim agreement that allows the City to start to connect some landowners.

Chair Leverenz stated he felt the meeting on July 19th was reasonably productive in the sense that it allowed for everyone get a feel for everyone else's problems. One of the features that Chair Leverenz noted was that some of these areas are island areas and as long as the island law is in effect, those property owners would not be able to protest an annexation.

Commissioner Sweany stated he is happy that the staffs were able to work out this interim compromise as it seems we can now take a step forward.

Ann Schwab, Mayor for the City of Chico, stated she wanted to thank Chair Leverenz and Commissioner Sweany for attending the meeting on July 19th. She stated she thought the meeting was productive and it got everyone at the table so we could understand each other's positions and to reassert the importance of moving forward on this item as a Health & Safety issue and as a mechanism for our residents to comply with the [Nitrate] Order from the State. She reiterated the economic hardship it would be for the City of Chico to continue with annexations at this point in the rapid fashion that the City had been going forward in years past. Ann Schwab stated the City is committed to a master annexation plan.

Commissioner Yamaguchi asked Mayor Schwab if she would be open to a 6 to 8 month timeline for the master annexation plan.

Mayor Schwab stated yes, our goal is to annex these properties and she would anticipate 6 to 8 months is a very reasonable timeline to develop an annexation plan. Mayor Schwab stated the City has 29 individuals in the Chapman/Mulberry area (in the 1S area) that are ready to hook up to the sewer and the City wants to provide for that. In areas 4, 5, & 7 – Chapman, Mulberry and Stewart, those have the majority of the 'Hot Spot' areas (highest concentration of nitrate compliance) and these are subject to island annexations. They are less than 150 acres, there would be no protest vote allowed and she would ask LAFCO not to require the covenant to the areas 4, 5 & 7 to expedite the process.

Mayor Schwab stated in the staff report, under action requested, is consideration of approving an interim authorization to extend services subject to conditions. Mayor Schwab asked the Commission to go forward to approve this so the City can start hooking up the 29 property owners that would like to hook up right now before the formal action.

Chair Leverenz stated he doesn't want to see the process slowed down if we can get these properties hooked up to sewer as that is in everybody's best interest.

Mayor Schwab stated if the Commission would allow these 29 properties to hook up with the covenant within this interim time period that would be beneficial.

Mayor Schwab stated she is most interested in coming up with an agreement that is the most beneficial for our community so they [the property owners] can be compliant with the State Order; that we can protect the health and safety; and the City of Chico can move forward on the ultimate master annexation agreement, as we are still working through these problems that delay the process for the annexation plan.

Commissioner Lotter stated in terms of the economic hardship; is it the cost of doing the annexation or is it the ultimate service those new citizens of Chico?

Mayor Schwab stated realistically it is the services to the citizens of Chico for general services; road & street repairs that they would expect; but probably most importantly would be the public safety. The City has the agreement with fire so that would not be an undue hardship and would remain the same to the customer. The City's greatest concern would be for police protection.

Commissioner Lotter stated he just wants to make sure LAFCO is not part of the impediment as it relates to the annexation costs.

Chair Leverenz stated he would like to encourage anyone that would like to come up and address the Commission to do so.

Jennifer Macarthy, Community and Economic Development Manager for Butte County stated the County appreciates LAFCO staff working with both the City and the County staff on an interim agreement. [County] Staff is in agreement with the terms that are before the Commission in the Staff Report, specifically including up to 80 connections over the coming year; the execution of a voluntary covenant; and the ability to connect without a covenant if the connection is considered an emergency. Over this course of time we want to make sure that if there are health and safety concerns, that we are not turning people away that will not sign a covenant.

Chair Leverenz stated that is covered in the fifth bullet of the staff report.

Jennifer Macarthy stated for consistency sake, because there has been some discrepancy over the definition of an emergency, the Butte County wastewater ordinance does have a definition of an emergency. (A Copy was given to LAFCO staff).

Commissioner Sweany stated he heard the word voluntary stated with the covenant.

Chair Leverenz stated if the property owners want to hook up to sewer during this interim agreement they have to sign the covenant and if they don't want to sign the covenant, they need to wait until there is an agreement in place.

Commissioner Yamaguchi stated he is assuming that the 29 parcels requested would be within the parameters of the maximum cap of 40 in regards to the staff report.

Steve Lucas stated that would be his expectation.

Fox Launer, resident in the Chapman/Mulberry area stated the number of 29 represents the property owners that have actually filed for hook-ups and that number is actually small. There are more people that want to hook up but they have been waiting to see what they are actually getting involved. Fox Launer stated he has a little over 60 people that he has been dealing with that are showing an interest and of that 25% are

showing an interest in hooking up now and most of those have not signed up yet to hook up. They have been informed that there has been added expense by LAFCo. The people don't know what LAFCo is actually doing for them. They don't know what LAFCo's position is.

Chair Leverenz asked Mr. Launer if he has had an opportunity to review the staff report related to this item. Mr. Launer stated he has not and Chair Leverenz summarized the staff report and the Commission's position. Chair Leverenz stated the covenant is a document that will be recorded and that is the only requirement that LAFCo would impose.

Fox Launer stated the question of added expenses is coming from people within the [City's] building department. Mr. Launer stated the citizens have been told there is an additional LAFCO cost of between \$1100 and \$1600 for annexation cost.

Chair Leverenz stated if the Commission was going to require an annexation that may be true but the Commission is not requiring an annexation at this time. The Commission is going to work out an agreement with the City for annexation sometime in the future and the people who have hooked up already probably won't be charged the annexation fees by the City.

Fox Launer stated his concerns regarding capping the number at 40 parcels.

Chair Leverenz stated the Commission is talking about setting the number at 80 parcels for the year and LAFCO will review how this works out.

Fritz McKinley, Director of Building & Development Services for the City of Chico, stated the potential LAFCo cost of annexation was relayed by staff at the front counter when handling the sewer applications.

Greg Steel, resident of the City of Chico stated he wants to commend staff on coming up with an excellent interim agreement. Greg Steel stated he found a historical copy of the City of Chico's General Plan – A Guide to An Orderly Environment covering from 1961 to 1985 and he wanted to share a part of the General Plan with the Commission-

As stated in the General Plan: The number one issue is annexation and if the City of Chico urban area is to enjoy adequate public services at a reasonable cost with a fair distribution to the burden, a way must be found to ensure that what is urban is municipal. City Government exist because large numbers of people living at urban densities need and are able to afford services that do not fall within the traditional scope of County Government. It is the interest of both urban and rural residents that urban residents incorporate. The City and County should cooperate to foster the annexation of urban areas.

Greg Steel stated this was written 50 years ago and is an issue that has been around the City of Chico for many, many years. Greg Steel stated the number two issue is Environmental Justice. If a municipality wants to annex the areas that pay but is reluctant to annex the areas that do not generate an amount of revenue, then that is a concern.

Ann Schwab stated she would ask the Commission to allow 80 per year so it doesn't slow down the process.

Chair Leverenz stated the anticipation is that we will have some type of agreement within the next six months. If we go with 40 for the six month period but with the caveat if it looks like we are going to reach that goal rather quickly, the Commission would retain jurisdiction to boost that number during the negotiation stage. Chair Leverenz stated he wants to keep the pressure on the City of Chico and the County to get this agreement done so that we don't have a problem anymore.

Ann Schwab proposed raising the number to 50.

Chair Leverenz stated he wouldn't have a problem, if we are well on our way to reaching an agreement, to increasing that number and possibly giving LAFCo staff the ability to add an additional 10. LAFCo staff will be monitoring this and if we get close to the set number, we can move quickly on that.

Commissioner Duncan asked about the time frame for applying for sewer and actually hooking up.

Fritz McKinley stated depending on how quickly the pipe gets in the ground, approximately 30 to 100 feet per week, then testing is done, and this could be a week to two weeks afterwards. Those contractors are the same contractors that will be hooking up the laterals. The contractor just being there initiates that process. The City is going to put in the mains and then the laterals to the property line. The property owners make the arrangements with the contractor to put in the lateral from the property line to the house or do it themselves.

Commissioner Connelly stated he believes the covenant being signed by everyone is the most important tool of this process. He is not concerned about the number of people hooking up to sewer as we are not trying to hold up people from hooking up to the sewer, but he wants to make sure they don't avoid a future annexation.

Chair Leverenz stated for this interim period he anticipates the agreement will identify the actual islands, and then the agreement would provide that covenants wouldn't be necessary for any of the islands that were in existence. Commissioner Connelly stated that island law could change. Although this may be a burden on the City in the future, having these islands exist in these urban areas is a burden on the County right now. The covenant is the most effective tool.

Commissioner Lotter stated he believes the number should be flexible and he agrees with Commissioner Connelly that the covenant is important and will protect the City if the island law does change in the future.

Commissioner Duncan asked for clarification as to whether landowners would be charged annexation fees in the future when the property is annexed.

Fritz McKinley stated the City fees would apply but there would be no annexation fees imposed on the landowners as the City would apply for the annexations. Fritz McKinley stated when there is an emergency situation for sewer services identified, there is time involved in getting a covenant in place, and he thinks the covenant would be very difficult in these situations.

Chair Leverenz asked Steve Lucas how many emergency applications we have had in the last five years.

Commissioner Connelly shared his concerns with people possibly creating emergency situations if it would ultimately keep them from being annexed into the City.

Steve Lucas stated we have had maybe three emergency applications in the past five years. The process for an emergency is that the City would contact him and he is authorized under the LAFCO policies to pre-authorize that connection for an emergency. We have not defined an emergency in our policies. What Ms. Macarthy has provided today from the Health Department does set some standard for an emergency. The Stewart Avenue project as an example was deemed an emergency although it was an emergency to sell that property not to an emergency to fix the tank.

Chair Leverenz asked if it is reasonable to include this definition from the Health Department as an emergency.

Steve Lucas stated as we are doing a motion of intent today and we can include this.

Commissioner Lotter stated if we have 50 people that signed the covenant and 2 people who have hooked up under an emergency and didn't sign a covenant, the 2 people cannot effectively stop the annexation process. Commissioner Lotter stated if Steve Lucas sees a huge uptick of emergencies in the next month, we may need to make changes to the agreement.

Commissioner Lotter made a motion stating the Butte Local Agency Commission, pursuant to Government Code Section 56133, hereby authorizes connections to the City of Chico's sewer system for properties outside the City boundaries, on an interim basis subject to the following conditions:

- 1) A maximum cap of one hundred (100) sewer connections within six (6) months from this authorization may connect.
- 2) Each parcel owner will be required to duly execute and deliver to LAFCO the LAFCO Annexation Consent *and Covenant* prior to connection to the sewer system.
- 3) Emergency sewer connections shall processed in accordance with regular LAFCO policies using the Butte County Wastewater Ordinance Chapter 19, Section 9.3.P definition of an emergency.
- 4) The City will demonstrate good faith in working with LAFCO on the completion of the Master Annexation Agreement within the six (6) month period.
- 5) The Interim Authorization may be extended by LAFCO for good cause.

The motion was seconded by Commissioner Connelly.

The motion was carried by the following roll call vote:

AYES: Commissioners Lotter, Duncan, Connelly, Sweany, Fichter, Yamaguchi and Chair Leverenz
NOES: None
ABSENT: None
ABSTAINS: None

5. PUBLIC COMMENTS NOT ON THE AGENDA

6. REPORTS AND COMMUNICATION

6.1 Executive Officer's Report –

Steve Lucas summarized the Executive Officer's report, dated July 27, 2011 relating to Administration – Butte LAFCO audit process, Legislative Notes – overview of AB 912 (District Dissolution), Financial Report and Application Activity.

6.2 Correspondence – None

7. ADMINISTRATION –

Commissioner Fichter requested status of arranging a time for the LAFCO Budget Committee members to meet to look at the overall budget process. Steve Lucas stated staff has contacted the budget committee members to try to put together a schedule.

8. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:08 a.m. to the September 8, 2011 regularly scheduled meeting.

LOCAL AGENCY FORMATION COMMISSION


By: **Stephen Lucas, Executive Officer**

Minutes prepared by Joy Stover, Commission Clerk