

**MEMORANDUM
LOCAL AGENCY FORMATION COMMISSION**

TO: Local Agency Formation Commission

FROM: Stephen Lucas, Executive Officer

SUBJECT: **Agenda Item 5.3 - Update of Sewer Service Extensions in the City of Chico.**

DATE: February 26, 2014 for the meeting of March, 2014

Background

The Commission initially received a staff report concerning the City of Chico connecting 62 unincorporated parcels to its sewer system without LAFCo authorization at its November 7, 2013 meeting. At that meeting the Commission took no formal action on the issue but provided the following direction to the Executive Officer:

1. Agreed to the Chico City Manager's request to delay any decision for 2 weeks to allow the City the time to offer a viable solution;
2. Continued the item to the Commission's December 5, 2013, meeting for consideration of any City of Chico proposed solutions (*none submitted*) and action to remedy the violation;
3. At a minimum, the City is to make application for extension of services request for the 62 unauthorized sewer connections identified at the established fee of \$600 per parcel (total of \$37,200);
4. The Commission desires the City to make application or otherwise commit to annex 26 of the 62 unauthorized sewer connections identified that are contiguous to City boundaries at Butte LAFCo's full cost recovery fee rate;
5. It is preferred that the City achieve the annexation of the 26 parcels by annexing the entire island(s) as the most efficient manner to annex these parcels; and
6. The \$17,606 reimbursement costs are open to further negotiation depending on the City's actions.

At the December 5, 2013 meeting the Commission directed the Executive Officer to prepare a letter to the City outlining the Commission's concerns and providing direction as to the preferred solutions. This letter was delivered to the City on December 19, 2013 and is provided herein as Attachment 1. The City Manager responded requesting additional time to consider the letter so as to allow the City Council the opportunity to agendaize the item and provide direction.

At its January 21, 2014 meeting, the Chico City Council considered the issue and received a staff report from the City Manager that recommended the City Council consider LAFCo's preferred Alternative 1 of executing a master annexation agreement or direct staff to consider some other undefined alternative proposal. The City Council directed the City Manager to approach LAFCo with alternative solutions and it was suggested to have a joint meeting with the Commission to directly address these issues.

At its February 6, 2014 meeting, the Commission received an update on the issue and directed Staff to work with the City staff to schedule a meeting between a subcommittee of Commissioners and City Council members to discuss the unauthorized sewer connections and possible solutions to resolve the matter.

Subcommittee Meeting

A Commission subcommittee (Leverenz, Lando, Fichter) met with a City Council subcommittee (Gruendl, Sorenson, Goloff) on February 21, 2014. The discussion included some history of events - and the City Subcommittee's acknowledgement that ultimately, unincorporated islands should be annexed and the City boundaries be made whole - but mainly focused on possible paths forward. The City maintained its reluctance to initiate island annexations in the near term (10 years) due to its poor fiscal condition, but did reiterate the concept of initiating annexations at such time 50% of parcels were connected to sewer services. There was also discussion concerning the City's possible willingness to reimburse LAFCO \$17,606 for the unauthorized sewer connection research time as a good faith measure while a larger annexation agreement could be negotiated. While no clear compromises were immediately in reach of the Subcommittees, there was agreement to meet again on March 5th which would allow the full City Council to meet on March 4th and offer any input to the City Subcommittee and the LAFCO Subcommittee to provide an update to the full Commission at its meeting of March 6th.

ACTION REQUESTED: Provide direction to staff.

Attachments: 1. 12/19/13 letter from LAFCo to City Manager requesting action.



BUTTE LOCAL AGENCY FORMATION COMMISSION

1453 Downer Street, Suite C • Oroville, California 95965-4950
(530)538-7784 • Fax (530)538-2847 • www.buttelafco.org

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 issue 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 Cortese 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 × \$600.00 = \$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,



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