MEMORANDUM
LOCAL AGENCY FORMATION COMMISSION

TO: Local Agency Formation Commission
FROM: Stephen Lucas, Executive Officer
SUBJECT: Agenda Item 5.2 - Update Concerning Approval of Sewer Service Extension and Annexation Agreement with the City of Chico.

DATE: November 25, 2014 for the meeting of December 4, 2014

Update

The Commission has been attempting to work with the City to address sewer extensions into unincorporated islands and other areas since 2011 resulting in the Commission proposed Sewer Service Extension and Annexation Agreement (Agreement). The most recent version of the Agreement was developed over a period of at least 8 months between LAFCO and City staff and most recently between a subcommittee of LAFCO Commissioners and City Council members - which resulted in concurrence pending final approval of each body in a public hearing. The following timeline reflects actions that followed:

- **August 7, 2014** - The Commission approved the Sewer Service Extension and Annexation Agreement and notified the City of its action.

- **August 19, 2014** - The Chico City Council considered the Agreement with a recommendation from the City Manager to authorize the Mayor to sign the Agreement. The City Council voted unanimously to table consideration of the Agreement and directed City Staff to: 1) provide further analysis of the impacts to the City and 2) provide additional notice to residents subject to future annexation consideration.

- **August 21, 2014** - LAFCO staff in cooperation with the Commission Chair, sent a letter (Attachment 1) to the City seeking clarification of the City's actions.

- **August 25, 2014** - The City provided a response (Attachment 2) that the City Council 1) received significant comment/overwhelming testimony from residents against the item; 2) did not have the necessary information to move forward with the Agreement; and 3) would consider the Agreement again at its October 21, 2014 meeting. The letter did not specify what new or necessary information the City Council needed to make a decision beyond the: 1) thorough report provided by its staff for the August 5th and 19th Council meetings, 2) the 32 page Chapman, Mulberry and Stewart Avenue Annexation Study prepared for this specific purpose; or 3) the thorough efforts made by the City Council subcommittee to address City concerns during multiple City/LAFCO subcommittee meetings over the past few months. Additionally, the issue of overwhelming testimony against the Agreement could be characterized more accurately in that only 8 residents (out of a population of 1,300) spoke against the proposal.

- **September 4, 2014** - The Commission directed staff, in coordination with the Commission Chair, to prepare a letter to the City that clearly articulates the Commission's expectations for future actions, dates for such actions and consequences of inaction.
• **October 13, 2014** - City staff advised LAFCo staff that the City would not be considering the Agreement at its October 21, 2014 meeting as previously promised due to the failure of City staff to provide mailed notice to the residents affected by the Agreement. The City indicated the City Council will postpone consideration of the Agreement until its November 18, 2014 meeting.

• **October 13, 2014** - Staff provided the City with a letter (Attachment 3) signed by the Commission Chair as previously directed by the Commission. The letter requires the City to execute the Agreement no later than November 25, 2014 and if the Agreement is not approved, the City shall submit an application for the 62 unauthorized sewer connections by December 3, 2014. If the City fails to execute the Agreement or make application for the 62 unauthorized sewer connections by the dates indicated, the Commission will have no alternative but to undertake appropriate legal remedies to compel City compliance with State law.

• **November 18, 2014** - The Chico City Council considered the Agreement and despite recommendations to approve the Agreement from their own staff, voted 4 to 3 to reject the Agreement. The primary reasons stated for rejection were: 1) cost of providing services; 2) opposition from residents and 3) the lack of public meetings to inform residents of the annexation process.

It was also clear from the comments from individual Council members that the City acknowledged it allowed unauthorized sewer connections to occur and that they would face litigation to enforce the illegal connections. Of particular concern to Staff is the oft repeated statement that the Agreement was developed in secret and not open to public scrutiny. As can be seen in Attachment 4, since 2010, the Commission has met 23 times in a publicly noticed meeting at which the issue of City of Chico sewer service and annexation was on the agenda for discussion or review. This does not include City Council meetings or neighborhood meetings within the Chapman neighborhood arranged by County staff under the auspices of the Nitrate Compliance Plan which were well attended and staffed by City, County and LAFCo representatives.

**Future Steps**

The Commission has unquestionably established a record of consistent and earnest effort to reach an Agreement concerning the 62 unauthorized sewer connections and related annexation options. The City has now officially rejected the Agreement leaving the Commission in the unfortunate position of either ignoring State law and the illegal sewer connections or authorizing appropriate legal remedies to compel City compliance with State law.

Aside from the consideration of litigation, the Commission also has the additional options in response to the City's unwillingness to engage in a reasonable resolution of this issue to include:

• Evaluating current policies and practices related to out-of-agency service provisions that would create clearer expectations of if/when annexation to the City of Chico shall be required;

• Addressing the current fee structures and policies related to non-emergency out-of-agency service connections;

• Considering the need to update the Chico Municipal Service Review (MSR) to reflect the City's current fiscal condition and how that may affect the existing and/or future Sphere of
Influence for the City and any new development that may be proposed to be served by the City.

- Consider a moratorium on annexations of areas outside of existing developed islands until a new MSR and Sphere Update are completed that reflect the current fiscal reality as communicated by the City.

The Commission is asked to consider any or all of the above options and provide any direction to staff.

Summary

The Commission has worked diligently and patiently with the City of Chico for several years to develop an agreement that addresses two important State directed goals:

1) Implement the Chico Urban Area Nitrate Compliance Program to address the documented public health need to convert existing on-site individual septic systems to municipal sewer service to address nitrate contamination in the groundwater per the Central Valley Regional Water Quality Control Board Prohibition Order No. 90-126; and

2) Provide for logical jurisdictional boundaries, the effective delivery/extension of municipal services and address environmental justice via the annexation process per the Cortese Knox Local Government Reorganization Act of 2000 (GC56000).

This most recent action by the City to reject the negotiated comprehensive Agreement seriously undermines cooperative efforts to achieve these goals. In order to underscore the level of effort and resulting frustration put forth by the Commission, just shy of one year ago the Commission sent a letter (January 19, 2013 - Attachment 5) to the then City Manager that clearly articulated the saga the Commission had endured up to that point in time. The letter clearly established 1) the foundations of State law; 2) identified the unauthorized sewer connections; 3) described the various costs associated with corrective measures; and 4) conveyed the Commission's reluctance to implement State law and local policies through litigation. Sadly, one year later instead of an Agreement reached and progress made towards the above stated goals, the City has elected to completely reject a reasonable, fair and productive Agreement that would have avoided greater costs to a City at the same time the City claims it cannot afford annexation.

ACTION REQUESTED:
1) Receive update concerning Sewer Service Extension and Annexation Agreement with the City;
2) Consider options related to future annexations, fees, and sewer connections;
3) Provide any other direction to staff.

Attachments:

1. August 22, 2014 Letter to City of Chico Requesting Clarification
2. August 25, 2014 City Response to LAFCO
3. October 13, 2014 Letter to City of Chico
4. Chronology of LAFCO Public Meetings Discussing Sewer Service/Annexation
5. December 19, 2013 Letter from LAFCO to City Manager Nakamura
August 21, 2014

Sent Via Email to: mark.orme@chicocagov
mark.wolfe@chicoca.gov

Mark Orme, City Manager
Mark Wolfe, Community Development Director
P.O. Box 3420
Chico, CA 95927

RE: City of Chico/Butte LAFCO Sewer Service and Annexation Agreement

Dear Mr. Orme and Mr. Wolfe:

At the direction of the Commission Chair, this letter is seeking clarification of the Chico City Council’s actions at its August 19, 2014 meeting. Specifically, Agenda Item 4.3 - Consideration of City/LAFCO Sewer Service and Annexation Agreement (Agreement), an item previously scheduled for discussion at the Council’s August 5th meeting and unexpectedly delayed.

Our observations of the Council meeting can be reduced to the following two facts:

1. It appears that the City Council has no date certain to further discuss or otherwise take action on the proposed Agreement; and

2. It also appears that the Chico City Council continued this item with direction to its staff to provide further analysis based on the concern by the members of the Chico City Council that the City of Chico’s fiscal condition may not warrant approval of this Agreement.

The Commission will proceed at its next meeting on September 4, 2014, based upon items 1 and 2 above. If you believe there are additional facts the Commission should be aware of, or consider, kindly provide them in writing as soon as possible. Should you have any questions please contact the LAFCo Executive Officer at your convenience.

Respectfully,

Steve Lucas

Stephen Lucas
Executive Officer

cc: LAFCO
LAFCO Counsel
Paul Hahn, CAO
August 25, 2014

Sent Via Email to: slucas@buttecounty.net

Stephen Lucas, Executive Officer
1453 Downer Street, Suite C
Oroville, CA 95965

RE: LAFCO Letter dated August 21, 2014
   Regarding City of Chico/Butte LAFCO Sewer Service and Annexation Agreement

Dear Mr. Lucas,

The City received your letter regarding observations of the Council meeting and is providing these clarifications as requested. A Sewer Service and Annexation Agreement was docketed for the City Council’s August 5th meeting. Due to an extended length agenda, the item was tabled until the City Council’s August 19th meeting.

The City Council heard the item on August 19th and received significant comment from residents of the affected area as well as other community members. The discussion involved overwhelming testimony against the item, and unfortunately, it appeared the City Council did not have sufficient information to move forward with an agreement at the August 19th meeting.

The City is aligned with LAFCO and its goal for the orderly formation of local government agencies, as well as, desires to be a partner with LAFCO in achieving that goal. However, it is critical for the City Council to have the information necessary to make a well-informed and defensible decision; and as demonstrated by the significant comment during the August 19th meeting, robust public discourse.

The action taken by the City Council was intended to provide the City Council the information necessary to take an informed action in approving an agreement between LAFCO as well as allow for the public discourse afforded to other important items before the City Council. The City Council’s action did not provide any direction to staff to present analysis intended to not warrant approval of an agreement. A delay in approval of an agreement does not affect the timeline desired for annexation of the area in question. Currently, the agreement is on the City Council docket for October 21, 2014 for approval.
We hope the Commission appreciates the City Council’s obligation and desire to proceed diligently while maintaining the engagement of the community affected by the decision.

Sincerely,

Chris Constantin,
Assistant City Manager

Cc: Chico City Council
    Mark Orme
    Debbie Presson
    LAFCO
    Paul Hahn
Scott Gruendl, Mayor  
Mark Orme, City Manager  
P.O. Box 3420  
Chico, CA 95927  

RE: City of Chico/Butte LAFCO Sewer Service and Annexation Agreement  

Dear Mayor Gruendl and Mr. Orme:  

This letter is written at the unanimous direction of the Butte Local Agency Formation Commission (Commission) to advise of the Commission’s position with respect to the City Council’s deferral of a decision on the approval and implementation of City/LAFCO Sewer Service and Annexation Agreement (Agreement).  

After extensive negotiations over the course of several years, we understood we had reached an agreement with the City over how to address the islands and illegal sewer connections. It only required formal approval by the Council and the Commission. In reliance on this understanding, this Agreement was approved by the Commission at its August 7, 2014 meeting and forwarded to the City for consideration at its August 19, 2014 Council meeting, specifically, Agenda Item 4.3, Consideration of City/LAFCO Sewer Service and Annexation Agreement. The Council at this meeting elected to not act on the item, but rather continue to the item to its October 21, 2014 meeting to allow for additional evaluation by City staff. It is now our understanding that the City will not consider this item at its October 21st Council meeting date as promised by the Mayor and City staff, but has yet again been postponed to the Council’s November 18, 2014 meeting agenda.  

These continuances were not what was anticipated by the Commission given the City Council subcommittee had actively participated and concurred with the terms of the Agreement during a series of meetings conducted over several months and had full staff analysis and participation in those negotiations.  

Over the past three plus years, the Commission has made many efforts to seek a compromise that would avoid more drastic measures such as moratoriums on extraterritorial service extensions and annexations, the elimination of expedited emergency sewer connections and engaging in potential legal remedies. The City has repeatedly put off making the necessary commitments to resolve the situation.  

The Commission now believes it has exhausted its cooperative options. It has determined that if the Agreement is not executed by the City on or before November 25, 2014, the Commission will expect the City to make an immediate application for the 62 unauthorized sewer connections which will be processed at the Commissions’ full cost recovery rates. Such application must be made not later than December 3, 2014. If the City fails to execute the Agreement or make application for the
62 unauthorized sewer connections by the dates indicated, the Commission will have no alternative but to undertake appropriate legal remedies to compel City compliance with State law. In such case, it will also seek reimbursement of its legal fees from the City pursuant to Code of Civil Procedure Section 1021.5.

Entering into the agreement with LAFCo will fairly and effectively resolve the current unauthorized sewer connections, establish a certain timeline for the annexation of long existing unincorporated islands and expedite the connection of existing dwellings to the municipal sewer system in support of the Nitrate Compliance Plan. The Agreement as structured, will not only resolve the three purposes described above, but will result in a significant cost savings to the City by establishing fixed costs for the various actions identified in contrast to a much more costly piece-meal approach to these issues. Given the Council’s considerable efforts to reduce City expenditures as of late, this Agreement provides an opportunity for certainty and clarity in resolving the current situation.

To conclude, the Agreement furthers the State’s goals of creating logical boundaries, improving the efficiency in providing municipal services and promoting environmental justice for the affected residents of the these disadvantaged unincorporated communities. We trust the Council will recognize these benefits and execute the agreement before November 25, 2014.

Should you have any questions concerning the contents or intentions of this letter please contact the Commissions’ Executive Officer, Stephen Lucas at 538-7784.

Carl Leverenz
Commission Chair

cc: LAFCO Commissioners
LAFCO Counsel
Paul Hahn, Butte County CAO
Chronology of Butte LAFCO Public Meeting Agenda Items Concerning City of Chico Sewer Service and Annexation Discussions

November 6, 2014:
5.2 Update Concerning Approval of Sewer Service Extension and Annexation Agreement with the City of Chico. (Continued from the September 4, 2014 meeting)
The Commission will receive an update on the Chico City Council's review of the Sewer Service Extension and Annexation Agreement and consider additional or future actions related to sewer service extensions and annexations absent an approved Agreement. The Agreement would have 1) retroactively authorized 62 con-compliant sewer connections; 2) initiated the annexation of the Chapman and Mulberry neighborhoods in 5 years; and 3) addressed future approval of sewer service extensions and eventual annexation of these properties. ACTION REQUESTED: Receive update concerning Sewer Service Extension and Annexation Agreement with the City of Chico and provide any direction to Staff.

September 4, 2014:
5.2 Update Concerning Approval of Sewer Service Extension and Annexation Agreement with the City of Chico.
The Commission will receive an update on the Chico City Council's review of the Sewer Service Extension and Annexation Agreement at its August 19, 2014 Council meeting and consider additional or future actions related to sewer service extensions and annexations absent an approved Agreement. The Agreement would have 1) retroactively authorized 62 con-compliant sewer connections; 2) initiated the annexation of the Chapman and Mulberry neighborhoods in 5 years; and 3) addressed future approval of sewer service extensions and eventual annexation of these properties. ACTION REQUESTED: Receive update concerning Sewer Service Extension and Annexation Agreement with the City of Chico and provide any direction to Staff.

August 7, 2014:
4.4 Review and Ratification of Sewer Service Extension and Annexation Agreement with the City of Chico.
The Commission will review and consider final ratification of the Sewer Service Extension and Annexation Agreement with the City of Chico that establishes a process for 1) retroactively authorizing 62 con-compliant sewer connections; 2) the annexation of the Chapman and Mulberry neighborhoods in 5 years; and 3) the future approval of sewer service extensions and eventual annexation of these properties. ACTION REQUESTED: Review and Ratify Sewer Service Extension and Annexation Agreement with the City of Chico.

June 5, 2014:
5.9 Update of Sewer Service Extensions in the City of Chico.
The Commission will receive an update on existing and future sewer service extensions and related annexation efforts in the City of Chico. ACTION REQUESTED: Receive update and provide any direction to staff.

May 1, 2014:
5.4 Update of Sewer Service Extensions in the City of Chico.
The Commission will receive an update on existing and future sewer service extensions and related annexation efforts in the City of Chico. ACTION REQUESTED: Receive update and provide any direction to staff.

April 3, 2014:
5.2 Update of Sewer Service Extensions in the City of Chico.
The Commission will receive an update on existing and future sewer service extensions and related annexation efforts in the City of Chico. **ACTION REQUESTED:** Receive update and provide any direction to staff.

**March 6, 2014:**

5.3 **Update of Sewer Service Extensions in the City of Chico.**
The Commission will receive an update on existing and future sewer service extensions and related annexation efforts in the City of Chico. **ACTION REQUESTED:** Receive update and provide any direction to staff.

**February 6, 2014:**

5.4 **Update of the Sewer Service Extension Process and Actual Sewer Connections in the City of Chico.**
The Commission will receive an update on the process for extending sewer service extensions without annexation and review actual sewer connection data for both authorized and unauthorized sewer connections in the City of Chico. **ACTION REQUESTED:** Provide direction to staff.

**January 9, 2014:**

6.2 **Correspondence – a. December 19, 2013 Letter to City of Chico re Unauthorized Sewer Connections.**

**December 5, 2013:**

5.3 **Update of the Sewer Service Extension Process and Actual Sewer Connections in the City of Chico.**
The Commission will receive an update on the process for extending sewer service extensions without annexation and review actual sewer connection data for both authorized and unauthorized sewer connections in the City of Chico. **ACTION REQUESTED:** Provide direction to staff.

**November 7, 2013:**

4.2 **Update of the Sewer Service Extension Process and Actual Sewer Connections in the City of Chico.**
The Commission will receive an update on the process for extending sewer service extensions without annexation and review actual sewer connection data for both authorized and unauthorized sewer connections in the City of Chico. **ACTION REQUESTED:** Direct the City of Chico to submit a single, comprehensive extension of services application that encompasses all 62 unauthorized sewer connections.

**November 1, 2012:**

4.4 **Discussion of Extension of Sewer Service and Annexation Plan for City of Chico**
The Commission will receive an update on the progress towards reaching agreement on an annexation plan that would support the extension of sewer services to unincorporated territory. **ACTION REQUESTED:** Discussion item only.

**September 6, 2012:**

4.4 **Acknowledgment of Correspondence from City of Chico Concerning Sewer Service Extensions Outside Its Jurisdictional Boundaries and Related Annexations.**
The Commission will acknowledge the receipt of August 6, 2012, correspondence from the City of Chico concerning the extension of sewer service connections outside of its jurisdictional boundaries and related annexations. **ACTION REQUESTED:** Acknowledge receipt of letter and provide direction to staff as to any further action.
June 7, 2012:

4.2 11-07 – City of Chico Master Extension of Sewer Services (Cont'd from March 1, 2012 meeting)
Consideration of City of Chico request to allow the extension of sanitary sewer service outside of its jurisdictional boundaries without annexation to approximately 2,991 unincorporated developed parcels to address a State Water Board Prohibition Order related to the use of septic systems and nitrates in the groundwater. The subject territory is located throughout the Chico Urban Area and comprised of various Assessors’ Parcel Numbers. **ACTION REQUESTED:** Receive status update, consider public comments and provide direction to staff if the proposed annexation plan satisfies the Commission’s prior directions.

April 5, 2012:


March 1, 2012:

4.3 11-07 – City of Chico Master Extension of Sewer Services – Extension of Letter Agreement for Conditional Interim Authorization Interim Agreement
Consideration of request from the City of Chico for a six (6) month extension to the Letter Agreement for Conditional Interim Authorization Interim Agreement allowing for the extension of sanitary sewer service outside of its jurisdictional boundaries without annexation to approximately 2,991 unincorporated developed parcels to address a State Water Board Prohibition Order related to the use of septic systems and nitrates in the groundwater. The subject territory is located throughout the Chico Urban Area and comprised of various Assessors’ Parcel Numbers. **ACTION REQUESTED:** Receive status update, receive public comments and direct the Executive Officer to extend the current Letter Agreement for Conditional Interim Authorization for an additional six (6) months.

February 2, 2012:

4.2 11-07 – City of Chico Master Extension of Sewer Services (Cont'd from October 6, 2011 meeting)
Consideration of request from the City of Chico to extend sanitary sewer service outside of its jurisdictional boundaries without annexation to approximately 2,991 unincorporated developed parcels to address a State Water Board Prohibition Order related to the use of septic systems and nitrates in the groundwater. The subject territory is located throughout the Chico Urban Area and comprised of various Assessors’ Parcel Numbers. **ACTION REQUESTED:** Receive status update, receive public comments and provide any direction to staff.

October 6, 2011:

4.2 11-07 – City of Chico Master Extension of Sewer Services (Continued from the September 8, 2011 meeting)
Consideration of request from the City of Chico to extend sanitary sewer service outside of its jurisdictional boundaries without annexation to approximately 2,991 unincorporated developed parcels to address a State Water Board Prohibition Order related to the use of septic systems and nitrates in the groundwater. The subject territory is located throughout the Chico Urban Area and comprised of various Assessors’ Parcel Numbers. **ACTION REQUESTED:** Receive status update, receive public comments and provide any direction to staff.

September 8, 2011:

4.3 11-07 – City of Chico Master Extension of Sewer Services (Continued from the August 4, 2011 meeting)
Consideration of request from the City of Chico to extend sanitary sewer service outside of its jurisdictional boundaries without annexation to approximately 2,991 unincorporated developed parcels to address a State Water Board Prohibition Order related to the use of septic systems and nitrates in the groundwater. The subject territory is located throughout the Chico Urban Area and comprised of various Assessors’ Parcel Numbers. **ACTION REQUESTED:** Receive status update, receive public comments and provide any direction to staff.
August 4, 2011:
4.2 11-07 – City of Chico – Master Extension of Sewer Services (Continued from the July 7, 2011 meeting)
Consideration of request from the City of Chico to extend sanitary sewer service outside of its jurisdictional boundaries without annexation to approximately 2,991 unincorporated developed parcels to address a State Water Board Prohibition Order related to the use of septic systems and nitrates in the groundwater. The subject territory is located throughout the Chico Urban Area and comprised of various Assessor’s Parcel Numbers. ACTION REQUESTED: Receive status update, receive public comments and consider approving an interim authorization to extend services subject to conditions.

July 7, 2011:
4.3 11-07 – City of Chico – Master Extension of Sewer Services
Consideration of request from the City of Chico to extend sanitary sewer service outside of its jurisdictional boundaries without annexation to approximately 2,991 unincorporated developed parcels to address a State Water Board Prohibition Order related to the use of septic systems and nitrates in the groundwater. The subject territory is located throughout the Chico Urban Area and comprised of various Assessor’s Parcel Numbers. ACTION REQUESTED: Review staff report, receive public comments and provide direction to staff.

April 14, 2011:
4.2 Update on Discussions with the City of Chico Related to Proposed Master Sewer Extension Agreement Pursuant to Government Code Section 56133.
An update will be provided to the Commission concerning the extension of municipal sewer services to developed unincorporated parcels and the related sewer service extension agreement required pursuant to Government Code Section 56133. Action Requested: Accept update and provide direction if applicable.

March 4, 2010:
4.3 Consideration of Amendments to the Commission’s Policies Related to the Processing of Extension of Services Proposals.
The Commission will have a discussion concerning possible amendments to its Policies and Procedures with respect to the processing and evaluation of proposals for extension of services. Action Requested: Conduct or waive the first reading of the proposed revisions and direct staff to provide proposed amendments to all local agencies for review and comment.
December 19, 2013

Brian S. Nakamura, City Manager
City of Chico
411 Main Street- 3rd Floor
P.O. Box 3420
Chico, CA 95927

RE: LAFCo Response to your Letter of December 2, 2013 re Correction of Illegal Sewer Connections

Dear Mr. Nakamura:

Butte LAFCo has reviewed and considered your letter of December 2, 2013 requesting that LAFCo waive its usual fees for processing approval of the 62 parcels that the City illegally connected without applying for LAFCo approval. You also are requesting for these properties that we give the City a special dispensation from our policy of requiring parcels that are contiguous to the City to annex.

LAFCo fully appreciates that the City is undergoing a serious fiscal strain at the present time and that it has limited money available for unplanned expenditures. We are prepared to work with the City to a reasonable extent to accommodate your concerns. We are, however, not prepared to compromise our fundamental policies.

To give the issue some perspective, LAFCo has made every reasonable effort for a number of years to work with the City to resolve the sewer connection issue. The City and County of Butte have been working on a solution to nitrate contamination issues to replace inadequate septic systems with city sewer since 1985. The City and County entered into an agreement in 2000 to implement the program. LAFCo was not allowed to participate in the development of that program and no consideration was given in the agreement to LAFCo's regulatory requirements and policy concerns. When LAFCo was finally advised in 2011 that the City was actually under construction with its program to extend sewer mains into unincorporated islands and fringe areas, LAFCo approached the City about annexing the areas. LAFCo proposed using the island annexation provisions of the Corteo Knox Hertzberg Act where possible to greatly simplify and expedite the process. Annexation would have obviated any need to seek LAFCo approval for each connection within the islands and would have promoted orderly boundaries, the efficient service delivery and addressed environmental justice concerns as the majority of the affected territory is considered a disadvantaged unincorporated community.

The City refused to consider annexing the islands, claiming that it could not afford to provide services to the areas. LAFCo then offered a plan whereby blanket expedited connection approval would be granted if the City would enter into a binding agreement with LAFCo to annex the islands over a period of time. While the City was considering the agreement, LAFCo agreed to automatically approve a limited number of sewer connections.
After a number of months, the City rejected this new plan, again claiming it could not commit to annexation even if it was deferred for a number of years.

This left LAFCo with no choice but to follow the requirements of G.C. 56133 and require that LAFCo approval be obtained for each sewer connection outside the City boundaries. Even here, LAFCo tried to further facilitate the process by adopting a flat $600 fee, significantly below the actual staff cost of processing the applications.

To facilitate the connection process and keep track of the extensions for future annexation consideration, LAFCo staff commenced working with City staff to determine what sewer connections existed outside the City boundaries. It was a considerable surprise to LAFCo staff when, through this process, it became clear that numerous sewer connections had occurred without seeking LAFCo approval. This necessitated substantial additional work to determine, identify and map each such illegal connection.

It should be kept in mind that the City allowed these connections in violation of state law, and after LAFCo had sent senior City staff several letters specifically reminding them of the requirement to obtain LAFCo approval before allowing the connections. The City also collected its sewer connection fees while now arguing against LAFCo collecting its fees. Had the City followed the law, each of these parcels would have been processed by LAFCo and the actual cost of processing would have been charged and paid by the City. For those 49 connections that occurred before the Commission adopted a flat fee, the cost would have, on average, run about $2,200 per connection application. For those 13 connections after the flat fee was adopted, the cost would have been $600 per application, for a total cost of $115,600 LAFCo is actually now asking for far less than what would have been charged. Many agencies, including the City of Chico itself, charge substantially more for permits to correct violations.

With respect to the $17,606 of LAFCo staff charges, that cost was incurred by LAFCo staff to discover and analyze the illegal connections. That is a cost directly and reasonably the result of the City's negligence in allowing the illegal connections. Likewise the cost of processing the applications is a real cost to LAFCo. You are asking LAFCo to absorb most of those costs. In essence you are asking LAFCo to shift much of the cost of the City's negligent acts on to all of the other agencies that support LAFCo. We believe that would be bad policy and a very bad precedent. It would give Chico special treatment, and relieve the City of the cost and consequence of its actions. It would indicate to all other Butte County agencies that there are likely to be no serious consequences from violating LAFCo law.

Butte LAFCo has maintained a long-standing policy to minimize required agency contributions to the operation of LAFCo by charging those who seek LAFCo action for the cost of processing their applications. We have rarely waived fees in the past, and usually only when there is a strong public interest in LAFCo facilitating the reorganization. If we waive or reduce charges for Chico simply because the City is suffering financial difficulties, we open the door to similar requests from every applicant.

Butte LAFCo must also reject your request to waive our policy requiring annexation of properties requiring sewer that are contiguous to City boundaries. Such a waiver would be contrary to LAFCo's basic mission to promote logical boundaries, orderly development and efficient delivery of services. The City will need to apply to annex the 26 parcels that have received sewer that are contiguous to the City. It will also need to agree to pay the cost of processing such annexations. LAFCo is willing, however, to allow a single application for all of
the properties which should reduce the cost somewhat. The Commission's ultimate goal is to have all of these islands annexed to the City. Therefore as an alternative to piecemeal connection approval and annexation, the Commission renews its previous offer to enter into an agreement with the City to provide for the annexation of the islands. The agreement would impose a binding obligation on the City to complete island annexations over a period of time. This would spread the completion of the annexations over time and allow the City to plan for the extension of services to those areas. Costs for processing these island annexations is likely to be much less costly than the alternative of individual connection and annexation approvals.

Considering the outcome of the recently completed Final Report of the Chapman, Mulberry, and Stewart Avenue Annexation Study for Butte County/City of Chico, it appears the fiscal burden to the City of a comprehensive annexation effort is essentially neutral leaving little reason not to proceed with such an effort.

In order that we are perfectly clear, on what we expect and when, the Commission provides the following direction and specific timeline for achieving compliance as follows:

**Alternative 1 (preferred) - Agreement for Annexation of Entire Islands**

If the City desires to enter into a binding master annexation agreement to include a comprehensive extension of services authorization, it must notify LAFCo in writing by **January 3, 2014**. The City of Chico has until **March 5, 2014**, to negotiate and complete a master annexation agreement that is acceptable to Butte LAFCo. A prior draft was given to the City in July 2012 and presumably the City is therefore already familiar with some of the basic concepts in that prior annexation agreement form. The agreement, at a minimum, shall require the City Council to initiate the immediate annexation of the Chapman, Mulberry, Forest Avenue and the East Lassen Avenue unincorporated area islands utilizing the island annexation provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (California Government Code §56375.3). The effective dates of annexation of each area are negotiable within legal limits and will be identified in the binding master annexation and sewer extension agreement. Failure of the City of Chico to accept the terms in Alternative 1 and promptly notify LAFCo writing by **January 3, 2014**, will result Alternative 2 below becoming effective.

**Alternative 2 - Extension Approval and Annexation for Illegal Connections**

If the City does not notify LAFCo in writing by **January 3, 2014** of its intention to negotiate and complete a master annexation and sewer extension agreement that is acceptable to Butte LAFCo, or it prefers to simply address the illegal connections, we require the following:

2-1. The City of Chico shall submit a single, comprehensive, and complete Butte LAFCo Extension of Services application for the 62 unincorporated parcels that have been connected to the City of Chico's sanitary sewer system without LAFCo authorization. An application processing fee of $37,200.00 shall be submitted with the application (fee is based on Butte LAFCo's current reduced Extension of Services application processing fee of $600.00 for parcels within the boundaries of the Chico Urban Area Nitrate Compliance Program; 62 parcels × $500.00 = $37,200.00). The signed and completed Extension of Services application, along with the application processing fee, shall be submitted to Butte LAFCo by the close of business on February 3, 2014.

2-2. The City of Chico shall initiate an annexation of the 26 parcels with unauthorized sewer connections that are contiguous to City of Chico jurisdictional boundaries as are identified in the table on Exhibit A, and shown on Exhibits B through E, of the LAFCo
December 5, 2013 staff report. Prior to April 1, 2014, the City of Chico shall submit to Butte LAFCo a single, comprehensive, and complete Butte LAFCo annexation application for the 26 contiguous parcels. The annexation application processing fee shall be on a full cost recovery basis, with an initial deposit of $10,000 submitted with the annexation application; and

2-3. As part of the cost of processing the above applications, the City of Chico shall also reimburse Butte LAFCo $17,606 for LAFCo staff's time working on the unauthorized sewer connections issue. The reimbursement shall be received by Butte LAFCo prior to February 3, 2014.

Please understand that this is not an invitation for further negotiation except on very limited issues. If the City fails to meet the deadlines for one or the other alternative, LAFCo will have to consider legal action to compel compliance. If we have to do so, the cost to the City could be much more than what is proposed above and the court would require application to comply in any event.

We do not want to do this and fully expect the City to act promptly to correct the violations. Please advise us no later than Friday, January 3, 2013, how the City desires to proceed. Should you have any questions concerning this matter, please contact our Executive Officer, Stephen Lucas at 538-6819 or via email at slucas@buttecounty.net.

Sincerely,

[Signature]

Carl Leverenz, Chair
Butte Local Agency Formation Commission

cc: City of Chico City Council
LAFCo Commissioners
Scott Browne, LAFCo Counsel
Paul Hahn, Butte County CAO
Jennifer McCarthy, Butte County