

BUTTE LOCAL AGENCY FORMATION COMMISSION
Minutes of January 6, 2011

1. CALL TO ORDER

Chair Leverenz called the meeting to order at 9:00 a.m., on January 6, 2011, in the Butte County Board of Supervisors Chambers, 25 County Center Drive, Oroville, California.

1.1 Roll Call

Present: Commissioners Lotter, Duncan, Connelly, Sweany, Fichter, Lambert and Chair Leverenz.

Absent: Alternate Commissioners Steel, Gill, Yamaguchi and Schwab

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

2. CONSENT AGENDA

2.1 Approval of the Minutes of December 2, 2010

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

The motion was carried by the following vote:

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

NOES: None

ABSENT: None

ABSTAINS: None

3. NOTICED PUBLIC HEARINGS – None

4. REGULAR AGENDA

4.1 Items Removed from the Consent Agenda –

4.2 11-05 – Berry Creek Community Services District – Extension of Services Determination – APN 062-110-002 (Rowe).

Jeff Carter, Attorney for the Berry Creek Community Services District and 32 defendants in this case, stated this case has lasted over five years and involves complex

issues of fact and law. Jeff Carter said the negotiated settlement that was reached they believe was a fair & equitable settlement. Jeff Carter stated he wants to commend LAFCo staff in guiding them and they agree wholeheartedly with the staff report and would encourage the Commission to go along with the staff recommendation.

Commissioner Connelly asked if the property owners are content with this settlement.

Andrew Morrissey, attorney for the John and Joan Rowe, the property owners engaged in the settlement, stated his clients agree with the settlement.

Commissioner Duncan made a motion to approve the LAFCo staff recommendation and adopt Resolution No. 08 2010/11. The motion was seconded by Commissioner Fichter.

The motion was carried by the following roll call vote:

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

4.3 10-03 – City of Chico – Extension of Services – Stewart Avenue No. 2

Steve Lucas, LAFCo Executive Officer, stated this project is a little bit more complicated. The issue itself in terms of connecting this particular property to sewer is a relatively simple one. It was a system that had apparently failed and the sewer line was in the street, immediately in front of the parcel. It makes sense for a variety of health and safety reasons to connect to the sewer. The complicated part of the process is the timeline in which events occurred; i.e., the sewer line was connected to the parcel prior to LAFCo being offered the opportunity to review and approve the out of agency connection.

The Staff Report describes that process and it has resulted in some sticky issues dealing with these extensions of services and how we go about approving them and ultimately what that means in terms of the process to annex those properties at the current time or at some point in the future. With respect to creating islands, once connected to sewer they have very little incentive to annex to the City.

Chair Leverenz stated according to the map, the property is contiguous to existing city boundaries and the city, pursuant to our policies and state law, should be taking some steps to annex the property.

Commissioner Sweany mentioned the neighboring parcel and Chair Leverenz stated the city needs to include the adjoining parcel in order to avoid creating an island.

Chair Leverenz stated the staff recommendation on the resolution is to condition this approval with some conditions that requires the city to provide information relating to how many of these service connections for sewer exist and have been set up and essentially

what plans the city has in the future to either annex them or come up with some type of plan/policy to deal with them.

Steve Lucas stated this is correct and this is an opportunity to correct some of those past processing issues and move us forward to a point where we are not having those connections occur prior to Commission review and authorization. There are instances where there's no question that there is an immediate emergency that exist. Somebody's system fails catastrophically and they need sewer tomorrow as opposed to a property that has a system in the process of failing.

In this situation, based on the documentation received, this was not at the time "an emergency". The house was vacant and it was connected during that vacancy period as a result from the sale of the property. It appears in this case, an annexation would have been the more appropriate request to make as there was time to process it.

Chair Leverenz stated we have, not for this particular one, but for the future, a difficult policy issue because clearly it is a violation of the Government Code. We have to decide what we do about it now and in the future.

Zach Thomas, senior planner with the City of Chico, stated in this particular instance, as in other instances alluded to in the staff report; the City has basically fundamentally used a different definition of the term 'emergency'. We operate under the idea that we have a nitrate abatement order issued by the state that has been in effect for a couple of decades now and any septic system that has failed in any way, whether it is leach lines or the tank itself, is basically deemed to be an emergency.

Chair Leverenz stated the term of emergency is not the main issue. The Commission wants to see the City hook all of these properties to the sewer. But do we end up providing service to parcels that are islands and should be annexed. We just spent decades with the City of Chico doing island annexation, cleaning up the island problem in the Chico area that was created in the fifties.

Zach Thomas stated the position the City has taken by the direction of the Council is to not initiate any more annexations. We do process annexation applications that are applied for by private property owners. In situations like this, when we don't receive an application for an annexation from the property owner and just the request to connect to sewer, we don't currently request that they annex.

Chair Leverenz said the City's ordinance, according to the staff report, supposedly requires at least some effort to encourage annexation and apparently the city staff is not doing this anymore.

Zach Thomas stated that is true and the City's Code, Title 15.36, does require the submittal of a sanitation sewer annexation agreement. This is a situation where council direction has not immediately been reflected in the code and the city is working on resolving those issues as well as discussing the process of coming up with a master sewer agreement with LAFCo to get an overall scope of all the properties that would potentially be connected to sewer under the abatement order.

Chair Leverenz stated the Commission is concerned this is going on and we need to have some game plan in place so that we don't end up with a lot of parcels that have no incentive to annex or should be annexed because they are receiving services. The

Commission is being mandated by the state of California with a code section that says we have to make certain findings and it is pretty difficult to make those findings if the City is hooking up parcels to sewer without going through the process.

Fritz McKinley, Director of Building and Development Services for the City of Chico, stated he doesn't disagree one bit. The City has been given the charge of creating the Nitrate Action Project with the County of Butte and we created that project. The north section that the City just finished completing is one that has a lot of parcels within the City. This is the City's first area where we have a large majority of properties in the County and the direction by the Board of Supervisors and the City Council is not to force annexations and to facilitate the connections just like the prohibition order is telling us. The City is working with LAFCo staff to come up with a process. We are working with the County to come up with an agreement. We are getting conflicting direction and we are modifying our code to follow the direction that we will be taking. We are working with LAFCo to come up with an overall agreement and we talked with the County yesterday to start that process, to get the attorneys involved to start the agreement. We want to comply with everything that we have to comply with and still keep our jobs. We are walking a very fine line here.

Chair Leverenz said we are looking at a situation where there is a clear violation of the code section, and from a policy point of view we want to see these parcels hooked up. We understand the importance of a Nitrate Action Plan. In a real perfect world, we'd love to see the City annex all those parcels and then there would be no problem at all but that's not what the Council is interested in doing. Now you have a bunch of parcels you need to deal with.

Fritz McKinley stated he agrees that LAFCo went through the island annexation process under Council and Board of Supervisors' direction. He stated the City is also mandated by the state to do certain things. We are walking that fine line between the Government Code and the Prohibition Order.

Chair Leverenz said he would like to see a light at the end of the tunnel. Is this a situation where the City is talking with LAFCo and the County about not doing forced annexations, but at some point, based upon the General Plan and Sphere of Influence, all of those properties belong in the City of Chico.

Fritz McKinley stated that is what they are working towards. They are getting through the process so that these residents that need to be connected per the Prohibition Order and high nitrate area can get connected, facilitate that process and also provide for the opportunity for annexation, whether it is sanitary sewer annexation agreement or some other agreement they can agree upon, that can be utilized through this process. We have to come up with something that is acceptable to all three boards, basically.

Commissioner Connelly said he did not think the Board of Supervisors is going to be too upset for the City of Chico to take a lot this size (.29 acres) but the issue is LAFCo law should pre-empt and there should be a forced annexation in these situations because you are putting an urban service in what is essentially an island. Can LAFCo preempt them and force this annexation?

Scott Browne, LAFCo Counsel, stated if the Commission does not approve this extension agreement, the City will have no choice legally but to annex the property if they want to continue to receive services.

Commissioner Connelly stated this individual parcel is begging to be annexed.

Chair Leverenz stated this parcel belongs in the City and it needs urban services, which the city can provide, including the sewer system. The Commission is mandated to provide efficient service delivery as it relates to police, fire, public works, planning, etc. This particular property brings the problem to bear, down the road looking at the whole Chapman area and other areas in order to comply with the Nitrate Plan. Chair Leverenz asked if there have been discussions with the Council and the County or at the staff level about the timing of when all of these areas should be annexed or is it just focused on the Nitrate Plan.

Fritz McKinley stated it is two-fold. One is the Nitrate Action Plan but also they are looking at development of any of those lots as that goes through the standard development process. We need to come up with an agreement and then how we work through that. Fritz McKinley stated they are meeting them next week sometime to sit down and discuss those possibilities. Our staff has been working with LAFCo and we are right in line with what Steve [Lucas] is saying needs to be done. Once we work through this within the next month, there would be light at the end of the tunnel. We would know whether it is a train or whether it is the end of the tunnel.

Commissioner Connelly stated if [City] staff is being giving direction by the City Council that is contrary to LAFCo Law, it is definitely not the staff's fault. Commissioner Connelly stated he understands providing a sewer service in an emergency, but this property is adjacent to the City and he is going to vote no, as he wants to see it annexed.

Chair Leverenz asked if there are any other questions of the City of Chico staff.

Matt Thompson, the senior civil engineer for sewer and storm drain for the City of Chico, stated there has been twenty years worth of discussions between the City & the County, regarding the subject of providing sewer and whether it should be tied to annexation. Ultimately, the City and the County established two goals with the implementation of the Nitrate Plan. The Nitrate Plan is to facilitate the individual property owners' ability to comply with the prohibition order as the prohibition order is not against the City or the County. The prohibition order is against the individual property owners. The City and the County made the determination so that these people could comply with state law individually and they would make this process expedient and cost efficient as possible. Unfortunately, tying an annexation to a sewer connection doesn't necessarily support those goals.

Chair Leverenz stated annexation doesn't cost that property owner anything else other than the cost of the annexation, which could be picked up by LAFCo or the City – one time. The cost of hooking up to the sewer system is going to be the same whether they are in the County or the City through the plan.

Matt Thompson, said the connection fees are the same but there are cost associated with the annexation process.

Chair Leverenz stated he understands that as stated earlier. LAFCo would like to annex all those parcels once we have a sewer line on them all.

Matt Thompson stated that would be fabulous because that is exactly where the City and the County would like to go and take care of all these issues.

Chair Leverenz stated the individual property owners if they are in the City or the County, dollar wise, does not make one wit of difference once they are annexed and if they don't have to bear the cost of the annexation there is no reason why they should not be annexed.

Matt Thompson stated he agrees 100% and that's ultimately what they would like to come away with today is that this individual parcel should not be tied to a much bigger issue that we all realize now needs to be dealt with.

Chair Leverenz stated this particular parcel is just that, but it represents the bigger issue and this is the first time we have had to deal with it in awhile, which is why we are raising it as it is a concern. The Commission does not want to get crosswise to the City or the County, and we recognize the good of getting these properties all hooked up to the sewers.

Matt Thompson stated for the past twenty years we've been working on how we're going to build this, how we are going to finance this, and how we are going to get the people to connect voluntarily without being forced to connect by the state and now it is time that the City and the County include LAFCo in the partnership to deal with this issue.

Chari Leverenz asked if there are any other comments.

Zach Thomas stated in looking at the conditions and hearing the discussion today and the acknowledgement of the ongoing efforts to develop a master sewer agreement with LAFCo, staff would actually like to respectfully request that condition "D" be removed from this project under "section 3" of the resolution. The reason for this request is staff does not see this as having a direct tie to this issue. Staff is happy to provide that information as we work through this process in the coming months.

Chair Leverenz, after reading the section, asked if there is some problem with the City providing a list.

Zach Thomas stated absolutely not, but he does not see it necessarily related to this particular parcel and it would be somewhat burdened with a problem that existed long before this property owner ever came to the city.

Chair Leverenz stated let's assume we approve the resolution just as it is, the sewer is already hooked up, and once the City provides the list the condition is completed. This condition is kind of a hammer to make sure the City provides the list and once you do that the condition is gone.

Zach Thomas stated he agrees it could be a good hammer, he would just prefer for it to be given as a direction just to staff to provide the list. Zach Thomas stated he would not want to unfairly burden this property owner for something the City has not done in the past.

Chair Leverenz stated he doesn't see this property owner as being unfairly burdened as he has already been hooked up to the sewer and it is up to the City to provide the list to comply with the law.

Chair Leverenz asked for any other comments.

Steve Lucas stated just as an observation, there has been a lot of discussion about these meetings that have occurred going back twenty years. One of the problems we have had as staff in trying to stay up on this, we just simply haven't been invited or been involved in most of those meetings. Recently staff has initiated some meetings with the City to deal with a master agreement. This came from our end as it looked like this was going to be a real problem; that we would have to address in some comprehensive way. Candidly the City and the County have met on numerous occasions and have come up with agreements and decisions in directions they wanted to move without any consultation with LAFCo. That this went forward without even a discussion about when/how annexation would occur or compliance with Code Section 56133 is troublesome. They [City Staff] are doing a remarkable job of getting the mechanics behind the scene to get people connected. But by leaving us out of those meetings, it's these very issues that don't get addressed and that are a primary concern.

Commissioner Connelly stated in the past six years he hasn't heard any Board reports on this issue. So if there have been meetings it hasn't been at the full Board level that he is aware of. Commissioner Connelly stated he still would say he does agree with the gentleman that this is an issue of one parcel but he'll use that logic to say this parcel should be annexed. It would be different if they were going out 3 or 4 parcels into an unincorporated area to hook to the city he could understand that in an emergency, and he wouldn't think annexation should be required. If you look at the map, it just screams for annexation and that is the way he is going to vote.

Commissioner Duncan asked if we can add to the resolution.

Commissioner Connelly made a motion to deny the request for approval. The motion was seconded by Commissioner Lotter.

Steve Lucas stated an annexation would be preferable by our policies but unfortunately this property is connected to sewer. The failure to annex the property or initiate an annexation of the property still results in an extension of services already having been provided. In terms of initiating the annexation, if that is the route the Commission wishes to go, you may wish to apply a timeframe in which you wish the application to be submitted.

Commissioner Connelly amended the motion to include the parcel needs to be annexed within a year and an application needs to be filed within a year. Commissioner Lotter seconded the amended motion.

The motion was carried by the following vote:

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

5. PUBLIC COMMENTS NOT ON THE AGENDA –

Will Cotter, representing the Berry Creek Community Association, stated they are in the process of trying to acquire the old Harts Mill Fire Station to use as a multi-use facility for the community. The Association is currently working with the Feather River Recreation and Park District (FRRPD) and he wanted to present the Commission with a folder with some signatures that they have acquired and general information in support of acquiring Harts Mill. Will Cotter stated they are the largest planning district in the FRRPD master plan and they currently have no services at all. He wanted to know if there is anything the Commission could do to help them.

Chair Leverenz asked Will Cotter who currently owns the Fire House.

Will Cotter stated the Fire House is owned by the State of California and has been appraised at \$135,000.00. The FRRPD was trying to buy the station for one half of the appraised value, but now the state wants the full appraised value, according to a letter received from the state.

Commissioner Lotter asked if the idea is to have the park district take ownership? Will Cotter stated yes, but the Association would maintain it and open it up to the public, similar to the way the building in Forbestown is being used for a museum.

Commissioner Connelly stated originally Assemblyman Logue tried to obtain the Fire Station for free, but that didn't work out as the past governor stated the state is going to sell these properties instead of giving them away for free. The County is currently trying to work out some type of deal to help the district out.

Will Cotter stated he doesn't want to see the FRRPD try to expand other services or other areas without having addressed any of the needs that the people in the Berry Creek area have. Will Cotter gave information regarding the amount of taxes that have been paid to the FRRPD through the benefits assessment process.

6. REPORTS AND COMMUNICATION

6.1 Executive Officer's Report –

Steve Lucas stated Commissioner Duncan attended the CALAFCO Board of Directors meeting held on December 10, 2010. Commissioner Duncan successfully placed the CALAFCO Board of Directors election process on the February agenda. Steve Lucas stated he raised the concern after he served as Recruitment Chair for the North Region LAFCOs. Steve Lucas explained the disadvantages small rural north state LAFCOs have in casting their vote and the fairness of requiring Conference attendance in order to vote for Directors. The CALAFCO Bylaws would need to be amended in order to make changes in the election process to allow a process that utilized either mail or email ballots to be submitted in place of requiring attendance. Steve Lucas stated he offered to draft the Bylaw changes that would allow that to go forward.

Steve Lucas gave a brief overview of the project notes, including staff working with the Lake Oroville Area Public Utility District in developing a reasonable and defensible Sphere of Influence boundary for their requested Sphere Update. Steve Lucas stated the Board of Supervisors has adopted a Resolution of Application to LAFCO requesting an

expansion of powers for County Service Area No. 114 that would allow the CSA to provide funding for specified sewer connections for eligible parcels. Steve Lucas stated he expects the application to be submitted sometime soon.

Steve Lucas stated there is a lot of legislation that is currently being proposed by CALAFCO and one of the issues he has been asked to be a part of, as being on the CALAFCO Legislative Committee, is GC §56133 that governs the extension of services outside of an agency's jurisdictional boundary.

Commissioner Duncan stated CALAFCO sent a request for people to submit items for articles to be published in the Sphere and he thought of the Area of Concern policy between the Cities of Biggs and Gridley would be a good item to submit. The Commission agreed Steve Lucas could write an article regarding this.

6.2 Correspondence –

A. December 22, 2010 letter to LOAPUD concerning sphere of influence update.

7. ADMINISTRATION – None

8. CLOSED SESSION (*Administration Conference Room*)

8.1 Public Employee Performance Evaluation.

8.2 Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(b)(1) – One Potential Case.

The Commission adjourned to Closed Session.

Chair Leverenz stated the Commission met in executive closed session and there was no action taken other than completing the executive officer's evaluation.

9. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:50 a.m. to the February 3, 2011 regularly scheduled meeting.

LOCAL AGENCY FORMATION COMMISSION


By: **Stephen Lucas, Executive Officer**

Minutes prepared by Joy Stover, LAFCO Commission Clerk