



BUTTE LOCAL AGENCY FORMATION COMMISSION

Minutes of October 1, 2020

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

1. CALL TO ORDER

Steve Lucas called the meeting to order at 9:00 a.m., October 1, 2020, through telephonic conference attendance only due to the COVID-19 pandemic.

1.1 Roll Call

Commissioners Present: Bill Connelly (Vice Chair - County)
Steve Lambert (County)
Carl Leverenz – (Chair-Public)
Al McGreehan (Special District)
James T. “Bo” Sheppard (City)
Greg Bolin (City)

Alternate Commissioners Present: Larry Bradley (Special District), Debra Lucero (County) & Pam Figge (Public)

Alternate Commissioners Absent: Bruce Johnson (City)

Vacant Seat: Regular Commissioner (Special District)

Others Present: Stephen Lucas, LAFCO Executive Officer
Shannon Costa, LAFCO Government Planning Analyst
Joy Stover, LAFCO Commission Clerk
P. Scott Browne, LAFCO Legal Counsel

1.2 Welcome Alternate Special District Member Larry Bradley

2. CONSENT AGENDA

2.1 Approval of the Minutes of Sept. 3, 2020

Steve Lucas asked if there were any comments. None stated.

Chair Leverenz made a motion to approve the Minutes as submitted. The motion was seconded by Commissioner McGreehan.

The motion was carried by the following roll call vote:

AYES: Chair Leverenz, Bolin, Bradley, Connelly, Lambert, McGreehan, and Sheppard

NOES: None
ABSENT: None
ABSTAINS: None

3. NOTICED PUBLIC HEARINGS - None

4. REGULAR AGENDA

4.1 Items Removed from the Consent Agenda- None

4.2 21-01 – City of Oroville – Lincoln Boulevard Annexation No. 1.

Shannon Costa stated the proposal is to annex 27 parcels totaling approximately 14 acres to the City of Oroville. If approved, this area would be removed from the Butte County Animal Control District and the Butte County Resource Conservation District. The territory would remain within the bounds of and continue to be served by the Lake Oroville Area Public Utility District, the El Medio Fire Protection District, the Oroville Mosquito Abatement District and the County Service Area No. 17, which provides funding for street lightening and alley maintenance. Staff has not received any comments and is recommending that the Commission find the project exempt from environmental review, waive protest proceedings and approve the project subject to the conditions found in the resolution.

Steve Lucas opened this item to the public for comments.

Steve Terry stated the Oroville Rescue Mission supports this item.

Steve Lucas closed the public comment portion as no further comments received.

Commissioner Connelly moved to approve Resolution No. 03 2020/21 approving the annexation as submitted. The motion was seconded by Commissioner Lambert.

The motion was carried by the following roll call vote:

AYES: Chair Leverenz, Bolin, Bradley, Connelly, Lambert, McGreehan, and Sheppard

NOES: None

ABSENT: None

ABSTAINS: None

4.3 Rock Creek Reclamation District Update

Steve Lucas stated that an election that was requested/petitioned by land owners to the Board of Supervisors to replace the current existing district board and that process is confusing at best. Staff was asked by John Garner, attorney for the petitioners, if staff would observe the election that was set by the Board of Supervisors. Steve stated he discussed the issue of attending the election process with the LAFCO counsel and LAFCO Chair and Chair Leverenz asked for this item to be put on the agenda for discussion. Steve stated he feels the issues of governance and administration are areas that LAFCO reviews during a municipal service review and this election would fall under that purview. Steve stated all that staff is requesting is to participate as an observer as it is not LAFCO's responsibility to mediate this issue as the Commission has no formal role to play in the elections process.

Scott Browne, LAFCo Counsel, stated the Water Code section concerning the general election procedures are very difficult to understand. The point that we have to make is that LAFCO does not need to get involved in this process. The interested parties are the existing district board, the proponents of the general election and the County of Butte are the parties that are going to have to figure this out. The ultimate result may have some impact on a current application that we are trying to process, which is why it is legitimate for LAFCO to observe the proceeding but certainly not get involved in them.

Steve Lucas opened this item to the public for comments.

Aimee Raymond, Vice Chair for the Rock Creek Reclamation District, stated she wanted to point out that much of this has to do with the use of water. Since 2013 Butte County has added 15 thousand acres of walnuts and almonds to our crop report of our harvested acres. This has required an increase in water demand of 44 thousand acre feet per year. The petitioners are the growers that are pushing the Tuscan Water District. Since 2002 we have added even more walnuts and almonds to Butte County that requires a 20% increase in the demand for water and this continues to escalate. The petitioners are the biggest consumers and have a vested interest. In regards to this election, the petitioners have failed on 2 occasions. Aimee voiced her concerns on how the Clerk of the Board handled the petitions that were received at the County related to date and time of receipt as well as other concerns regarding how the Rock Creek Reclamation District has been treated. We have no issue with the election. She believes the petition was executed correctly, but they have failed to follow process. Hence, no election and it is now in the hands of the Board of Supervisors to place the slate of trustees.

Chair Leverenz stated from the point of LAFCO, our sole concern was if there was going to be an election, and we wanted to be able to observe so we would know factually what was going to occur. Chair Leverenz asked Aimee to clarify exactly what it is the BOS is supposed to do.

Aimee Raymond stated the BOS are to appoint any qualified individual to the position. They can opt to choose to retain the current Board or they can choose to consider any other person who they deem qualified. A qualified person is a land owner or a legal representative of a land owner.

Chair Leverenz stated our concern is we want to make sure that whatever is done, is done procedurally correct. We have an obligation with the Municipal Service Reviews which we are required to do by the legislature, to comment and to study the efficiency and functionality of every district in the County and also will impact the creation of this new district.

Commissioner Lambert stated this is a special district and the Board of Supervisor's job was to validate the right to for them have their election and the Board did that.

Chair Leverenz stated the LAFCO role, and simply why this was just an update, is that LAFCO has no vote to take about anything. We were simply giving an update that if in fact an election physically takes place, it was suggested we be given an opportunity to observe but that is not going to happen.

Commissioner Lambert asked if we know in fact that there is not going to be an election.

Steve Lucas called on the office of John Garner to express their position.

Caitlin Hoffman stated it is their position that the election is still occurring and that the nominations and petitions were valid. Other than that they have deferred to outside counsel and anything further they would need to discuss with them.

Darren Rice stated we have tried to have discussions with Rock Creek and we do not believe Rock Creek Trustees represent the landowners. That is why 80% of the landowners sent a letter to Rock Creek stating they are unhappy with Rock Creek and the way they have been operating. He believes they have done their very best to comply with the law and any deficit in this election squarely rest with Rock Creek Board of Trustees and their reckless disregard for the law and their landowners. The only qualified nominees to run for the office of trustee for Rock Creek are the seven nominees that turned in their paperwork to the County and made their intentions known that they were valid qualified nominees. We are going to have our election Saturday, it is going to be messy, the people are going to speak and we're going to let the chips fall where they may.

Chair Leverenz stated he is a little concerned because the representative from the District has indicated that there is not going to be an election. Physically, how is there going to be an election and where are they going to go.

Darren Rice stated to the designated area the Supervisors appointed: 5470 Wilson Landing Road, where the Supervisors said we can have our election.

Aimee Raymond stated per the Butte County Elections Department, the ballot is to be created by the Butte County Board of Supervisors and per their office no ballot has been created. There has been a lack of public notice that there is going to be an election and there has been no ballot that has been produced for this election.

Chair Leverenz stated LAFCO is not in a position to get in the middle of this dispute. Under the circumstances there is enough doubt and it doesn't appear our staff has anything to observe.

Scott Browne stated these particular code sections are quite unusual. The fact is we don't have to observe and it is not our responsibility to determine whether an election will proceed.

Steve Lucas asked if Richard Harriman has comments on this item.

Richard Harriman stated he is appearing on behalf of the Northern California Environmental Defense Center that is a public interest advocate that has a public interest in this process. He shares Chair Leverenz's position as a lawyer and someone that has been through a similar situation. He doesn't think that LAFCO has any authority to appear at that election and given the tenor of the staff reports and the process that LAFCO needs to make sure that it remains a neutral and unbiased position both in the RCRD dispute over management of that entity and with the regard to the potential Tuscan Water District process. Mr. Harriman stated it would be in the interest and fairness to all parties that LAFCO stand down and not get involved prematurely in something that may end of being a petition for dissolution of the District, which would be under the jurisdiction of LAFCO. Therefore I would strongly urge the Commission to direct its Executive Officer to stand down and stand back and conduct an unbiased evaluation in this process.

Steve Lucas asked if there was anyone else on the phone that would like to offer any comments that have not already commented. None stated. This item was closed to the public.

Steve Lucas stated he would like to offer two comments in response to several comments made this morning. The implication that we are biased in any way is completely false. Steve stated he has spent a lot of time looking at all possible aspects of this issue and is only interested that this process move forward fairly and that is the only outcome that LAFCO has ever sought. There is no bias on our part towards either side. It is pretty clear from everybody's comments today that there is a tremendous amount of confusion on the interpretation of the reclamation code as to how these elections proceed. There was talk about the District not being in contact or people not contacting the District, I just want to remind everyone that since June the District has not had a website. I can't tell you right now whether they have had meetings or if they have not had meetings. Additionally, their email contact also went down. It has not been an easy District to communicate with since June when this all occurred.

Aimee Raymond asked to respond. The District is actively in the process of working on the website and it should be up in the next day or so. The email address was changed. Aimee gave the new email address as rockcreekreclamation@gmail.com. The mailing address has not changed.

Chair Leverenz stated under the circumstances we should take no action and indicate to the Staff that at this point if something proceeds by way whether there is an attempted election or not, under the circumstances we would be better served by not trying to be involved and simply to determine whether or not legally one of the parties is able to determine what is going to proceed in the future.

Commissioner McGreehan asked Chair Leverenz if that recommendation a motion.

Chair Leverenz stated normally the Chair doesn't make motions but Steve has been functioning as the Chair, and if he could make a motion he will would put it in that form.

Steve stated we will accept that as a motion and asked for a second or further discussion.

Commissioner McGreehan stated he seconds the motion.

Steve Lucas restated the motion to state staff will stand down at this point, let the District do whatever they are going to do and discover that after the fact.

Chair Leverenz stated yes, the motion has been made and seconded and as far as discussion is concerned he just doesn't think it is a wise use of the our staff's time at this point to try to be involved in what may or may not be an attempted election in a couple of days. Clearly there is going to have to be some legal process to determine what the right procedure is.

Steve asked Commissioner McGreehan if this was consistent with his second.

Commissioner McGreehan stated it is consistent with his second and his understanding of why we need that motion.

Chair Leverenz moved to have staff not be involved in the Rock Creek Reclamation District in what may or not be a valid attempted election process. The motion was seconded by Commissioner McGreehan.

The motion was carried by the following roll call vote:

AYES: Chair Leverenz, Bolin, McGreehan and Sheppard
NOES: Connelly and Lambert
ABSENT: None
ABSTAINS: Bradley

5. Public Comment on Items not on the Agenda - None

6. Reports and Communications

6.1 Executive Officer's Report

Steve Lucas summarized the Executive Officer's report and provided updates.

Richard Harriman stated he wanted to make it clear he has high regard for Steve Lucas and wanted to state Steve's Executive Officer's report is always well done. On the Tuscan Water District matter, he appreciates that we have the petition on the website and stated it might be useful to the public and those who are focusing on this, if you could put up on the website the findings that LAFCO will have to make in order to approve that petition. If you could put up the statutory ones and the LAFCO guidelines or regulations that they will have to satisfy. He feels this would serve a public information function. I think it would keep your thumb evenly off the scales and he would ask the Chair to direct you to do that.

Steve stated he will just agree to do this.

6.2 Correspondence - None

7. ADMINISTRATION

Commissioner Connelly stated he is really concerned about El Medio Fire Protection District and he asked for updates by email or phone.

Steve Lucas stated he may ask Commissioner Connelly to join us if those meetings start to develop.

Commissioner Connelly stated we have a history and he thinks there is going to have to be some major resolutions to the issues.

8. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:54 a.m. to the next LAFCO meeting scheduled for November 5, 2020. The next LAFCO meeting is proposed to be a telephonic only meeting.

LOCAL AGENCY FORMATION COMMISSION


By: Stephen Lucas, Executive Officer

Minutes prepared by Joy Stover, Commission Clerk