

**BUTTE LOCAL AGENCY FORMATION COMMISSION**  
**Minutes of December 3, 2009**

**1. Call to Order**

Chair Leverenz called the meeting to order at 9:02 a.m., December 3, 2009, in the Butte County Board of Supervisors Chambers, 25 County Center Drive, Oroville, California.

**1.1 Roll Call**

Present: Commissioners Lotter, Duncan, Connelly, Sweany, Holcombe, Dolan, and Chair Leverenz.  
Alternate Commissioners Gill and Steele

Absent: Commissioner Frith and Alternate Commissioner Yamaguchi

Others Present: Stephen Lucas, LAFCO Executive Officer  
Stephen Betts, LAFCO Deputy Executive Officer  
Joy Stover, LAFCO Commission Clerk  
P. Scott Browne, LAFCO Legal Counsel

**2. Consent Agenda**

**2.1 Approval of the Minutes of November 5, 2009**

**2.2 10-01 – City of Gridley – West Biggs Gridley Road Annexation No. 2**

Commissioner Dolan asked how often does the Commission create islands.

Steve Lucas stated we endeavor not to create islands at all and we have policies that encourage us not to. In this particular case the City and the County came to an agreement over the road. The parcel that may be considered an island is owned by an individual that has no interest in annexation. To include the island parcel would have defeated the annexation of the road.

Commissioner Sweany asked if under the island law we [LAFCo] could in the future forcibly annex this island parcel. Steve Lucas stated this does not qualify as an island under Code section 56375.3.

Scott Browne stated he would like language added so that we comply with Code section 56375 (m) which says in order to waive the restrictions against island annexation you must find the application of the restrictions would be detrimental to orderly development of the community and the area to be enclosed by the annexation or incorporation is so located that it cannot reasonably be annexed into a city or incorporated into a city.

**Commissioner Lotter made a motion to approve the consent agenda with additional language added as requested to Resolution No. 07 2009/10. The motion was seconded by Commissioner Duncan.**

**The motion was carried by the following vote:**

**AYES:** Commissioners Lotter, Duncan, Connelly, Sweany, Holcombe, Dolan and Chair Leverenz  
**NOES:** None  
**ABSENT:** None  
**ABSTAINS:** None

**3. NOTICED PUBLIC HEARINGS –**

**3.1 10-02 – Chico Area Recreation and Park District – Richardson Springs Road Sphere of Influence Amendment and Annexation No. 1**

Chair Leverenz stated that even though the County and the Chico Area Recreation and Park District have met and agreed to a tax sharing arrangement, it has not been put into written form and for purposes of this annexation LAFCo needs the agreement in writing. Chair Leverenz stated it is his understanding that the Commission can proceed with the Sphere of Influence Amendment portion.

Steve Lucas, LAFCo Executive Officer, stated the Sphere of Influence is the publically noticed portion of this project and staff recommends adopting the Sphere Amendment at this time and bring back the Annexation resolution at such time as a written tax share agreement resolution from the County is received.

Chair Leverenz opened the hearing to the public. There being no responses the public portion was closed.

Commissioner Lotter asked why the land owner wants to annex this parcel into the Chico Area Recreation District. Commissioner Sweany stated the developer has half of his land in the District and half of it is not and in order to develop in the future the entire land needs to be in the District.

Commissioner Holcombe asked if this would then be development inducing. Commissioner Dolan stated the parcel is currently 40 acre zoning. Steve Lucas stated CARD does not provide services that promote the urban development of property. Commissioner Holcombe stated whatever development potential there might be, it is not linked to CARD services or the extension of their Sphere.

**Commissioner Dolan made a motion to approve the Sphere of Influence Amendment approving Resolution No. 08-S 2009/10. The motion was seconded by Commissioner Duncan.**

**It was determined to table the annexation portion of this project until such time as LAFCo receives the written tax share agreement.**

**The motion was carried by the following roll call vote:**

**AYES:** Commissioners Lotter, Duncan, Connelly, Sweany, Holcombe, Dolan and Chair Leverenz  
**NOES:** None

**ABSENT:** None  
**ABSTAINS:** None

#### 4. REGULAR AGENDA

##### 4.1 Items Removed from the Consent Agenda – None

##### 4.2 09-05 – City of Chico – Bidwell Avenue No. 1 Extension of Services

Steve Betts stated this is an extension of services to the City of Chico for sewer services for one parcel; that a tentative map has already been approved by the County to split this parcel into two parcels for development purposes; and many of the parcels in this area, as noted in the staff report, are already receiving sewer service from the City of Chico.

Commissioner Dolan stated the last time we [LAFCo] saw this project the land owner did not want to pay full fees for this project. Commissioner Dolan asked if this will be taken care of. Steve Lucas confirmed the land owner will pay full costs for processing.

Commissioner Dolan stated this parcel is large and it needs sewer to subdivide and while the sewer is not in itself a big deal, except without sewer there is no parcel map. Commission Dolan stated she did not vote to approve the tentative parcel map and the parcel map has traffic, noise and safety compatibility impacts. Commissioner Dolan stated the City has no plans to annex this area. Commission Dolan stated she cannot make the finding that there are no significant impacts.

Commissioner Duncan asked about the property access. There was discussion on pedestrian impacts, traffic impacts & possible other parcel splits. It was tentatively determined only one other adjacent parcel could split based on the zoning of the area.

Chair Leverenz stated the County has approved the tentative parcel map subject to obtaining sewer service.

There was discussion on the need for LAFCo policies to be reviewed as they pertain to extension of service proposals. Staff was directed to undertake such a review.

**Commissioner Connelly made a motion to approve the extension of services and adopt Resolution No. 09 2009/10 as recommended by LAFCo staff. The motion was seconded by Commissioner Sweany.**

**The motion was carried by the following roll call vote:**

**AYES:** Commissioners Lotter, Duncan, Connelly, Sweany, Holcombe, and Chair Leverenz  
**NOES:** Commissioner Dolan  
**ABSENT:** None  
**ABSTAINS:** None

#### 5. Public Comment on Items not on the Agenda – None

## 6. Reports and Communications

### 6.1 Executive Officer's Report

Steve Lucas, LAFCo Executive Officer, summarized the Executive Officer's Report. The updated LAFCo 2010 Calendar of Events has been distributed to the Commission. The audit has begun with Matson & Isom with one minor change noted and the audit will be completed in the next few months and presented to the Commission.

Steve Lucas stated staff met with the SC-OR Technical Advisory Committee and provided an overview of the recently adopted Wastewater Service Providers Oroville Region MSR. The Committee had been given the letters attached to the staff memo prior to the meeting. Steve Lucas stated staff discussed the Commission's concerns and expectations contained in the letter and unfortunately, he doesn't feel that outside of the SC-OR staff themselves, the collection entities recognize the Commission's sense of importance of correcting the issues that were identified in the MSR. The general feeling, and certainly as purported by the City of Oroville representative, is that they're meeting and talking so there is no urgent need to pursue the LAFCO suggestions. Steve Lucas stated staff was very blunt with them that this was an unacceptable outcome to the Commission's suggestions and that they need to immediately implement some policies that will address the deficiencies found in the MSR. The committee responded with a letter that is enclosed with the Commission packet dated November 20<sup>th</sup>.

Steve Lucas stated the wastewater plant operator/SC-OR staff have been very proactive and very open to the Commission's considerations, however; the three member entities have not expressed the same level of concern at this point.

Chair Leverenz stated he feels the issue is serious and obviously we are going to come to grips with it when any of these entities submit an annexation or development proposal. If they [SC-OR member entities] are not willing to take the suggested corrective steps to address the problems, development may get shut down because there is inadequate sewer capacity or infill & infiltration issues. Chair Leverenz stated the Commission may have to sit on the sideline and wait for this to run its course and the people that should be hearing this are not here today.

Commissioner Connelly stated there is an I & I problem and the I & I is not just the water getting in the line. It's raw sewage escaping the line. There is a water quality issue in a regional manner and until they take a regional approach about fixing this they are not doing their job and if we have to force them to take care of the issues, that's why LAFCO exists. If we have agencies that don't get along and cooperate then maybe we need to look at consolidation or some regional approach.

Commissioner Duncan stated they need to be notified in writing about this.

Commissioner Lotter stated we have already sent them a letter.

Commissioner Connelly stated maybe we need to inform them again.

Commissioner Duncan said maybe we didn't hit them hard enough and need to send a copy to Hignell.

Steve Lucas stated there are several good suggestions here and one of the things that Commissioner Connelly brought up that the Commission has not done is to interact more closely with the Regional Water Quality Control Board. By notifying them of our MSR and expressly indicating that the Commission does not believe that SC-OR is effectively addressing the MSR determinations.

Steve Lucas stated Scott Browne has been involved in these types of issues and could speak to what other agencies he has been involved in have experience. The second item that is out there is the consolidation issue. This Commission has clearly said that might be where we'll head if they are unwilling to address their issues. The Commission could certainly indicate to SC-OR entities that we wish to pursue that course. If they fail to act within short order, whatever period of time the Commission believes is appropriate, we could follow up with a letter to them that we are going to pursue initiation of a consolidation study. There's a funding issue that we could talk about later, as there's a big cost to that, but nonetheless, that might be an additional step that would propel them to act. Finally, as Chair Leverenz indicated where we ultimately hold the big hammer is the Commission could reject or deny annexations and/or sphere amendments reliant on SC-OR facilities.

Chair Leverenz stated he doesn't want to see us get to that point as he doesn't want to punish valid applicants who have projects. Clearly some communication with the State Regional Water Quality Board should take place immediately.

Commissioner Connelly stated he hopes they resolve this in a peaceful manner and just resolve it among themselves but he feels without pressure they are not going to do that.

Chair Leverenz stated maybe we don't need to do it at this meeting, but certainly a letter indicating if they haven't implemented some of the Commissions suggestions by say April of next year, we should seriously consider consolidation or something to that affect. Chair Leverenz stated he would like to see the entities move forward.

Commissioner Dolan stated SC-OR staff is doing it, it's the member entities that are not doing it.

Steve Lucas stated he believes the structural shortcoming within that JPA construction is that they do not see themselves as one; they do not treat themselves as a joint powers authority. They treat themselves as three individual entities that have a board that meets once a month to manage the Wastewater Treatment Plant with common goals, policies and practices. They don't yet really appreciate that the Commission wants them to act as one cohesive unit.

Chair Leverenz stated they have one problem and they need to treat it as one.

Commissioner Duncan suggested we send them a letter stating that we are going to the Regional Water Quality Board and give them a little time and if they still don't do anything, then move forward with a consolidation. The more we put it in writing the better.

Commissioner Sweany stated we could chart out their possible future and see if it gets action.

Commissioner Dolan asked if LAFCO can initiate changing that JPA to a CSD.

Scott Browne stated yes, LAFCO can initiate a new reorganization into some other agency. Scott Browne stated the Commission is doing exactly what the legislature wants them to do here, particularly considering what has happened. The poster child for this is what happened in Marin County. It may happen here if the agencies don't get their I&I problems under control. At that point the Regional Board is going to come screaming in and shut all development down until they fix it and what the Commission is trying to do is be proactive and address this problem before it gets to that point.

Commissioner Lotter stated we should restate it just that way in a letter.

Commissioner Dolan stated who cares what the legislatures want us to do. The issue here is water quality. The Regional Board came to Chico and shut down stuff for a long time because of the indication of nitrates in the ground water. Here you have I&I and that causes worse stuff than nitrates in the drinking water.

Commissioner Lotter stated there's a cost to not fixing it.

Commissioner Connelly stated it stifles all growth. The entire county is looking at this region for growth. What is lacking in the infrastructure is adequate sewer and that has to come through the three entities working closely together to fix their I&I and prioritizing regular maintenance. One of the major problems is they have not raised their rates to fund the necessary maintenance. This has to be attacked in a regional manner. Our hammer is that we can force a consolidation and Marin County is a good example of that. When we have a viable proposal to bring either a company or a nice subdivision and they can't get there, somebody will have a petition in a hurry at that point. Commissioner Connelly stated he agrees we are being proactive and trying to get them to take care of the one major infrastructure problem that they have and what better thing can LAFCO do?

Chair Leverenz stated we are in agreement to; 1) contact the Regional Water Quality Board to assist us in the process and; 2) another letter to SC-OR is warranted outlining the concerns of the Commission that in addition to talking we expect some actual efforts to be made to correct these problems and to do so on a very quick time or we're going to have to consider a reorganization.

Commissioner Lotter asked if we need to say that any annexations or sphere amendments for development in this area is, in all likelihood, on hold.

Steve Lucas stated he thinks we clearly stated this not only in the MSR determinations, but also in two subsequent letters.

Commissioner Lotter asked if the letters were sent to all three entities. Steve Lucas stated the letters were addressed to each of the member entities individually.

Commissioner Dolan stated there were several findings in the MSR and then we said to these entities to develop a work program that identifies the expected outcomes and timelines for the determinations. Commissioner Dolan asked what if we developed a timeline of expected outcomes for them.

Chair Leverenz stated the problem then becomes that we are trying to micro-manage their operation. We may have to do that at some point, but at the same time this has to happen almost immediately and like with what happened in Chico, development is not going anywhere until they solve the sewer problem.

Commissioner Duncan stated this should all be included in a letter.

Chair Leverenz stated we should authorize the staff, with Scott Browne's help, to draft a letter and send it out to all three entities.

Chair Leverenz stated we have a responsibility to those people who have a need to bring projects to the Oroville area that they have sewer plus we have an obligation to the people that are here already that their sewer system not be bubbling up on the ground.

Commissioner Dolan stated we have an obligation to every person in the north state not to pollute the ground water which we all drink.

Steve Lucas stated when we started this whole process with the MSR, the issue was presumed to be about capacity. Steve Lucas gave kudos to the SC-OR staff themselves and stated the plant has actually done much to change the capacity issue at the plant. They have a plan for 53 million dollars worth of improvements over a period of years to increase capacity to meet expected demand. What we found out with the MSR is that the plant is being run very professionally and they have a plan for capacity increases. It was the JPA governance and collection system that turned out to be the bigger concern.

Steve Lucas stated he appreciates the letter that came from Mr. Sousa at the plant as he feels Mr. Sousa has really been trying to help us achieve this and he's in a tough spot as his bosses are in effect those three member entities.

Chair Leverenz stated we are not trying to shoot the messenger for the message. The point is that those member entities need to realize they have a problem and they need to deal with it.

Commissioner Connelly stated he thinks we are giving him [Mr. Sousa] a tool to use, because the JPA was written in a very weak manner, to strengthen and fix it or we'll do it and we're actually helping him [Mr. Sousa].

Steve Lucas stated with the adoption of the City of Oroville MSR, we have completed the entire first round of all of the Municipal Service Reviews for all five cities and 41 special districts to include a handful of county service areas that provide essential services such as sewer and water delivery. The only CSAs that we have not dealt with yet are the individual subdivision CSAs which are generally for street lighting, storm drainage, and fire protection for maintenance of fire hydrants. We are planning to evaluate those CSAs and we have been working on them behind the scenes already.

Steve Lucas stated we will start the next five year Municipal Service Review all over again starting with the El Medio Fire Protection District. The City of Gridley will be coming forward with their Sphere Update probably within the next few months as they adopt their general plan and they will begin to update their MSR as well.

Steve Lucas stated he has been asked to participate on the CALAFCO Legislative Committee as has Scott Browne.

**6.2 Correspondence**

- A. October 18, 2009 letter to Oroville Mosquito Abatement District
- B. November 20, 2009 response letter from SC-OR

**7. ADMINISTRATION – None**

**8. ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:51 a.m. to the January 7, 2010 regularly scheduled meeting.

**LOCAL AGENCY FORMATION COMMISSION**

  
By: **Stephen Lucas, Executive Officer**

Minutes prepared by Joy Stover, LAFCO Commission Clerk