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FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)  
EXECUTIVE OFFICER'S REPORT

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AGENDA ITEM NO. 8

DATE: October 13, 2021

TO: Fresno Local Agency Formation Commission

FROM: David E. Fey, Executive Officer 

BY: Juan Lara, LAFCo Analyst II

SUBJECT: **Consider Approval: "Sierra Resource Conservation District Annexation."** A proposed annexation of approximately 235,776 acres to the Sierra Resource Conservation District for territory westward of the current district service area to align with State Route 99. (LAFCo File No. AD-19-3, continued from June 9, 2021 and August 11, 2021)

**Applicant:** Sierra Resource Conservation District.

**Landowners/Parties of Real Interest:** (See Attachment C)

**RECOMMENDATION: Approve by Taking the Following Actions:**

**Action 1:**

- A. Acting as a Responsible Agency pursuant to California Environmental Quality Act ("CEQA") Guidelines, find that prior to approving the proposed annexation, the environmental effects of the Proposal as shown in the CEQA documents prepared, adopted, and submitted by the Lead Agency, were reviewed and considered, and determine these documents to be adequate pursuant to CEQA Guidelines section 15096.

**Action 2:**

- B. Find that the proposed annexation is consistent with LAFCo Policies and the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Government Code sec. 56000 *et seq.* ("CKH")
- C. Find pursuant to CKH and information in the record that:
  - a. The territory is inhabited; and
  - b. Not all landowners and registered voters have consented to the annexation.
- D. Assign the distinctive short form designation "Sierra Resource Conservation District Annexation" and approve the annexation subject to the following conditions of approval:

- a. Pursuant to Fresno LAFCo Policy 103-05, the Executive Officer shall record the approved application if all conditions have been satisfied and once, he or she has determined that the facts pertaining to the application during the time of recording are materially similar to those facts considered by the Commission when the application was approved. Facts, as used in the proceeding sentence, is defined to include, but is not limited to, whether or not the proposed project is materially similar to the project described in any application before the Commission.
  - b. Submittal of corrected legal description and map.
- E. Find that on September 22, 2021, notice was given pursuant to state law and disclosed that there is potential for the extension or continuation of any previously authorized charge, fee, assessment, or tax by the local agency in the affected territory, and that the Commission intends to waive protest proceedings pursuant to Government Code section 56663(a)(b)(c) unless written opposition is received before the conclusion of the Commission proceedings.
- F. Waive further Conducting Authority Proceedings and order the annexation subject to the requirements of CKH.
- G. Find that no written opposition to the proposal was received prior to the conclusion of the hearing and approve the proposal subject to the requirements of CKH, the 30-day reconsideration period, and compliance with all of the above conditions, and waive further conduction Authority Proceedings.

-Or-

- H. If written opposition to the proposal was received prior to the conclusion of the hearing, approve the proposal subject to the requirements of the CKH, the 30-day reconsideration period, and compliance with all of the above conditions, and direct staff to set a protest hearing pursuant to the requirements of the CKH

**Alternative for Commission Action**

**Alternative Actions: Deny or modify application AD-19-03**

If the Commission denies application USOI-193, proposed annexation AD-19-03 will not be consistent with the extant Sierra Resource Conservation District ("Sierra RCD") Sphere of Influence ("SOI"). In this case, staff recommends that the Commission deny without prejudice application AD-19-03.

If the Commission modifies application USOI-193, then approval of proposed annexation AD-19-03 in conformance with modified USOI-193 is recommended.

## **Executive Summary**

This item has been continued twice to allow the affected special districts and Sierra RCD to work on a mutual resolution that addresses the agencies' concerns with LAFCo applications USOI-193 and AD-19-03. The affected special district consists of Alta Irrigation District ("AID"), Consolidated Irrigation District ("CID"), Kings River Conservation District ("KRCD"), Central Kings Groundwater Sustainability Agency ("CKGSA"), and Fresno Irrigation District ("FID").

## **Discussion**

On July 2019, Sierra RCD filed a SOI update application (File No. USOI-193) requesting LAFCo to include approximately 235,776 acres into the Sierra RCD SOI that would expand the District westward to align with State Route 99. The SOI update was necessary to support the District's concurrent annexation application (File No. AD-19-03) to annex the affected territory into Sierra RCD's service area.

On June 9, 2021, the Commission approved an update of the Sierra RCD Municipal Service Review (LAFCo File No. MSR-21-7) prepared pursuant to Government Code section 56430. The Commission then voted unanimously to continue the hearing on the Sierra RCD SOI update application (USOI-193) and the subsequent annexation application (AD-19-03) to the August 11, 2021 LAFCo hearing. The purpose of the continuation was to allow the affected special districts to work with Sierra RCD to find a mutually agreeable resolution that addresses the agencies' concerns with the applications.

The Commission then voted unanimously to continue the hearing on the Sierra RCD's Sphere of Influence amendment application USOI-193 and related annexation application AD-19-03 to August 11, 2021. The purpose of the continuation was to allow several special districts in opposition to the applications and the Sierra RCD to continue dialog on a mutually agreeable resolution.

On August 11, 2021, the Commission reconvened to consider application USOI-193 and AD-19-03. The Commission was informed that the agencies did not reach a mutual resolution within the 60-day negotiation period.

The Sierra RCD general manager informed the Commission of his efforts to address the affected special districts' concerns even though there was not a clear issue that the District could address within the Sierra RCD's purview. Sierra RCD is not a taxing agency and does not have that authority to regulate or manage water supplies. The affected special districts affirmed their opposition to Sierra RCD's applications because of the potential risk to existing and future water supplies.

During the public hearing, the FID general manager expressed to the Commission that the affected special districts preferred the "status quo," if that was not acceptable to the Commission then the affected special districts would ask for additional time to discuss a potential written agreement with Sierra RCD. The primary issue was "water related" goals and language included in Sierra RCD's five-year Long-Range Plan for years 2020 through 2025.

An alternative to the boundary change was suggested by a Commissioner for the agencies to consider during negotiation. Perhaps exploring the options of entering into a Memorandum of Understanding or a Joint Powers Agreement for resource conservation services may allow the agencies to partner together on projects in the affected territory without the need to alter the boundaries of the Sierra RCD.

The Sierra RCD general manager and the FID general manager on behalf of the affected special districts expressed their willingness to work together if an additional 60-day negotiating period was approved by the Commission.

After closing the public hearing, the Commission unanimously voted to continue the hearing to allow an additional 60 days for the parties to negotiate in good faith and seek a resolution and report back to the Commission at its October 13, 2021 hearing.

### **Staff Analysis**

After the 60-day continuation of the hearings for USOI-193 and AD-19-3, LAFCo has not received written evidence that identifies an occasion where a duplication of services occurred among Sierra RCD and either AID, CID, FID, CKGSA, or KRCD.

As October 6, 2021, the affected special districts and Sierra RCD have not reached a mutual agreement.

### **Proposal/Land Use**

- The Proposal consists of the annexation of approximately 235,776 acres.
- Information related to the Proposal's affected territory, land use, proposed development, special districts, surrounding areas, and existing/proposed services can be found on **Attachment A**.
- Should the Commission approve the concurrent SOI update, all affected territories will be within the Sierra RCD sphere of influence and are contiguous to the District's service area (**Attachment B**).
- No zone change is proposed as all affected territories are not proposed for development.
- The territory is inhabited.

### **Revenue and Tax Code Section 99 (b)**

On July 22, 2020 LAFCo issued a notice for jurisdictional change under Revenue and Taxation code section 99(b) to the Fresno County Assessor-Recorder and the Fresno County Auditor Controller/Treasure-Tax Collector. Upon receiving the notice these agencies are to commence calculations and negotiations to determine the amount of property tax revenues to be exchanged between the local agencies whose service area or service responsibility will be altered by the change.

The Sierra RCD general manager advised staff that because the District did not collect, nor did it intend to collect property tax revenue, it did not want to proceed with the tax revenue exchange negotiations under Revenue and Taxation code section 99(b) for the affected territory.

Sierra RCD does not have a regular source of revenue such as fees for services, property taxes, or special assessments. Its future service capacity is anticipated to be funded through the District's ability to secure project-specific state grants and contributions.

### **Sustainable Groundwater Management Act ("SGMA")**

Former Governor Edmund G. Brown Jr. signed California's SGMA into law on September 16, 2014. This three-part legislation requires local agencies to develop groundwater sustainability plans that are compatible with their regional economic and environmental needs. SGMA creates a framework for sustainable local groundwater management for the first time in California's history.

SGMA requires local agencies to form Groundwater Sustainability Agencies ("GSA's") in local groundwater basins by June 2017 and requires the adoption of Groundwater Sustainability Plans ("GSP's") for groundwater basins deemed high priority by year 2020.

Portions of the affected territory are in the Kings River East GSA, North Kings GSA, Central Kings GSA, and South Kings GSA and will be represented by the GSA in which they are located in.

### **Environmental Determination**

The Sierra RCD, acting as "Lead Agency" under CEQA, determined that the proposal is ministerial in nature. The proposed Sierra RCD annexation will not change existing land uses nor change the land use designations depicted by the Fresno County General Plan. Since it can be seen with certainty that the proposal does not have the potential to result in a significant effect on the environment, it is not subject to CEQA pursuant to CEQA Guidelines section 15268 and Public Resources Code section 21080 (b)(1), Ministerial. On July 24, 2019, the Sierra RCD filed a Notice of Exemption with the Fresno County Clerk (#E20190000260).

As a "Responsible Agency" pursuant to CEQA Guidelines, the Commission is required to independently review and consider the environmental review for the proposed SOI update prior to reaching its decision. Therefore, the LAFCo, finds that it can be seen with certainty that the SOI update does not have the potential to result in a significant effect on the environment, and that the SOI update is not subject to CEQA pursuant to CEQA Guidelines section 15061 (b)(3). Therefore, the proposal is exempt from environmental review.

Pursuant to CEQA Guidelines section 15096(i), if the Commission determines that these documents are adequate, A Notice of Determination will be prepared and filed with the County of Fresno Clerk's office in compliance with section 21152 of the Public Resources Code.

**Costs and Other Changes Affecting Residents or Landowners** – None reported by the District.

**Agencies and Individuals Submitting Comments**

- Kevin Tsuda, Environmental Health Specialist III, Fresno Co. Dept. of Public Health
- Chufeng Vang, IT Analyst, Fresno County Elections Department
- Paul Peschel, Kings River Conservation District
- Phillip G. Desatoff, General Manager, Consolidated Irrigation District
- Laurence Kimura, Chief Engineer, Fresno Irrigation District
- Chad Wegley, General Manager, Alta Irrigation District
- Bryant VanderValde, Cadastral Tech III, Fresno County Assessor's Office
- Bill Stretch, General Manager, Fresno Irrigation District

**Territory Boundaries** - The boundaries of the proposed annexation are definite and certain, and the County Assessor has determined that the map and legal description are **not** adequate to file/record with the Fresno County Recorders Office. A condition of approval that the District submit a corrected legal description and map will address this matter.

**Registered Voter Data** - The office of County of Fresno Elections reported that there are **279,582** registered voters in the affected territory.

**Compliance with the Requirements of CEQA (Original Proposal)**

**Lead Agency:** Sierra Resource Conservation District

**Level of Analysis:** Exemption

**Finding:** Exception (see Environmental Documents at [www.fresnolafco.org](http://www.fresnolafco.org) under the Hearing and Workshops tab in the October 13, 2021 file).

**Individuals and Agencies Receiving this Report**

- Ken Price, LAFCo Counsel
- Bernard Jimenez, Deputy Director of Fresno Co. Public Works and Planning
- Steve Haze, Sierra RCD, General Manager
- Chad Wegley, District Manager, Alta Irrigation District
- Phil Desatoff, District Manager, Consolidated Irrigation District
- Bill Stretch, District Manager, Fresno Irrigation District
- David Merritt, General Manager, Kings River Conservation District

**Attachments**

Attachment A - Information related to the Proposal's affected territory

Attachment B - Map of the affected territory

Attachment C - Landowner/APN information

Attachment D - Comment letter for USOI-193 and AD-19-3

Attachment E – June 9, 2021 Agenda item Packet