

BUTTE LOCAL AGENCY FORMATION COMMISSION
Minutes of November 2, 2017

(A complete voice recording of the Commission's meetings can be obtained from www.buttelaftco.org)

1. Call to Order

Chair Leverenz called the meeting to order at 9:00 a.m., November 2, 2017, in the Butte County Board of Supervisors Chambers, 25 County Center Drive, Oroville, California.

1.1 Roll Call

Commissioners Present: Scott Lotter (City), Steven Onken (Special District), Bill Connelly (County), Al McGreehan (Special District-Alt), Linda Dahlmeier (City), Steve Lambert (County) and Chair Carl Leverenz (Public).

Alternate Commissioner Present: Greg Steel (Public).

Absent Commissioners: Tom Lando (Special District)

Alternate Commissioners: Larry Wahl (County-Alternate), and Bruce Johnson (City-Alternate).

Others Present: Stephen Lucas, LAFCO Executive Officer
Stephen Betts, LAFCO Deputy Executive Officer
Craig Sanders, LAFCO Deputy Executive Officer
Jill Broderson, Management Analyst
Joy Stover, LAFCO Commission Clerk
P. Scott Browne, LAFCO Legal Counsel

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2. Consent Agenda

2.1 Approval of the Minutes of October 5, 2017

Chair Leverenz asked if there were any corrections or additions to the minutes. None stated.

Commissioner Lotter made a motion to approve the October 5, 2017 Minutes. The motion was seconded by Commissioner Lambert.

The motion was carried by the following vote:

AYES: Commissioners Lotter, Onken, Connelly, Dahlmeier, Lambert and Chair Leverenz

NOES: None

ABSENT: None

ABSTAINS: Commissioner McGreehan

3. NOTICED PUBLIC HEARINGS

3.1 17-07 - Public Review Draft Municipal Service Reviews and Sphere of Influence Plans for the Mosquito Abatement Districts in Butte County: Butte County Mosquito and Vector Control District, Durham Mosquito Abatement District and Oroville Mosquito Abatement District. (Continued from October 5, 2017)

Chair Leverenz asked if staff had anything to add to the staff report.

Steve Lucas stated a letter was received from Butte County Mosquito & Vector Control District and has been distributed to the Commission. The letter is confirmation from the District Manager that should they be asked to take over the services within the Oroville Mosquito Abatement District area that they are guaranteeing they will provide the same level of services the other residents receive in their district.

Chair Leverenz stated we can continue this item open to give people an opportunity to speak and requested Steve Lucas go over the actions requested of staff.

Steve Lucas summarized the staff report and suggested actions. Steve Lucas went over the area considered for boundary changes as shown on the map provided with the staff report. Fiscal impacts were stated if proposed boundary changes were to take place.

There was discussion regarding DMAD not currently treating the rice land area yet receiving the tax revenue to do so. DMAD is not in a position to treat the rice land area aerially.

Commissioner McGreehan asked if there is a Homeowner's Association within the Butte Creek Estates Subdivision.

Steve Lucas stated yes.

Commissioner McGreehan asked if the association has been advised of these possible changes.

Steve Lucas stated he understands that the general manager of DMAD has been in contact with the homeowner's association, but LAFCo staff has not.

Commissioner Lotter asked if there is a cost associated with the boundary changes for the annexations.

Steve Lucas stated there are certain unavoidable fixed cost such as mapping and also the LAFCo fees associated with processing the annexations.

Commissioner Lotter stated he is concerned with the cost of the annexations for changes that may only last one year if DMAD fails to comply with the requested improvements required to pass probation.

Steve Lucas stated that is a valid concern. One suggestion may be to hold off on the annexations until after the one year probation period is over.

Chair Leverenz stated we have one district providing service outside of its boundaries and is providing service outside of its sphere of influence. LAFCo has the ability to allow this to happen by a memorandum for a one year period so that LAFCo could have the BCMVCD handle the rice fields but there is still a cost involved and that presents an issue.

Steve Lucas asked for clarification purposes; what is suggested is BCMVCD would continue to allow DMAD to serve Butte Creek Estates (north) but they might transfer the funding for that purpose to DMAD as a part of the agreement, without actually formally making a jurisdictional transfer of the lands.

Chair Leverenz stated yes for the one year period.

Commissioner Lotter asked would this be the same for the rice fields.

Chair Leverenz stated yes, DMAD would have to transfer approximately the same amount of money to the BCMVCD to compensate them for taking over the rice fields.

Steve Lucas stated with respect to Butte Creek Estates, there is some merit to that. But with the rice fields, there isn't any reason to give DMAD any time to wait.

There was a discussion regarding the standard of care and LAFCo's role in making sure that the public is protected from serious health issues. If the standard care has a certain level of things that need to be done, then the mosquito abatement districts need to do that. If you don't live up to the standard of care as established by the health department, the law calls that negligence.

Commissioner Connelly asked if a person contracts a mosquito borne disease where only fogging is being provided, is there a potential liability to the District.

Commissioner Lotter stated the problem is if there is a lower standard of care within the boundaries of DMAD and someone right outside the district contracts a virus, this is a problem as mosquitoes don't respect political borders. He agrees it is a public health issue with the rice fields not being treated and they should be given to BCMVCD.

Commissioner Onken states he has spoken with three people of the Durham area that have contracted West Nile Disease in the last 2 years. Is fogging enough to provide protection and is DMAD meeting an acceptable standard for protection. These are serious diseases and it devastates the individuals.

Aaron Amator, the manager of DMAD, stated it doesn't matter where you live in the County, you are susceptible to contracting a disease, no matter how much money you spend on control.

There was discussion regarding a required certain level of care, based upon the health department and whether DMAD provides the range and standards that were listed in the letter from the County Department of Health.

Commission Lambert asked why the DMAD has not contracted for services to aerial spray the rice fields.

Aaron Amator stated they have in the past, when West Nile virus was hot and heavy and the state was handing out funding. The District was doing aerial spraying for about 3 years but the District does not have the funding to provide aerial spraying continually. Aaron Amator stated the district does apply larvicide in the ditches around the rice fields. Aaron stated when the district was providing aerial spraying services over the rice lands; it was costing the district \$13,000 per flight. The District cannot afford this cost.

There was a discussion regarding DMAD providing fogging services within the BCMVCD area of the Country Club and BCMVCD providing spraying services over the rice lands and possibly continuing to do so by written agreement.

Commissioner Onken asked if a lot of people show up to the DMAD meetings and are they aware of the level of service that DMAD provides and the level of service that the County Health Department expects to be provided.

Aaron Amator stated typically nobody shows up to the public meetings and some are aware of the level of service and some are not.

Commissioner Dahlmeier asked if DMAD reimburses BCMVCD for treating the rice land areas at Rancho Esquon.

Aaron Amator stated the landowner reimburses BCMVCD for the aerial spraying of the rice lands.

Commissioner Dahlmeier asked if DMAD is reimbursed for spraying the BCMVCD portion of the Butte Creek Country Club.

Aaron Amator stated no they do not.

Commissioner Dahlmeier asked Aaron if the District keeps records showing when the Country Club area is fogged.

Aaron Amator stated yes they keep records of all their fogging.

There was discussion regarding assessment fees and property tax share associated with a possible annexation.

Commissioner Lambert asked why BCMVCD couldn't just pay DMAD for providing fogging services in the Country Club area and DMAD pay BCMVCD for providing services for the rice lands by agreement. He asked LAFCo counsel if this would be legal.

Scott Browne stated you can do it, the problem is should you do it?

There was discussion on the merits of having the two districts agree to reciprocate for services for one year.

Steve Lucas stated LAFCo is not set up to have agencies constantly contracting across boundaries. The point is to make the policy strict so the jurisdictional boundaries reflect the service areas to be served and who serves them most efficiently. If it is the appropriate thing for BCMVCD to serve the rice fields, then it is the appropriate LAFCo action to put it into BCMVCD, not to contract with them. Then it is up to BCMVCD to decide how to treat the rice fields and they will decide whether or not it is financially do able and what they might need to do to gain additional revenue to treat it. A contractual agreement does not fix the problem.

Matt Ball, district manager for BCMVCD stated he wanted to make some clarifying comments. It was stated that BCMVCD does not treat all of the rice fields in Butte County in their service area. That is incorrect but also correct. We have a treatment threshold of one mosquito larvae per dip on a certain species of mosquito, regardless of its location. If they exceed our treatment threshold, we treat every acre of rice in Butte County,

regardless of location proximity to human populations. These rice fields near Durham are near populated areas. It will cost the District in the neighborhood of \$350,000 to treat the rice fields currently in DMAD. Many of the rice fields found throughout the Sacramento Valley region need to be treated weekly. In the Country Club there are “no spray” areas that need to be treated differently. DMAD was not notifying BCMVCD when they were treating the BCMVCD area.

Commissioner Connelly asked without the proper treatment of all the rice, there is a hole in the treatment of the entire area.

Matt Ball stated that is correct. Matt went over the different types of mosquitoes found in the Butte County area. Mosquitoes are attracted to various things such as light and water vapor.

Commissioner Lambert asked how BCMVCD is reimbursed for their services on rice fields.

Matt Ball stated in 1999 West Nile was first discovered in the United States. In 2002 the BCMVCD Board created what is called an aggressive larvicide program and it applies to any property owner that has more than 3 acres. The current policy states 3 larvae per dip on 3 or more acres subjects the landowner to reimbursement to the District & rice farmers are subject to this. In wetlands and pastures you can find over 1000 larvae per dip. Organic farmers are treated with a different product and they are subject to the additional cost for the products used.

There was discussion regarding the BCMVCD providing the district’s level of service to the Oroville area residents, and they would be treated no different than any other resident in BCMVCD. Matt stated if BCMVCD is to absorb the OMAD, he hopes the Commission moves soon as there is a lot of work that needs to be done before the next West Nile season gets here.

Dr. Albert Beck, president of the Board of Trustees for BCMVCD and also an environmental consultant, stated in his environmental consultant status he has prepared program EIRs for Orange County and Sutter/Yuba Mosquito Abatement Districts. He has knowledge of the level of mosquito control required in both highly urbanized areas and also a combination of urban and rural areas. He disagrees with Aaron Amator stating there is no standard of service. There is a standard of service that can be modified to each district and he doesn’t believe DMAD or OMAD has ever met the standard level of service required. In the absence of records for the other districts, he can’t tell the level of service they provide. Records are available at BCMVCD for any property in their District. The BCMVCD Board did not agree to meet with DMAD as they had no proposal on the table so we have something to discuss. The main concern is public health. The rice fields used to be exempt from reimbursement but in 2004 that changed. Dr. Beck stated he agrees the District should treat the rice fields that are currently in the DMAD area. But he does not agree to give up the Country Club northern parcels to DMAD. They would like to respectfully ask DMAD to stop treating those parcels that are in the BCMVCD area. Dr. Beck stated he agrees with giving DMAD one year to see if they can improve their level of service.

Commissioner Dahlmeier stepped out at this time (10:17 am)

Chair Leverenz stated he would like to see the BCMVCD Board and DMAD work together to get an application for the rice fields submitted to LAFCo.

Commissioner Lotter asked in Dr. Beck's opinion, will the incorporation of the OMAD area and the DMAD rice field area be improved by BCMVCD taking over these areas.

Dr. Beck stated yes, especially the rice field area.

Commissioner Dahlmeier returned. (10:20 am)

Jeff Carter, appearing on behalf of the Oroville Mosquito Abatement District stated here with him today is Chad Gunderson, Chairman of the Board of OMAD. The draft MSR and its recommendations have focused the thoughts of the OMAD Board, LAFCO and the other two districts. The Board of Directors met last Wednesday. The Board is not concerned about a turf war. It is only concerned about one thing and that is the level of service provided to the Oroville area. OMAD is looking at working with LAFCo staff to see that the people of Oroville receive the best level of service possible under the circumstances. They appreciate BCMVCD's letter; we have yet to meet with Matt or the BCMVCD Board but they intend to do so. OMAD will continue to work with Steve Lucas.

Chair Leverenz stated the Commission anticipates and it's pretty clear that the staff is recommending that the Commission approve the MSR and that we will move hopefully with the OMAD and BCMVCD Boards agreement & assistance in transitioning that process. This is a public health issue.

Jeff Carter stated they see it as a collaborative effort and we are all here for the same thing.

Chair Leverenz asked if anyone else wanted to be heard. No more responses received. Chair Leverenz closed the public portion of the hearing.

Chair Leverenz asked if staff is requesting this item be left open until next month.

Steve Lucas stated yes, we would ask that the Commission continue the item until next month and direct staff to update the MSR with all relevant information.

Chair Leverenz restated staff's suggested recommendations and requested a motion to approve.

Commissioner Lotter stated so moved. The motion was seconded by Commissioner Dahlmeier. The motion was carried by the following vote:

AYES: Commissioners Lotter, Onken, Connelly, McGreehan, Dahlmeier
Lambert and Chair Leverenz
NOES: None
ABSENT: None
ABSTAINS: None

Commissioner McGreehan asked if there were anymore amendments to the initial Draft MSR.

Steve Lucas stated additional information has come up within the last three months and that information needs to be incorporated within the draft document.

Chair Leverenz stated we still have the consideration of DMAD and BCMVCD. We will keep this open for next month. Chair Leverenz asked if there were any concerns by the Commissioners for BCMVCD. None stated.

Chair Leverenz stated LAFCo does not have the ability to modify the BCMVCD boundary to include the rice land south of Durham in DMAD and at the same time remove that area from the Durham district.

Commissioner Lotter stated he wants to clarify that the application for the rice acreage is going to come from BCMVCD.

Chair Leverenz stated from his perspective he feels the two districts should jointly apply.

Steve Lucas stated the preferable method would be if BCMVCD wants to take the lead on the application what we would want from DMAD is a consenting letter.

Steve Lucas stated he wanted to make sure it is very clear. The rice field detachment from DMAD does not require a change in the DMAD SOI, they can still have a zero SOI and we can still detach. If the Commission chooses to annex the north area of the Butte Creek Country Club Estates, you would need to give DMAD back their SOI and amend it to include that area to allow that annexation to occur. If you don't choose to make that swap, there is no reason to give them the probationary SOI, aside from the incentive to getting them to do the other items we have talked about.

Chair Leverenz stated we will still need an application to annex the rice acreage into BCMVCD. Do we want to put a year's probation & our comments and findings in the MSR for DMAD to see if they can reach an acceptable level of production and standard of care.

Chair Leverenz stated we can simply let the two districts keep doing what they are doing in the Country Club. For the loss of the rice land, DMAD would then take quite a hit on their budget. The issue then becomes whether the BCMVCD would be willing to provide some type of compensation to DMAD for fogging the Country Club area.

Commissioner Lotter stated there is a need for a more formal agreement. And BCMVCD is still incurring cost for monitoring in their area of the Country Club.

Commissioner Onken stated if we consider the one year probation, he feels there are a couple things that need to be included in that. We should require an integrated vector management plan and also a website. Also, he questions whether the vast majority of the Durham residents really know the level of service they are receiving and it would be good if DMAD would conduct two noticed public outreach meetings addressing the findings of the LAFCO MSR & SOI Plan. DMAD should invite the representatives of the Butte County Health Dept., Butte LAFCo, BCMVCD and other relative stake holders in order to provide the community with the greatest opportunity to understand these issues.

Chair Leverenz asked LAFCo counsel if the Commission can impose some conditions that need to be reasonable and within the scope of authority, is that something we can ask of the district.

Commissioner Lambert stated he will hold the meetings.

Commissioner Lotter stated he feels it is important that people fully understand what they are getting. They may say that they like their district, but that it needs to come up to the standard of care required.

Chair Leverenz stated the Commission wants to approve the MSR as it relates to the DMAD and follow the staff recommendation for the one year probation period with those conditions. Is there anything else that staff needs direction on?

Steve Lucas asked for clarification regarding is the Commissions direction to amend the DMAD SOI and take in the northern portion of the Country Club Estates or leave it out.

Chair Leverenz stated he believes the Commission wants to leave everything the way it is in that area and let the two Districts deal with it.

Scott Browne asked what are the factors the Commission is going to use to determine if the District complied with probation at the end of the year.

The Commission can condition the probation that the District must hold the two public meetings as stated by Commissioner Onken as well as the other items he listed.

Commissioner Lotter supported the idea of two public meetings, but agreed that Commissioner/Supervisor Lambert could hold the meetings.

Commissioner Lotter stated so moved. The motion was seconded by Commissioner Dahlmeier.

Commissioner Connelly stated he wants to confirm the motion did not include a boundary change for the Butte Creek Estates Country Club.

Commissioner Lotter confirmed no boundary change included in the motion.

The motion was carried by the following vote:

AYES: Commissioners Lotter, Onken, Connelly, McGreehan, Dahlmeier
Lambert and Chair Leverenz

NOES: None

ABSENT: None

ABSTAINS: None

4. REGULAR AGENDA

4.1 Items Removed from the Consent Agenda. None

4.2 Adoption of 2018 LAFCo Regular Meeting Calendar

Commissioner Dahlmeier motioned to approve the 2018 LAFCo Calendar leaving the October meeting date to be determined. The motion was seconded by Commissioner Onken.

The motion was carried by the following vote:

AYES: Commissioners Lotter, Onken, Connelly, McGreehan, Dahlmeier
Lambert and Chair Leverenz
NOES: None
ABSENT: None
ABSTAINS: None

5. Public Comment on Items not on the Agenda.

Chair Leverenz asked if there was anyone who wished to speak on something not on the agenda.

Tasha Levinson, City of Oroville resident, stated she wanted to follow up on the Oroville Area Water Study. She understands Steve Lucas and Mr. Rust have met to discuss a more simplified Study that will focus more on what is rather than what could be.

Linda Draper, Oroville resident and a member of the Oroville City Council stated she wanted to thank the Commission for seeing that this Study goes forward for the regional water service review for the City of Oroville. This affects 3600 households and businesses in the City of Oroville and it is really a crucial item. The City Council has encouraged you to continue with the Study in a simple version, not some amplified project that will take forever. This is of utmost importance to our City as it affects residents and businesses. If you just drive downtown where Cal Water residents live it is like a dust bowl now. We just want fair water rates and a standard level of fair treatment for people here in town.

6. Reports and Communications.

6.1 Executive Officer's Report.

Steve Lucas summarized the Executive Officer's Report. One more Special District vote was received but we still need three more votes. The LAFCo Audit will be conducted the week of Nov. 13th. We have met with the City of Oroville Administrator to talk about the Water Study. Commissioner Connelly was re-elected to the CALAFCO Board and also put on the Budget Committee. Steve Lucas stated Butte LAFCo was awarded Project of the Year for the CSA MSR out of 8 entries.

6.2 Correspondence – None

7. ADMINISTRATION – None

8. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:55 a.m. to the Thursday, December 7, 2017 regularly scheduled meeting.

LOCAL AGENCY FORMATION COMMISSION


By: Stephen Lucas, Executive Officer

Minutes prepared by Joy Stover, Commission Clerk