
COMMISSIONERS

CITY
Maria Nava-Froelich
CITY
Jason Jackson
COUNTY
Michael Kelley, Chairman
COUNTY
Raymond "Ray" Castillo
PUBLIC
David H. West
Vice-Chairman



ALTERNATES

CITY
Jim Predmore
COUNTY
Jesus "Jack" Terrazas
PUBLIC
Ralph Menvielle

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EXECUTIVE OFFICER
Jurg Heuberger, AICP, CEP

LEGAL COUNSEL
Ryan D. Childers

ACTION MINUTES OF THE REGULAR LAFCO HEARING

September 22, 2016

8:30 a.m.

El Centro City Council Chambers
1275 Main Street, El Centro, CA

VOTING COMMISSIONERS PRESENT: Michael Kelley, Chairman
David West, Vice Chairman
Jason Jackson
Jack Terrazas
Maria Nava-Froelich

ALTERNATE COMMISSIONERS PRESENT: Ralph Menvielle

ABSENT: Raymond Castillo
Jim Predmore

STAFF PRESENT: Jurg Heuberger, Executive Officer
Julie Carter, Accountant
Paula Graf, Clerk
Ryan Childers, Legal Council

REGULAR SESSION OF THE LAFCO CALLED TO ORDER AT 8:30 A.M.

3. Approval of Minutes from May 26, 2016

Motion by Commissioner West and passed by the roll call vote of Froelich, Jackson, Kelley, West and Terrazas.

4. Approval of Consent Items:
 - A. Project Report Update
 - B. Transfer of Property to I.C. Historical Society
 - C. Fee Schedule

Motion by Commissioner Froelich and passed by the roll call vote of Froelich, Jackson, Kelley, West and Terrazas.

5. Public Comments: None

ANNOUNCEMENTS

6. A. Announcements by the Commissioners.

Commissioner Kelley stated the annual CALAFCO conference is coming up in October. Commissioner Kelley is on the awards Committee and the Committee is reviewing volumes of submissions for the awards.

Commissioner West stated he attended the Southern Region of LAFCO's meeting and discussed issues amongst the LAFCO's. The meetings have been reduced to two per year. There are no major updates to report at this time.

Commissioner Froelich stated the Calipatria Unified School District is having a grand opening ceremony for the Calipatria and Niland Resource Center on September 28th from 10:00 to 11:30am. Commissioner Froelich is the Director of the Resource Center.

Commissioner Jackson stated there will be a town hall meeting at the Imperial Irrigation District board room tonight from 5:30-7:00. There will be a presentation regarding the impending ballot initiatives for a sales tax increase and a 3% percent TOT increase for the City of El Centro. Commissioner Jackson is also proud to announce the City broke ground on the Veterans Memorial at the Bucklin Park. There will be an unveiling ceremony on November 11th.

- B. Announcements by the Executive Officer.

Mr. Heuberger stated that registrations have been completed for those who will be attending the CALAFCO conference. The Commissioners were provided with the LAFCO's Financial Statements/Audit for fiscal year ending June 30, 2015 by White Nelson Diehl Evans LLP. An audit is a requirement on an annual basis. The financials are in order due to the tremendous efforts of Ms. Julie Carter, Accountant to LAFCO. The Commissioners have also been provided with a letter from the new auditors stating that "professional auditing standards require that, as part of the audit, we inquire of those in governance to ascertain whether or not the Commissioners have knowledge of matters that might have a bearing on the auditor's risk assessment for the annual audit of the Commission's financial statements." If the Commission has any questions or concerns, they can contact LAFCO or the auditors.

DISCUSSION/ACTION/DIRECTION ITEMS

7. **Discussion/Action/Direction regarding the Seeley County Water District (SCWD 1-15)**

Mr. Heuberger stated the SCWD has been on the agenda several times. Over the past few months Mr. Heuberger has made a number of efforts to meet with the SCWD Board including prescheduling the LAFCO to be placed on the District's agenda. The one meeting he attended, only one board member was present. Several meetings were cancelled due to the fact a quorum was lacking. Attempts to meet with the full board have been unsuccessful. Individual conversations with a couple of the board members have occurred either by phone or by meeting at the LAFCO office. Mr. Heuberger has expressed his concerns to the board members and has been attempting to compile information. An updated Service Area Plan is required. The update started about 1.5 years ago. Mr. Heuberger, P. Harris and the former general manager had met on several occasions and were approximately 50% completed. The Service Area Plan update stalled partly due to the termination of the former manager and also internal issues with the SCWD board. The primary objective of the LAFCO is to ensure the district is providing adequate service and are financially sound. The LAFCO is attempting to communicate with the SCWD Board to express several concerns and to also offer assistance. The Commission does have the authority to terminate a district but considers that option as a last resort. The primary goal is to see if we can help the district remain as a sound financial viable entity and the ultimate decision if that doesn't work out could be a dissolution. That kind of dissolution would require a successor district, a new district, or a similar type of district. In most common cases that becomes a County Service Area and the Board of Supervisors becomes the governing agency. The county Board of Supervisors is not enthusiastic with that option. The reality is the district has to provide the service or another district does. Mr. Heuberger is attempting to encourage the SCWD board members to have a meeting and to get on track.

Commissioner Kelley asked if it would be beneficial to schedule a meeting under the authority of the LAFCO.

Mr. Heuberger responded yes that would be the next step.

Commissioner Froelich asked how outdated the Service Area Plan is.

Mr. Heuberger stated the Service Area Plan is approximately 8 years old and is supposed to be updated every 5 years. The Commission has granted some leniency years ago because of the downturn in the economy.

Commissioner Jackson asked if we are at the point where we need to say we are going to set a date and time and if the SCWD Board doesn't attend then the LAFCO will start the dissolution process.

Mr. Heuberger replied the goal is to timely meet with the SCWD Board prior to the next LAFCO hearing. If that doesn't happen then this would be on the next agenda as a directive.

Mr. Ralph Menvielle stated he had the opportunity to attend two meetings at the SCWD and believes the people at the SCWD are good people and concerned for the Seeley residents. One of the meetings there were about 15 people from the public in attendance and various concerns were raised. One of the concerns was regarding a \$22,000 expenditure on a UV system that was required to be in compliance that was not voted on by the board. A fine of \$105,000 could essentially be imposed without the compliance. This item should have been reason to call an emergency meeting. The SCWD lacks the education on how the meetings should work and how the board is supposed to function. There are public outcries during the meetings. Someone has to sit down with them and ask them to work together because right now the board isn't working together. Mr. Heuberger stated it's dysfunctional and it is dysfunctional, there are a lot of arguments. There needs to be some help to get them to work together.

Mr. John Kemp, SCWD Consultant stated he wants to clarify some of the points. Mr. Kemp authorized the expenditure of the \$22,000 for the UV system. Mr. Kemp started working for the SCWD in February 2016 and knew the compliance project had to be completed fast. The work started immediately and had an August 1st deadline. The fine from Regional Water Quality Control Board could potentially be \$105,000 and are awaiting the outcome since the SCWD was three days late. He stated when reviewing the financials please also look at the conditions of the facilities along with that review. Last month was the only negative month since he took over. The SCWD cannot afford to spend more money. In some areas items aren't getting completed, the necessities to make clean safe water and meet the requirements of the RWQCB are being completed.

Commissioner Terrazas stated some of the smaller districts have issues with collection of timely payment and asked if it's an issue with the SCWD.

Mr. Kemp replied that collection of payment is not an issue.

Commissioner Kelley stated he is confident in Mr. Heuberger in investigating what needs to be done.

Mr. Patrick Harris, Director of the SCWD stated he addressed the Commission at the last meeting and thanked them for their time and patience. The basic issue is education, but if you have a majority of the board who ignore the rules or procedures then it doesn't work. He appreciates the Commissions willingness to help. Basically right now it's 3 board members who basically refuse to show up. There were five meetings this last summer and Mr. Harris was the only one to show up on a number of occasions. There is no forward agenda from month after month. The Holt Group has done an outstanding job with the compliance project that started two weeks before deadline. The preliminary work was completed about a year ago. This item has been on the agenda month after month but no board was present to vote and the same issue with the Service Area Plan is that it's never been on the agenda. Mr. Harris is put in the position of being the guy saying we need to do these things and is told to stay quiet. The main issue is we have a rate study that's been voted on but stalled out for conflicting reasons. If no action is taking place it's because the items are not on the agenda, not being debated or voted on. All the board members need to attend and participate in the meetings.

Commissioner Castillo asked if there is a designated chair person.

Mr. Harris replied yes, Ms. Beatriz Scroggins is the SCWD Chairperson.

Motion by Jackson to authorize Mr. Heuberger to hire extra help for the financial review of the SCWD and passed by the roll call vote of Froelich, Jackson, Kelley, West, and Terrazas.

PUBLIC HEARING ITEMS

8. **Public hearing to consider the approval of the agreement between the Heber Public Utility District and the City of El Centro (HPUD 1-15)**

Mr. Ryan Childers excused himself from this item due to a conflict of interest. He was the interim City Attorney for the City of El Centro at the time this agreement was being processed.

Mr. Heuberger stated that this item was discussed previously and the Commission directed the two agencies to come to a written agreement and provide said agreement to the LAFCO. The

agreement between HPUD and the City of El Centro is now completed and before the Commission for approval.

Motion by Commissioner West and passed by the roll call vote of Froelich, Jackson, Kelley, West, and Terrazas.

9. **Public hearing to consider the approval of the Service Area Plan/Municipal Service review for the Bard Resource Conservation District (BRCD 1-16)**

Mr. Heuberger stated this is a Service Area Plan and Sphere of Influence review. This is a very small district that provides limited services with an almost a non-existent budget. Mr. Heuberger has corresponded with the District and is recommending the approval of Option #1.

Motion by Jackson and passed by the roll call vote of Froelich, Jackson, Kelley, West, and Terrazas.

10. **Public (INFORMATION ONLY) hearing to consider the dissolution of the Winterhaven Fire District (WFD 1-15)**

Mr. Heuberger stated this is not a hearing to consider the dissolution of the District. This is an informational hearing to solicit information from the public, brief the Commission and allow the public to come forward with any issues or concerns they may have. Mr. Heuberger met with the WFD Board on at least three occasions, and I.C. Fire Chief Tony Rouhotas was also present at the meetings. The WFD voluntarily ceased to provide services several months ago. The WFD has three board members and one attempted to resign at the last meeting. Mr. Heuberger asked the board member not to resign, and he agreed. Accountant to LAFCO Ms. Julie Carter has spent an enormous amount of time reviewing the WFD financials considering the limited information available. At this time the WFD has less than \$1,000 in the bank. The WFD owns a limited amount of equipment, owns a fire station building, and a dodge ram truck that was primarily used by the WFD Fire Chief. The dodge ram truck has equipment that may have been installed/purchased with grant funding. Because of this, the LAFCO may have a tough time selling the truck; however it may be of use to the county. The WFD had a fire engine and an ambulance. The ambulance is paid off and the fire engine has a substantial balance owed. The ambulance and the fire engine were taken to a company in San Diego called Fire ETC; this is the same company that the fire engine was purchased from. The WFD stated that Fire ETC had requested the return of the fire engine but there is no paper trail that shows it was asked to be returned. The ambulance was also taken to Fire ETC but there is also no paper trail. Mr. Heuberger spoke with a representative of Fire ETC who has been cooperative and stated he had paid \$5,386 to WFD for the purchase of the ambulance. Mr. Heuberger asked the WFD when and who authorized the sale of the ambulance. The WFD Board responded they didn't authorize the sale of the ambulance and the WFD Fire Chief stating the Board did authorize the sale. Mr. Heuberger asked the WFD where the check from Fire ETC is. The response from WFD was that the check is in an office that is locked and the key is at the home of the current WFD Fire Chief in Salton City. Mr. Heuberger asked that the check be turned into LAFCO, three weeks have passed and the LAFCO hasn't received the check. Mr. Heuberger also asked if the check has been cashed and he has not received a response. The WFD does not have either a budget or any audit documentation. The LAFCO placed a legal and classified advertisement in the Yuma Sun asking for anyone who may have outstanding debt to come forward and provide that information to LAFCO. The LAFCO received about \$5,000 in claims. Mr. Heuberger anonymously received information indicating there may be approximately \$30,000 in outstanding debt against the WFD. Mr. Heuberger has not contacted everyone on that list. An ice machine and a water machine were returned to the debtors after information was verified that it was on lease with the WFD.

Commissioner Terrazas asked who owns the building.

Mr. Heuberger responded that the WFD owns the building. Mr. Heuberger was advised there is a communication tower on the WFD property that was permitted by the County about 15 years ago and a CUP was scheduled to go before the IC Planning Commission. Mr. Heuberger requested that the IC Planning Commission continue the hearing on the CUP for SBA in order for the LAFCO to review the issue with the tower. Mr. Heuberger spoke to SBA and was provided information with the exception of the amount that was paid, when it was paid and under what terms. Mr. Heuberger stated to the best of my knowledge between rumors and finances, the County permitted a CUP to SBA. Typically the way it works is a monthly payment would have been made to the WFD from SBA. At some point in time the WFD and SBA entered into an agreement to what I consider was to buy out the lease. There is some language in the agreement that is questionable in terms of land usage, but that's the counties issue and not LAFCO. The information that the LAFCO needs are how much was paid and when so that we can go back and trace what that money was used for. In reviewing the WFD financials there is an amount that looks like it is from the buyout provision. The land use issue relative to the tower is between the county and SBA when they reconsider the CUP extension. Ordinarily regarding a fire district the LAFCO looks at it as a standpoint of a successor district providing services or the county being the successor. In Niland as you recall the county didn't want to form a new district. In Winterhaven the county is already committed to building a fire station and is already providing services in that area. Similar to Niland, there is no need to form a successor district since the county is already providing and willing to provide ongoing service. In Niland the station was transferred to the county and there was no reason to give it to anyone else. There were no outstanding debts so the assets were transferred to the county. The situation with the WFD is they have debt and it is the obligation of the LAFCO to review what assets the WFD may have to sell and possibly generate revenue to offset the debt. The assets the LAFCO is aware of are the ambulance and the building. If from the possible sale of assets there is sufficient cash to settle the debt then the building may be transferred to the county. If there is not then an option would be to sell the property publicly or to the county. The county may have a potential interest in the building primarily for storage. For example if we ultimately come to a vendor list of \$10,000 in debt, the LAFCO's position would be that if we don't have enough revenue after the sale of property, then the county could essentially pay the difference and utilize that revenue to settle the debt. If we don't go that route, and the county doesn't want the building, then we have to sell the building. There is a tower sitting on the property and whoever would buy the property would not receive any revenue from SBA since the lease was bought out. The county could technically say they wouldn't renew the CUP and have SBA remove the tower. SBA paid out the lease as a lump sum to the WFD. If we sell the building at auction, any buyer would be stuck with a tower and not receive revenue. The building isn't in the best of shape, and the tower is also an issue. The county may be interested in the building.

LAFCO Legal Counsel Mr. Ryan Childers stated it's a peculiar arrangement between SBA and the WFD in buying out the lease. A lump sum was paid to the WFD and an easement was granted which is perpetual in nature, and essentially arguably subdivided out the piece of the property. That is an issue between SBA and IC Planning.

Mr. Heuberger stated his argument would be there might be a violation of the map act. Mr. Heuberger stated the county counsel is reviewing the agreement. The LAFCO's issues are not with land use. This hearing is not to dissolve the district, although in the end we don't have many choices. The problem is we have the building, the fire engine, and the ambulance. The problem with the engine is that there is money owed against the engine, it is not an asset that we could sell. The sale of the ambulance is in question, number one how did the board arrive to the

\$5,000. The board stated that was the amount that was offered. The ambulance itself may not be worth \$5,000 but may be worth that with the equipment. If there is grant funded equipment in the ambulance then there has to be a review of what was purchased with the grant funding. There have been a number of hours spent by the LAFCO Accountant Julie Carter trying to figure out the financials. The WFD did not have any bookkeeping, audits, or budgets and when you ask the board there is never a definite answer. Mr. Heuberger and staff are trying to piece together as much information. The biggest obligation is to try and settle the debt obligation. There were also several credit card charges that occurred in one day and a criminal investigation has been discussed.

Commissioner Froelich asked if the county can use the building.

Mr. Heuberger responded the county is already committed to building a new station in Winterhaven and could have a potential use for storing the sheriff department items on the WFD parcel. A phase I environmental assessment and a preliminary title report was completed. If the property is sold publicly then an appraisal will also need to be completed. Bottom line is Mr. Heuberger didn't want to spend money on an appraisal if the property would be transferred to the county. The WFD debt is between \$5,000 and \$30,000.

Commissioner Jackson stated he understands we want to make the vendors whole as possible, can the LAFCO be first in line as a creditor. Do we have the authority to take some of those funds and pay the LAFCO.

Mr. Heuberger replied yes, we are including the LAFCO costs in the total debt. We've spent hard money on the phase I environmental and the title report, and those he would classify as being entitled to being reimbursed.

Ms. Emily Murray, Legal Counsel to SBA stated she appeared at the CUP hearing and has offered to speak with county counsel. Ms. Murray stated she wants to explain a little bit about how lease buy outs in the wireless industry work. It's a fairly common practice for rooftop facilities and less common for tower facilities. Many wireless facilities are mounted on the top of commercial rooftops and are usually not the practice of the wireless companies to own the building or own the underlying ground. A lease agreement with the building owner is common practice and in this case the lease agreement is for a tower on the ground. Often times in lieu of monthly rent building owners request a lump sum which is a lease buyout. With a lease buy out, the leasehold interest in the land is converted to an easement and the building owner receives a onetime usually large payment. There are companies that are in the business and are lease aggregators that buyout rooftop leases. The third parties will turn into leases or easement agreements with the building owners. Where it gets sticky is the scenario that is unfolding here with the WFD. As an example, there's a lease buyout and then two years later the building is being sold and the new owner doesn't have any revenue stream. The wireless facility does have an easement and a right to be there, and the new owner is aggravated. As buildings change hands along the line, this issue comes up. It's an unfamiliar scenario here and want everyone to understand it's a common industry practice and not without issues that come up. SBA does want to work with the county and the LAFCO and apologizes for any confusion. To answer the specific questions, SBA paid the WFD approximately \$90,000 to buyout the lease subject to a credit for money that was already paid during the year of the buyout. The buyout was approved April 22, 2013 by the WFD board. The monthly lease payment prior to the buyout was a little less than \$8,000 per year. So the lease buyout payment would have been less than the \$90,000. The WFD continues to own the land that the tower is on and SBA continues to be tower operator. The owner of the land and operator didn't change because of the lease buy out, it changed from a lease to easement. It is a perpetual easement. The easement is a real property interest, it doesn't go away because the

tower is removed or the CUP is no longer active. If SBA took the tower down or the county didn't renew the CUP the easement would remain unless SBA elects to terminate.

Mr. Heuberger asked if the county doesn't renew the CUP and the tower is removed, does the easement dissolve.

Ms. Murray responded that the easement is a real property interest; it doesn't go away if the land is sold, the tower is removed, or the CUP expires. The control over the site is a function of the easement agreement. If SBA removed the tower or if the county didn't approve the use, the easement still remains. If the commission decides to sell the property there is now an easement on the title. SBA in a sense owns that part of land. SBA would be a creditor in line and would request to be paid back. It's as if SBA owns the parcel that the tower sits on. We do have a property interest that was paid for. If the net effect of all of this is someone comes to SBA and asks for rent or asks for the easement agreement to be terminated, then SBA would request to be paid back the \$85,000- \$90,000.

Mr. Heuberger replied he doesn't necessarily agree with the amount stated by SBA. In addition to the vendor debt, SBA may also become a creditor and will add to the WFD debt. He thanked Ms. Murray for her attendance today.

Mr. Ralph Menvielle stated he was at the WFD meeting in August. During the meeting it was stated that the firefighters and the secretary have not been paid for over a year and they should be added to the vendor list.

I.C. Fire Chief Mr. Tony Rouhotas stated his concern is over the past several years the WFD have taken some homeland security monies that are funneled through his department. When Mr. Rouhotas took over he didn't allow WFD to make purchases. I.C. long term loaned equipment to the WFD and his office is ultimately responsible for the auditing process for 5-7 years down the line. Mr. Rouhotas made it clear the last time he spoke to the WFD chief that there are items at the WFD that cannot be sold or transferred even if they are damaged. When items are damaged Mr. Rouhotas submits a report to the state.

Mr. Heuberger responded that what we can do is go through the list of items and confirm if they are at the WFD.

Commissioner Jackson asked who has access to the building and if we could change the locks.

Mr. Heuberger stated he doesn't know. The Winterhaven Water District also has access rights because part of their water system is on the property.

Ms. Esperanza Colio, I.C. Economic and Development Manager stated about 5 years ago the county secured grant funds for improvements to the WFD facility and also for the purchase of small equipment. The county has an inventory of those items. We would like for those items to be secure. Part of the grant funding is the item has to be in place and in service for the life of the item. If an item is broken or no longer in use then it has to be itemized and it cannot be sold or transferred. It would be returned to the county. Ms. Colio recommends checking to see if items were purchased with USDA funding as well. Due diligence needs to be completed.

No action was taken.

EXECUTIVE SESSION

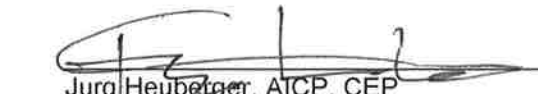
11. Anticipated Litigation

The Imperial County Local Agency Formation Commission will recess to closed session with its attorney regarding anticipated litigation in that:

Imperial County Local Agency Formation Commission to Initiate Litigation. Based on existing facts and circumstances, LAFCO had decided to initiate or is deciding whether to initiate litigation. There is one (1) such potential case. (Government Code 54956.9(c).

Mr. Heuberger stated there is no update on this item. No action was taken.

Mike Kelley, Chairman



Jurg Heuberger, ATCP, CEP
Executive Officer to LAFCO