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October 14, 2009 (Agenda)

October 14, 2009  
 Agenda Item 10

Contra Costa Local Agency Formation Commission  
 651 Pine Street, Sixth Floor  
 Martinez, CA 94553

**Reclamation Services Municipal Service Review and Sphere of Influence Updates**

Dear Members of the Commission:

This matter was continued from the July 8 and August 12, 2009 LAFCO meetings.

On July 8, following a public hearing, the Commission accepted the Reclamation Services Municipal Service Review (MSR) report and made the required determinations pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. The MSR report addresses services provided by reclamation districts 799, 800, 830, 2024, 2025, 2026, 2059, 2065, 2090, 2117, 2121, 2122, and 2137. The MSR report is available on the LAFCO website ([www.contracostalafco.org](http://www.contracostalafco.org)).

On July 8, the Commission also approved, in principle, the SOI and governance structure options as recommended by staff (see Attachment 1), and directed staff to prepare the SOI resolutions for consideration in August. The Commission deferred discussion of regional governance structure options at that time.

On August 12, the Commission continued discussion of the reclamation district SOIs and voted to form a committee to further discuss reclamation district boundary and service issues. Commissioners Glover and Mary Piepho were appointed to the committee. The Commission requested that the committee meet with Dante Nomellini, Sr. and Dante Nomellini, Jr., who provide legal services to a number of reclamation districts, and report back to LAFCO in October.

On August 27, the committee and LAFCO staff met with the Nomellinis. As a follow-up to the meeting, Dante Nomellini, Jr. provided a summary of the key issues discussed (Attachment 2).

In his letter, Mr. Nomellini discusses the potential effects of reclamation district consolidations and dissolutions, noting efforts involved in forming (or reconstituting) a reclamation district, and impacts to state and federal funding and disaster assistance. Mr. Nomellini also suggests that prior to consolidating or dissolving a reclamation district, LAFCO should first consult with the affected landowners.

RECOMMENDATION

Discuss the matter and provide direction regarding SOI updates and future LAFCO action.

Sincerely,

LOU ANN TEXEIRA  
EXECUTIVE OFFICER

c: Distribution

Attachments:

1. Governance Structure and SOI Table
2. Letter dated September 30, 2009 from Dante Nomellini, Jr.

**RECLAMATION DISTRICT (RD) SPHERE OF INFLUENCE (SOI) AND  
GOVERNANCE STRUCTURE (GS) OPTIONS AND RECOMMENDATIONS**

<b>Agency</b>	<b>SOI Options</b>	<b>GS Options</b>	<b>Consultant Recommendations</b>	<b>LAFCO Staff Recommendations</b>
<b>RD 799</b> (Hotchkiss Tract)	<ol style="list-style-type: none"> <li>1. Reduce SOI in the western portion of the District to facilitate detachment of State-owned land (Dutch Slough Tidal Marsh Restoration Project)</li> <li>2. Expand SOI to include Bethel Island</li> <li>3. Retain existing coterminous SOI</li> </ol>	<ol style="list-style-type: none"> <li>a. Detach State-owned land (436 acres) once the Jersey Island Road setback levee has been constructed</li> <li>b. Transfer responsibility for flood protection from BIMID to RD 799</li> </ol>	Reduce SOI in western portion of the District, between Jersey Island Road and Little Dutch Slough, to remove parcel in the Dutch Slough Tidal Marsh Restoration Project area.	Reduce SOI in western portion of the District, between Jersey Island Road and Little Dutch Slough, to remove parcel in the Dutch Slough Tidal Marsh Restoration Project area.
<b>RD 800</b> (Byron Tract)	<ol style="list-style-type: none"> <li>4. Adjust SOI to add 80-acre agricultural parcel on the west side of the District that is within the dry land levee, and remove 200-acre agricultural parcel outside the levee system adjacent to Byron Highway and Clifton Court Road that does not need District services</li> <li>5. Expand SOI to include 172-acre Pantages Bay property in anticipation of proposed residential project (292 single-family dwelling units)</li> <li>6. Retain existing coterminous SOI</li> </ol>	<ol style="list-style-type: none"> <li>c. Consolidate with adjacent RDs (e.g., 2024, 2117)</li> <li>d. Annex 80-acre parcel</li> <li>e. Detach a 200-acre parcel</li> <li>f. Annex the proposed Pantages Bay residential project area (292 single-family dwelling units)</li> <li>g. Transfer responsibility for flood protection from RD 800 to Discovery Bay CSD, as DBCSD provides flood control services in certain areas within its District (this would essentially result in dissolution of RD 800)</li> <li>h. Transfer responsibility for flood protection from DBCSD to RD 800 to consolidate services</li> <li>i. Consolidate Discovery Bay Drainage and Maintenance District and RD 800</li> </ol>	Expand SOI to include an 80-acre parcel where the District currently provide service outside its bounds, and reduce SOI by 200 acres to remove a parcel that does not need District services.	Expand SOI to include an 80-acre parcel where the District currently provide service outside its bounds, and reduce SOI by 200 acres to remove a parcel that does not need District services.
<b>RD 830</b> (Jersey Island)	<ol style="list-style-type: none"> <li>7. Retain existing coterminous SOI</li> </ol>	None identified.	Retain existing coterminous SOI.	Retain existing coterminous SOI.
<b>RD 2024</b> (Orwood/ Palm Tracts)	<ol style="list-style-type: none"> <li>8. Expand SOI to include Veale Tract in anticipation of future consolidation with RD 2065</li> <li>9. Retain existing coterminous SOI</li> </ol>	<ol style="list-style-type: none"> <li>j. Consolidate with RD 2065</li> </ol>	Retain existing coterminous SOI.	Retain existing coterminous SOI.
<b>RD 2025</b> (Holland Tract)	<ol style="list-style-type: none"> <li>10. Expand SOI to facilitate a future consolidation of RD 2025, RD 2026, RD 756 and RD 2028</li> <li>11. Retain existing coterminous SOI</li> </ol>	<ol style="list-style-type: none"> <li>k. Consolidate RD 2025 and RD 2026 - Contra Costa County and RD 756 (Bouldin Island) and RD 2028 (Bacon Island) – San Joaquin County with RD 2025 being the successor agency</li> </ol>	Retain existing coterminous SOI.	Retain existing coterminous SOI.

<b>Agency</b>	<b>SOI Options</b>	<b>GS Options</b>	<b>Consultant Recommendations</b>	<b>LAFCO Staff Recommendations</b>
<b>RD 2026</b> (Webb Tract)	12. Adopt a zero SOI to signal consolidation with RD 2025, 2026, 756 and 2028 13. Retain existing coterminous SOI	l. Consolidate RDs 2025, 2026, 756 and 2028 with RD 2025 being the successor agency	Retain existing coterminous SOI.	Retain existing coterminous SOI.
<b>RD 2059</b> (Bradford Island)	14. Adopt a zero SOI to signal consolidation with RD 830 and/or RD 2026 15. Retain existing coterminous SOI	n. Consolidate with RD 830 and/or RD 2026	Retain existing coterminous SOI.	Retain existing coterminous SOI.
<b>RD 2065</b> (Veale Tract)	16. Expand SOI to the west to allow for future annexation 17. Adopt a zero SOI signaling future consolidation 18. Retain existing coterminous SOI	o. Annex properties to the west that benefit from District services (overlap with Knightsen Town CSD) p. Consolidate with RD 799 and/or RD 2024 q. Collaborate with KTCSD	Retain existing coterminous SOI and require the District to explore expansion of SOI/boundary to the west. This District is required to report back to LAFCO within 12 months regarding status.	Designate coterminous SOI as “provisional.” Require the District to report back to LAFCO within 12 months regarding potential SOI expansion.
<b>RD 2090</b> (Quimby Island)	19. Adopt a zero SOI to signal consolidation with RD 2027 or RD 2025 20. Retain existing coterminous SOI	r. Consolidate with RD 2027 (San Joaquin County) or RD 2025	Retain existing coterminous SOI.	Retain existing coterminous SOI.
<b>RD 2117</b> (Coney Island)	21. Adopt a zero SOI to signal consolidation with RD 1 and 2 22. Retain existing coterminous SOI	s. Consolidate with RD 1 and 2 (single RD in San Joaquin County)	Retain existing coterminous SOI.	Retain existing coterminous SOI.
<b>RD 2121</b> (Bixler Tract)	23. Adopt a zero SOI in anticipation of a future consolidation or dissolution 24. Retain existing coterminous SOI	t. Consolidate with RD 2024 u. Consolidate with RD 2065 v. Dissolution	Adopt zero SOI to allow initiation of dissolution.	Adopt zero SOI to allow initiation of dissolution. LAFCO staff to work with RD 2121 staff to initiate dissolution.
<b>RD 2122</b> (Winter Island)	25. Retain existing coterminous SOI	None identified	Retain existing coterminous SOI.	Retain existing coterminous SOI.
<b>RD 2137</b>	26. Adopt a zero SOI to signal future dissolution, consolidation or establishment of a subsidiary district to the City of Oakley 27. Expand SOI to include the Burroughs property 28. Retain existing coterminous SOI	w. Dissolution x. Consolidate with RD 799 y. Annex the Burroughs parcel z. Establish a subsidiary district to the City of Oakley and construct a new set back levee	Adopt zero SOI to allow initiation of dissolution.	Adopt zero SOI to allow initiation of dissolution. LAFCO staff to work with RD 2137 staff to initiate dissolution.
<b>Other</b>	29. Adopt a zero SOI for all RDs to signal future countywide consolidation	aa. Consolidate all RDs in Contra Costa County	Not recommended	Encourage reclamation districts to discuss countywide consolidation.
	30. No SOI action needed	bb. Pursue regional functional consolidation	No recommendation	Encourage reclamation districts to discuss regional functional consolidation.

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September 30, 2009

**Via Email at LTexte@lafco.cccounty.us**

Lou Ann Texeira, Executive Officer  
Contra Costa County LAFCO  
651 Pine Street, Sixth Floor  
Martinez, CA 94553

Re: Reclamation Districts.

Dear Ms. Texeira:

I am the secretary and attorney for Reclamation District No. 2065 ("Veale Tract") which is entirely located within Contra Costa County, and I am also the secretary and attorney for Reclamation District Nos. 404, 548, 2041, and the attorney for 2037, 2113 and 2118, which are all located in San Joaquin County. I also serve as assistant attorney for several other reclamation districts and have been working with reclamation districts in the capacity of a secretary and attorney for approximately the last ten (10) years.

On August 27, 2009, I met with you, Commissioner Glover, Commissioner Mary Piepho, and my father, Dante Nomellini, Sr. (who also represents many more reclamation districts than I do and has been doing so for probably the last 30 to 40 years). You requested that I summarize some of the thoughts and input my father and I provided at that meeting for the benefit of LAFCO.

The matter of dissolving reclamation districts was discussed at length. Both my father and I felt strongly that the decision to dissolve a reclamation should not be taken lightly nor made hastily. An obvious threshold concern is who will take over the jurisdiction, responsibilities and liabilities of the reclamation district if the district is dissolved?

As you are aware, reclamation districts are local public entities governed by Water Code section 50000 et seq. and, pursuant to Water Code section 50652, "[t]he board [of trustees of the reclamation district] shall exercise general supervision and complete control over the construction, maintenance and operation of the reclamation works, and generally over the affairs of the district." If a reclamation district is dissolved, the question of who is going to take over the jurisdiction, responsibility and liability over such reclamation works is of paramount concern.

## **Consolidation of One or More Reclamation Districts**

Your Municipal Services Review report, at page 46, does a good job of setting forth some of the pros and cons associated with the consolidation of one or more reclamation districts. (A copy of page 46 is attached hereto.) In order for any consolidation to be successful, there must be sizeable support from the affected landowners. To the extent LAFCO has authority to initiate a consolidation (and, hence, a dissolution of one or more reclamation districts), I strongly believe LAFCO should defer to the will of the affected landowners and only initiate such a dissolution and consolidation in the event a sizeable number of affected landowners request LAFCO to do so. Without such support, the effort will likely fail and constitute a waste of everyone's time and scarce resources.

If LAFCO feels strongly that any particular consolidation makes good sense, then it would appear prudent for LAFCO to meet with the affected landowners (perhaps starting with the Board of Trustees who represent those landowners), and try to convince them that such a consolidation is in their best interests. If LAFCO is ultimately unable to so convince a sizeable number of the landowners, then it would seemingly not make sense for LAFCO to thereafter initiate a consolidation and try to force it upon them.

## **Dissolution Without Consolidation**

At the August 27, 2009 meeting, a discussion also took place regarding the situation where a reclamation district is more or less defunct (which appears to be the case in one or more instances within the County). One option, of course, would be to dissolve the district and consolidate it with another district. Another option is for the County or some other public entity to take over the jurisdiction, responsibility and liability over the various reclamation works. In lieu of those options, the question was raised whether it would make sense to keep the status quo and keep the district intact despite its current inactivity. There are indeed several benefits to keeping the district intact which would be lost if the district was dissolved and not taken over or consolidated with another public entity.

Some of those benefits include the following:

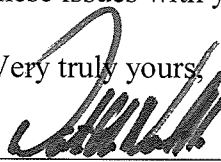
- (1) The process to create a reclamation district from scratch is quite involved and both time consuming and expensive. The fact that the existing landowners are not currently interested in running an active district does not mean that at some point down the road they will not change their mind and want to reinvigorate the district. Moreover, the ownership of the lands within the district may very well change in the future and the new landowners may be considerably more interested in running an active district. Accordingly, the avoidance of the hassle and expense of starting from scratch and creating a new reclamation district in the future weighs in favor of keeping the district intact notwithstanding its current inactivity.

- (2) As public entities, reclamation districts are eligible to participate in the Department of Water Resources' (DWR) "Delta Levee Subventions Program" and "Special Projects Program" wherein DWR provides substantial reimbursement for levee maintenance and rehabilitation costs in light of the state-wide public interests in preserving and maintaining those levees. (See Wat. Code, §§ 12980 et seq. & 12310 et seq., respectively.)<sup>1</sup> If a reclamation district is dissolved and no other public entity takes over the responsibility to operate and maintain the levee system, then the private landowners would be ineligible for such reimbursements.
- (3) As public entities, reclamation districts can also qualify for state and federal disaster assistance in the event the levees (i.e., public facilities) are substantially damaged or even breached as a result of a high water, flood, earthquake or other disaster. If a reclamation district is dissolved and no other public agency steps in and assumes jurisdiction and control over the levees, then such assistance to restore and rehabilitate those public facilities would seemingly be unavailable to the private landowners.

In the end, it seems clear that the decision to dissolve a reclamation district should not be taken lightly nor made hastily. Because the landowners within the districts will be the most directly affected by any proposed dissolution or consolidation, it would make the most sense, and seem the most fair and reasonable, for LAFCO to obtain support for any such dissolution or consolidation from a sizeable number of the landowners before LAFCO initiates any such dissolution or consolidation on behalf of such landowners. Barring that support, forcing a dissolution and/or consolidation on landowners and reclamation districts that oppose such a dissolution and/or consolidation will most likely result in a significant waste of time and resources of all involved.

I am not sure the forgoing is very helpful, but, if you or anyone else have any questions, I would be more than happy to further discuss these issues with you or any of the others .

Very truly yours,



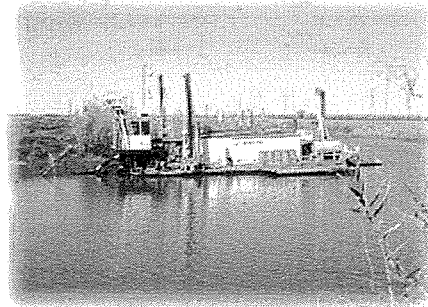
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Dante John Nomellini, Jr.

Enclosure

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<sup>1</sup> See also Water Code section 12981 which provides: "(a) The Legislature finds and declares that the delta is endowed with many invaluable and unique resources and that these resources are of major statewide significance. (b) The Legislature further finds and declares that the delta's uniqueness is particularly characterized by its hundreds of miles of meandering waterways and the many islands adjacent thereto; that, in order to preserve the delta's invaluable resources, which include highly productive agriculture, recreational assets, fisheries, and wildlife environment, the physical characteristics of the delta should be preserved essentially in their present form; and that the key to preserving the delta's physical characteristics is the system of levees defining the waterways and producing the adjacent islands. . . ."



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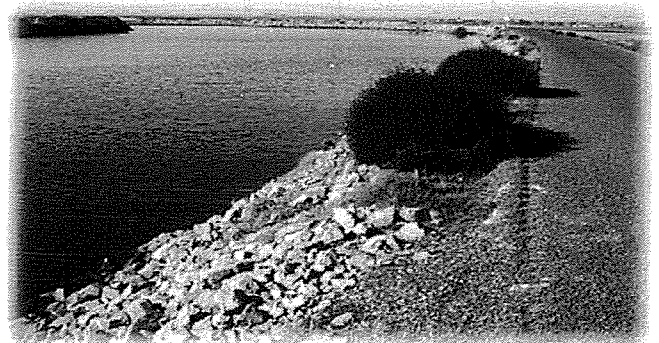
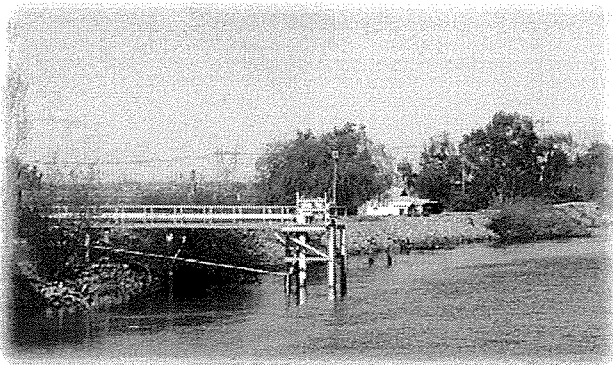
# Municipal Service Review: Reclamation Services

Final

Adopted July 8, 2009

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Contra Costa Local Agency Formation Commission



- 22) Agencies that did not provide information in a timely manner or demonstrate full accountability to LAFCO due to insufficient disclosure of information and participation include RD 2090, RD 2121, RD 2122 and RD 2137.

## **GOVERNMENTAL STRUCTURE AND OPERATIONAL EFFICIENCIES**

Consolidation of all or several reclamation districts within Contra Costa County into one reclamation district is a governance alternative. A major obstacle to reclamation district consolidation relates to the liability associated with levee maintenance responsibilities. Larger districts, such as RD 799 and RD 800, are professionally staffed, but may be hesitant to accept such liabilities from smaller, less financially stable districts and are, therefore, unlikely to accept responsibility by becoming successor agencies. A second obstacle is simply the physical separation of districts from each other and the inability or difficulty of sharing facilities, equipment and personnel.

Another obstacle to consolidation is the rural, agricultural preference for lower assessments and service levels and the urban need for professionally staffed entities and higher service levels. Based on the unique characteristics within each district (population, land use, land and asset value, flood risk, etc.), districts do not necessarily share the same goals in terms of flood protection levels or other policies such as encroachments on or near levees, making widespread consolidation of districts difficult. Shifts in control from local landowners following consolidation with a larger agency was identified as a possible obstacle to consolidation.

An additional barrier to consolidation identified in the MSR process relates to the practical and administrative difficulty of establishing and maintaining an assessment roll for a single district responsible for separate drainage and flood control areas, given that landowner assessments must be proportional to the services that are provided. If the District spends legal, engineering or other expenses on a particular section of levee, landowners protected by a differing levee system do not receive a direct benefit, greatly complicating the day to day accounting and earmarking of district expenses.

Alternatively, the reclamation districts could pursue functional consolidation by creating a regional administrative and maintenance program to pool resources to hire staff to maintain the levees. This approach would offer professional staff with appropriate equipment that could be shared in levee maintenance within the County. The downside to this is it would result in increased costs in reclamation districts that presently rely on board members and volunteers for maintenance work. A successful approach would likely need to develop assessment financing that would allow agricultural uses to pay based on need and benefit.