

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: JANUARY 13, 2015
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
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TO: LOCAL AGENCY FORMATION COMMISSION



SUBJECT: Agenda Item #8: Special Study for Daggett, Newberry and Yermo
Community Services Districts including Plan for Service and Service
Review

RECOMMENDATION:

Staff recommends that the Commission take the following actions related to LAFCO 3176:

1. For environmental review certify that the special study to include a plan for service and service review update are statutorily exempt from environmental review and direct the Executive Officer to file the Notice of Exemption within five (5) days.
2. Receive and file the special study to include a plan for service and service review update for the Daggett, Newberry, and Yermo Community Services Districts.
3. Make the determinations related to the service review update required by Government Code 56430 as outlined in the special study.
4. Determine that the districts are not in compliance with the following constitutional and statutory requirements and direct LAFCO staff to monitor and update the Commission biannually until all items below are satisfied:

All Districts

- a) Adopt and annually review reserve policies pursuant to Community Services District Law Section 61112.
- b) Forward a copy of the final budget to the County Auditor pursuant to Community Services District Law Section 61110.

- c) Adopt an annual appropriations limit by resolution allowing the expenditure of the proceeds of taxes and review the annual calculation as a part of the annual financial audit, pursuant to Article XIII B of the State Constitution, which is further acknowledged by Community Services District Law Section 61113.

Daggett CSD

- d) Continue to work with the County to address and formalize a lease arrangement and/or title transfer for the Daggett Community Center land and improvement.
- e) Provide LAFCO with a copy of all future water quality information provided to the public, to include water quality control reports, occurrences of contamination, and boil water orders.
- f) Adopt an annual budget that conforms to generally accepted accounting and budgeting procedures by September 1 of each year pursuant to Community Services District Law Section 61110.

Newberry CSD

- g) Recommendation #5 from the 2012-13 Grand Jury Report reads for Newberry CSD to: " Work with the Board, County Auditor, and utilize resources such as the California Special Districts Association to develop a basic accounting manual". The CSD's March 2014 response to the Grand Jury reads, "Due to limited resources and the intrinsic limitations of a part time staff, our audit firm and our own Treasurer, are developing an accounting manual based on generally accepted accounting principles, to be implemented in the immediate future".

In its response to the draft staff report, Newberry CSD identified that such an accounting manual would be a one-page item identifying payment policies. Nonetheless, the district notified in writing to the Grand Jury that it would develop an accounting manual. The Commission requests that the district either update the Grand Jury on this matter or provide the Grand Jury and LAFCO with a copy of the accounting manual regardless of size and content, upon approval.

- 5. Determine that the Commission will not initiate consolidation but that it will continue to monitor the districts for compliance with State Law and County regulations.

BACKGROUND:

The 2012-13 San Bernardino County Grand Jury report investigated the Newberry Community Services District and identified numerous issues and challenges related to governance, accounting and financial management, and internal controls. A single finding from that Grand Jury report related to LAFCO, identified as Recommendation #15, recommending that LAFCO:

“Review suggestions made in its 2009 report and include more robust analysis of governance and reorganization options for the next Service Review of the District, scheduled for 2014.”

At the September 2013 hearing the Commission initiated a special study for the Newberry CSD and the bordering Daggett and Yermo CSDs based upon the recommendations within the 2012-13 Grand Jury report. The Commission’s direction also included the requirement for preparation of a plan for service to address the various government structure options.

COMMISSION WORKSHOP:

At the October 2014 hearing, staff presented the draft staff report in a workshop session for Commission review, input, and direction before conducting a community meeting. At the October hearing, the Commission took no formal action nor did it direct that any changes in the draft report be provided.

A few minor updates have been made to the draft staff report that was presented during the Commission workshop and the community meeting. The updates do not alter the conclusions of the special study and include: staff and board composition and comments on the draft report following the Commission workshop provided by Daggett CSD which have been added as Attachment #5c to the final special study report. The final report is included as Attachment #1 to this report.

COMMUNITY MEETING:

On December 10, staff conducted a community meeting to review the draft special study report with the residents and landowners of the Districts at the Silver Valley High School in Yermo. The registered voters and landowners within the boundaries of the CSDs and the assigned spheres of influence were provided an individual mailed notice of the community meeting. Approximately 150 persons attended the meeting which included community members along with the representatives of the boards of directors and staffs of the districts. A copy of the minutes from the community meeting are included as Attachment #2 to this report. The sentiments from the board members were in opposition to any potential reorganization. A few comments from the general public were voiced which included positions of opposition to or acceptance of the special study report.

SURVEY:

During the community meeting staff outlined its non-scientific survey to gauge the public’s views on the report. The survey was accessible via the internet as well as paper (to allow for mail-in survey responses). As of the date of this report, the survey had 67 respondents with 60 indicating that they read the staff report and 55 indicating that they attended the community meeting. The summarized results of the survey are below and a full copy of the survey results are included as Attachment #3 to this report.

When asked for their preference for continuing streetlighting, park and recreation, and fire response and emergency medical services for their respective communities:

- The landowners or registered voters within Yermo and Daggett CSDs responded with:
 - 54% - Retention of Existing Special Districts
 - 30% - Consolidation with the other districts
 - 8% - Formation of a Joint Powers Authority
 - 8% - No preference on the matter

- The landowners or registered voters within Newberry CSD responded with:
 - 90% - Retention of Existing Special Districts
 - 5% - Consolidation with the other districts
 - 5% - San Bernardino County Fire Protection to provide services to Newberry

Therefore, the sentiments voiced at the community meetings and received via the survey generally indicate the desire for retention of the status quo. Important to note, this survey was not a randomized survey and includes responses of all those seeking to provide an opinion.

CONTINUED MONITORING OF THE DISTRICTS BY LAFCO:

The service review update identifies numerous areas where the districts fail to comply with the State Constitution, State Law, and generally accepted good-governance practices. These issues were outlined in the original service review in 2009 LAFCO and continued through the update process. Staff recommends that the Commission determine that the districts are not in compliance with the following requirements and direct staff to continue to monitor progress to rectify the problems and update the Commission every six months until all of the items below are satisfied.

All Districts

1. Adopt and annually review reserve policies pursuant to Community Services District Law Section 61112.
2. Forward a copy of the final budget to the County Auditor pursuant to Community Services District Law Section 61110.
3. Adopt an annual appropriations limit by resolution authorizing the expenditure of the proceeds of taxes and review the annual calculation as a part of the annual financial audit, pursuant to Article XIII B of the State Constitution, which is further acknowledged by Community Services District Law Section 61113.

As of the date of this report, LAFCO staff has not received any information from Daggett CSD and Yermo CSD on their intent to adopt the appropriations limit.

Newberry CSD has responded to the draft staff report and has indicated that it will begin work on formulating the appropriations limit in the near future.

Daggett CSD

4. Continue to work with the County to address and formalize a lease arrangement or title transfer for the Daggett Community Center.

The Community Center is located on County property at 35277 Afton Street in the southern portion of the District. According to staff at the County Department of Community Development and Housing, there is a lease agreement from 1982 between the County and Daggett CSD for the facility to be on County property. The term of the lease is for 30 years with two 10 year options to renew. However, neither the County Department of Community Development and Housing, County Real Estate Services nor Daggett CSD staff could provide a copy of the lease to substantiate the terms of the agreement.

Included as Attachment #4 to this report is a copy of the recorded grant deed for the parcel and information on the parcel from the County Assessor. Both identify that the parcel is in the name of the County. Further, there is no record with the County Assessor of a transfer of the land or improvements to Daggett CSD or any other party. Therefore, the concerns about the use of the facility, insurance, maintenance, etc. need to be resolved to eliminate the potential financial obligation to the County. LAFCO staff remains available and willing to assist in resolving this issue.

5. Provide LAFCO with a copy of all future water quality information provided to the public, to include water quality control reports, occurrences of contamination, and boil water orders through the initiation of the second cycle North Desert Service Reviews.
6. Adopt an annual budget that conforms to generally accepted accounting and budgeting procedures by September 1 of each year at a noticed hearing pursuant to Community Services District Law Section 61110. Failure to comply with this requirement will necessitate further action by the Commission to resolve the issue.

Newberry CSD

7. Recommendation #5 from the 2012-13 Grand Jury Report reads for Newberry CSD to: " Work with the Board, County Auditor, and utilize resources such as the California Special Districts Association to develop a basic accounting manual". The CSD's March 2014 response to the Grand Jury reads, "Due to limited resources and the intrinsic limitations of a part time staff, our audit firm and our own Treasurer, are developing an accounting manual based on generally accepted accounting principles, to be implemented in the immediate future".

In its response to the draft staff report, Newberry CSD identified that such an accounting manual would be a one-page item identifying payment policies. Nonetheless, the district notified in writing to the Grand Jury that it would develop an accounting manual. LAFCO requests that the district either update the Grand Jury on this matter or provide the Grand Jury and LAFCO with a copy of the accounting manual regardless of size and content, upon approval.

CONTINUING EDUCATION FOR SPECIAL DISTRICTS:

During the review of the question of whether or not to conduct the special study, the Commission directed staff to look into providing for education on the responsibilities and requirements for operating an independent special district. As a part of this special study, staff contacted the Special Districts Risk Management Authority (SDRMA) to conduct local training on board governance. The training held in March 2014 provided access to resources that the districts may not have had otherwise and was attended by 50 representatives.

It is the staff's position that the Commission continues to hold this position regarding on-going educational opportunities. Therefore, it is staff's recommendation that the Commission build upon this educational pursuit and continue to provide governance training for the special districts within the County. Staff will be contacting SDRMA and the California Special Districts Association, and others to be determined, for future educational opportunities. As a part of the FY 2015-16 Budget, staff will present the Commission with an outline of the program proposed along with estimated costs.

ENVIRONMENTAL CONSIDERATIONS:

The Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates, has indicated his recommendation that the review of LAFCO 3176 is statutorily exempt from California Environmental Quality Act (CEQA). This recommendation is based on the finding that the special study is not judged to pose any adverse changes to the physical environment. Therefore, the special study is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061 (b)(3). A copy of Mr. Dodson's analysis is included as Attachment #5 to this report.

OPTIONS FOR FUTURE ACTION:

The Special Study recommends that at a minimum, Daggett CSD and Yermo CSD consolidate; however, the preferable course would be for Daggett CSD, Newberry CSD, and Yermo CSD to consolidate into a single district to achieve long-term benefits for the residents of these communities. The long-term benefit to the community would be through services which are consistent, allowing flexibility in assigning resources, and streamlining governance and management. The Plan for Service shows that a consolidated district

would be fiscally feasible during the five-year forecast period and beyond, achieving the determination of long term sustainability, at a cost at or below that of the status quo.

The question now is who can and would be willing to initiate an application. The options are:

1. The Districts Initiate an Application to Consolidate

It is unlikely that the districts will initiate a consolidation application given their publicly-stated positions. However, should the districts initiate an application to consolidate through adoption of substantially similar resolutions, the Commission would be required to approve the consolidation and could only tinker with the conditions of approval. Per Commission policy, the fees would be reduced should there be a public benefit for the proposal. Further, the proposal would go through the standard protest process:

- Order consolidation without election unless 25% of registered voters or 25% of number of landowners who own at least 25% of the assessed value of the land or more protest
- Order consolidation subject to an election if 25% or more protest
 - within entire territory, or
 - within any district if any district objects by resolution
- Terminate proceedings if 50% or more of the registered voters protest

This would be the smoothest, yet least likely route.

2. Commission Options

There are a number options for Commission action to effectuate the changes anticipated in the Plan for Service. They are:

a. The Commission has the power to initiate consolidation

Historically this commission has been reluctant to move forward to initiate a consolidation, opting instead to try to entice districts or communities to resolve the issues. The written comments provided by Newberry CSD and Daggett CSD for this special study as well as the comments provided by members of the boards of directors at the community meeting identify retention of the status quo as the sole acceptable governance option. Therefore, initiation by the Commission to consolidate would bypass the boards and place the matter for final approval by the registered voters.

Nonetheless, a proposal initiated by the Commission (consistent with the recommendations or conclusions of the special study) and subsequently approved by the Commission would change the protest process as follows:

- (1) If any of the districts objected to the Commission initiated change (filed by resolution), it would change the protest process from the entirety of the reorganization area (standard) to the individual districts. This is significant in that if only one of the districts objected, the election held in that agency would determine the fate of the overall reorganization.
- (2) Pursuant to Section 57113, 10% protest from landowners within any affected agency would require an election. 10% protest of the voters within the area (or district which objected to the proposal) would require an election. If any of the districts had less than 300 voters it would require 25% protest. A 10% protest in Yermo (800 registered voters) or Newberry (930 registered voters) and 25% for Daggett (200 registered voters) would require an election. Given the position of the districts, this would be anticipated.

Therefore, this option has the least chance of success.

b. The Commission can request an affected agency to initiate reorganization

The Commission could request that an affected agency initiate consolidation by submitting an application to LAFCO. The affected agencies are the County of San Bernardino, Mojave Desert Resource Conservation District, Mojave Water Agency, San Bernardino County Fire Protection District, San Bernardino County Flood Control District, County Service Area 40, and County Service Area 70. It would seem that the only agency that would support the possibility of initiating an application to consolidate the districts would be the County through one of its board-governed districts.

Should the County express an interest in an alternative form of governance (i.e. consolidation with or annexation to the San Bernardino County Fire Protection District with removal of the districts' fire protection powers), it would need to initiate by resolution an application along with the required fees and deposits. However, the liability for the proposal is then placed upon this agency.

c. The Commission can forgo action at this time and continue to monitor the districts

As a third option, the Commission can take a wait and see approach - not take any action at this time to initiate consolidation or request any affected agency to initiate consolidation. Since the issuance of the Grand Jury report, Newberry CSD has rectified many of the deficiencies identified and is the only agency that notified LAFCO that it will begin work to formulate and adopt an appropriations limit. It is hoped that a move towards compliance with the State Constitution and State Law can occur for Daggett CSD and Yermo CSD. Therefore, it is the staff's position that an additional time period to evaluate compliance with the State Constitution and State Law be given.

As noted above, staff recommends that the Commission not take any action at this time to initiate consolidation or request any affected agency to initiate consolidation. However, staff recommends that the Commission direct it to continue to monitor the districts for compliance with the California Constitution and State Law with biannual reports on the progress of satisfying the deficiencies presented. During this period, at any time the Commission can initiate consolidation or request an affected agency to initiate consolidation. This route of action is similar to that of the Rim World Recreation and Park District – where the Commission placed conditions upon the district and signaled its intent to move towards dissolution if the district did not rectify its major deficiencies.

ADDITIONAL DETERMINATIONS:

1. As required by State Law notice of the hearing was provided through publication in a newspaper of general circulation within the area, the *Desert Dispatch*. Individual notice was not provided as allowed under Government Code Section 56157 as such mailing would include more than 1,000 individual notices. As outlined in Commission Policy, in-lieu of individual notice the notice of hearing publication was provided through an eighth page legal ad.
2. As required by State law, individual notification was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.

CONCLUSION:

The Plan for Service discusses structure options for the community to consider that could potentially achieve a consistent level of service and economies of scale. Given the objectives and analysis for the Plan for Service, LAFCO staff's position is that, at a minimum, Daggett CSD and Yermo CSD consolidate to achieve these results; however, the preferable course would be for Daggett CSD, Newberry CSD, and Yermo CSD to consolidate into a single district. The long-term benefit to the community would be through services which are consistent, allows for flexibility in assigning resources, and streamlines governance and management. The Plan for Service shows that a consolidated district would be fiscally feasible during the five-year forecast period and beyond, would be sustainable at a cost at or below that of the status quo. Even given all this information, the position of the residents and board members which have conveyed their opinions to LAFCO staff is to retain the status quo.

Therefore, it is staff's recommendation that the Commission not take any action at this time to initiate consolidation or request any affected agency to initiate consolidation. However, based upon the issues identified in the original and updated Service Review, staff recommends that the Commission continue to monitor the districts for compliance with the California Constitution and State Law and direct staff to return with biannual reports on the progress of satisfying the deficiencies. However, it is noted that should any of the issues worsen, the Commission may initiate consolidation at any time or request an affected agency to do so.

KRM/MT

Attachments:

1. [Special Study – Final Plan for Service and Service Review to include Attachments](#)
2. [Minutes of the December 10, 2014 Community Meeting](#)
3. [Results from Survey](#)
4. [Recorded Grant Deed and Information from County Assessor related to Daggett Community Center Parcel](#)
5. [Environmental Recommendation from Tom Dodson](#)