

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #9 - Status Report on LAFCO 3176 -- Special Study for Yermo, Daggett and Newberry Community Services Districts

RECOMMENDATION:

Staff recommends that the Commission:

1. Note receipt of the status report and file.
2. Set the next status report for the August 2016 hearing for Daggett CSD and Yermo CSD.

BACKGROUND:

At its January 2015 hearing, the Commission completed the special study of the Daggett, Newberry, and Yermo Community Services Districts to address issues identified from the Grand Jury. The special study identified numerous areas where the districts failed 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 and remained unresolved through the special study. The Commission directed staff to continue to monitor progress to rectify the problems identified in the special study and update the Commission every six months until all of the items are satisfied.

The first status update to the Commission was in August 2015. The following is a summary from the first status update:

- Daggett CSD
 - Daggett CSD satisfied the following items: adopted a budget, forwarded the budget to the County Auditor, adopted its annual appropriations limit by resolution, and formalized a lease agreement with the County for the Daggett Community Center.

- Outstanding items were: had either not completed or forwarded copies of its audits to LAFCO and had not adopted a reserve policy pursuant to CSD Law.
- Yermo CSD
 - Yermo CSD did not satisfy any of the outstanding State Constitution or statutory items identified.
- Newberry CSD
 - Newberry CSD satisfied the following items: forwarded a copy of its budget to the County Auditor, adopted by resolution an appropriations limit, and formally approved accounting procedures.
 - The sole outstanding item was adopting reserve policies.

CURRENT UPDATE:

This is the second scheduled update related to the special study. Since the first status update:

- Newberry CSD has satisfied its sole outstanding requirement (reserve policy).
- Daggett CSD has satisfied all but one outstanding requirement (reserve policy).
- To date, Yermo CSD has not satisfied any of its outstanding requirements identified in the special study relating to the State Constitution or CSD Law. Further, the District has not responded to LAFCO staff's requests for information, is experiencing turmoil within the board, and has been operating without a general manager for over three months.

The issues that were to be addressed as identified from the August 2015 status report are outlined below in italics. This is followed by LAFCO staff's analysis of the current situation:

All Districts

1. *Adopt and annually review reserve policies pursuant to Community Services District Law Section 61112.*

Newberry CSD adopted reserve policies at its August 25 meeting and provided a copy to LAFCO. Being so, Newberry CSD has satisfied all of the outstanding requirements identified by LAFCO.

Daggett CSD and Yermo CSD were requested to provide either (1) a copy of the reserve policies along with staff report and minutes, or (2) a statement that the district intends to comply with CSD Law Section 61112. As of the date of this report, both districts have not provided information on this statutory requirement.

Daggett CSD

1. *Originally not included as a monitoring item, Daggett CSD did not complete or provide copies of its FY 2012-13 and FY 2013-14 audits.*

Following the first status update from August 2015, Daggett CSD provided a copy of its FY 2012-13 audit and completed and provided a copy of its FY 2013-14 audit.

Yermo CSD

1. *Forward a copy of the final budget to the County Auditor pursuant to Community Services District Law Section 61110.*

As of the date of this report, Yermo CSD has not provided information on this statutory requirement.

2. *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, Yermo CSD has not provided information on this constitutional requirement. It is noted that LAFCO staff provided background information to the district and its known independent auditor on March 19, 2015 to assist the district in adopting an appropriations limit. Additionally, LAFCO staff has provided all notices and staff reports of its hearings to Yermo CSD, as well as correspondence following the August 2015 update summarizing the first status update.

Yermo CSD – Current Situation

It has been brought to the attention of LAFCO staff by government entities and the press that Yermo CSD is experiencing turmoil and uncertainty within its Board of Directors. Currently, more than one lawsuit has been filed against Yermo CSD (naming board members), two recall petitions have been certified, and the District has been operating without a general manager for over three months. To better understand these developments, LAFCO staff has assembled a timeline taken from news articles from the *Desert Dispatch*:

- **September 2015**
 - Recall effort announced against three District board members: Smith, Berner, and Clougen.
 - Board president Smith at a public meeting announces his resignation, to be effective December 31.

- Director Clougen resigns board position but remains as Fire Chief (an appointed position).
- October 2015 – District board presented with “intent to circulate” notices for recall petition of Smith and Berner.
- November 2015
 - General Manager resigns.
 - District cannot hold a meeting due to lack of quorum.
- December 2015
 - Board President Smith publicly rescinds his resignation that was to be effective December 31. It has been identified that the technical process of the resignation and rescission are in question.
- January 2016
 - LAFCO staff mails letter to District to obtain information for the status update. The letter requests a board and staff roster and an explanation on the lack of movement on the outstanding items from the January 2015 LAFCO special study. LAFCO staff follows up with a fax and phone call with message. As of the date of this report, LAFCO staff has not received any return correspondence or contact.
 - A mortgage company calls LAFCO stating that its phone messages left with the District have not been returned. It is attempting to remove a lien on a property associated with “Yermo Water Community Services District”.
 - A Cure and Correct letter is filed with the board citing Brown Act violations during the December meeting and Mr. Smith’s rescinding of his resignation.
 - The San Bernardino County Registrar of Voters announced that the two recall petitions (Smith, Berner) have been certified.
 - District board appoints a new fire chief.

It is the understanding of LAFCO staff that the District is seeking to fill the general manger position (as directors set policy and general managers implement policy – CSD Law Sections 61040 and 61051) and the vacant seat on the board.

As for the vacant seat on the board, pursuant to Government Code Section 1780(b), the district is required to notify the county elections official of the vacancy no later than 15 days after either the date on which the district board is notified of the vacancy or the effective date of the vacancy, whichever is later. LAFCO staff understands that the board has not yet been able to select a candidate it deems qualified. However, LAFCO staff has confirmed that Yermo CSD has not formally notified the Registrar of Voters of the existing vacancy. Therefore, LAFCO staff questions how an agency can actively seek to the fill a vacancy when it has not notified the County Registrar of Voters of the vacancy as required by law. Further, the with the vacancy taking place in September, the district is past the 60-day timeframe to make an appointment (Section 1780(c)). As

a result, the lack of adherence to state law concerning notifying the ROV and filling the vacancy within the statutory timeframe results in a government not responsive to the representation needs of those within the district and may be a symptom of larger issues. The code citations from the Government Code concerning vacancies is included as Attachment #3 to this report.

LAFCO has already conducted a service review (2009) and a special study which contained a service review update (2015). Both of these reports detailed the challenges facing the community. Additionally, the reports included recommendations for the community to consider regarding alternative government structures; which were unacceptable to the community.

The next status update is scheduled for the August 2016 hearing. At that time, staff will update the Commission on the results of the recall as well as the current health of the district (governance, management, finances, and service delivery). It is hoped that the district will begin to comply with the outstanding requirements of the State Constitution and State Law.

CONCLUSION:

In concluding this status report on compliance,

- Newberry CSD has satisfied all of its outstanding requirements as identified in the special study.
- Daggett CSD has satisfied all but one outstanding requirement as identified in the special study (adoption of a reserve policy pursuant to CSD Law).
- To date, Yermo CSD has not satisfied any of its outstanding requirements from the State Constitution or CSD Law as identified in the special study. Additionally, the District is experiencing turmoil and uncertainty.

LAFCO staff will continue to provide assistance to the districts whenever requested to help achieve compliance with state law and good governance objectives.

Staff recommends that the next status report on compliance be scheduled for the August 2016 hearing for Daggett CSD and Yermo CSD. Newberry CSD has satisfied all of its outstanding requirements; therefore, it will not be included in subsequent status updates. At that time, staff will update the Commission on the results of the Yermo CSD recall as well as the current health of the district (governance, management, finances, and service delivery).

For Yermo CSD, the lack of adherence to state law concerning notifying the ROV and filling the vacancy within the statutory timeframe results in a government not responsive to the representation needs of those within the district.

Should the Commission have any questions, staff will be happy to answer them prior to or at the hearing.

KRM/MT

Attachments:

1. [First Status Report - LAFCO Staff Report dated August 12, 2015](#)
2. [Staff Report for LAFCO Special Study dated January 13, 2015](#)
3. [Government Code, Title 1, Division 4, Chapter 4, Article 2 \(Vacancies\)](#)