

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
EXECUTIVE OFFICER'S REPORT

August 8, 2018 (Agenda)

August 8, 2018
Agenda Item 9

LAFCO 18-09

Dissolution of the Reclamation District 2121 (Bixler Tract)

APPLICANT

Contra Costa LAFCO by Resolution adopted May 9, 2018

ACREAGE &
LOCATION

Reclamation District (RD) 2121 is located in unincorporated east Contra Costa County (Bixler Tract) north of Discovery Bay, near the intersection of Bixler Road and Orwood Road, east of Eagle Lane and south of Dead Dog Slough as shown on the attached map (Attachment 1). The District comprises 584± acres, with a population of approximately 10 residents (zero voters). The District is located outside the countywide urban limit line (ULL) and agriculture is the predominant land use (i.e., crops, cattle grazing).

SYNOPSIS

RD 2121 was formed in 1984 to improve and maintain levee, drainage and irrigation systems within affected territory. The District is a family-run operation that provides maintenance services to non-project levees and internal drainage facilities.

For many years, RD 2121 has struggled with administrative, governance, financial and infrastructure matters. Following the 1st and 2nd round Reclamation Services Municipal Services Review (MSRs) in 2009 and 2015, respectively, LAFCO had communicated with RD 2121 regarding needed improvements to comply with State law. Following Commission discussions in 2017 and early 2018, LAFCO received a letter from RD 2121 thanking LAFCO for explaining the State requirements and for acknowledging the challenges faced by RD 2121. District representatives explained that they operate a small family farm and the State's requirements place a burden on their small operation. Consequently, their small family-run district can no longer remain an independent district. Subsequently, on May 9, 2018, LAFCO adopted a resolution initiating proceedings to dissolve the RD 2121.

BACKGROUND

LAFCO Municipal Service Review (MSR) – Since 2004, LAFCO has completed three MSRs covering RD 2121 - an abbreviated MSR in 2004, a 1st round comprehensive MSR in 2009, and a 2nd round MSR in 2015. All MSRs concluded that RD 2121 is inactive, not functioning as a government agency and not providing services or fulfilling its corporate powers. Specifically, RD 2121 was found to be deficient in the following areas:

- Non-compliance with the Federal Emergency Management Agency (FEMA) requirements.
- No financial or planning documents (i.e., audit, budget, capital plan, etc.), and does not file annual reports with the State Controller's Office.
- Financial resources are severely constrained. The District does not participate in State subvention programs, and is dependent on funding commitments of the landowner.
- No formal levee inspection procedures and does not keep written inspection reports.

The 2009 MSR identified the following governance options for RD 2121: 1) consolidation with RD 2024, 2) consolidation with RD 2065, and 3) dissolution. Consolidation with RD 2024 or RD 2065 was found to be infeasible for financial and liability reasons. The MSR consultants and LAFCO staff recommended a zero SOI for RD 2121, signaling a future change of organization (e.g., dissolution). However, the Commission voted at that time to retain the existing coterminous SOI, and required RD 2121 to report back to LAFCO within two years as to its progress in meeting operational and infrastructure challenges as identified in the MSR report. LAFCO has no record of a progress report being provided within the timeframe.

In 2015, LAFCO completed its 2nd round MSR covering reclamation services. The 2015 MSR updated information contained in the 2009 MSR, and provided a status report on the more significant issues identified in the 2009 MSR. In conjunction with the 2015 MSR, RD 2121 property owners reported that some improvements on the levees have been made with rock materials, but no value to the District was recorded. Further, RD 2121 reported no changes or improvements in its governance, operations or financial status. The District was again found to be inactive, not functioning as a governmental agency, and not recording financial transaction reports with the SCO.

The 2015 MSR concluded that unless RD 2121 activates its financial reporting and makes physical improvements to its levees, no State Levee Subvention or Special Project funding will be available. Further, as currently functioning, RD 2121 will be unable to maintain levee infrastructure and financial stability. At a minimum, budget/financial and capital improvement plans are needed to improve District operations. The 2015 MSR identified one SOI option: adoption of a zero SOI, signaling a future "reorganization." In November 2015, the Commission, by resolution, adopted a zero SOI for RD 2121.

Grand Jury Report - Following the 2015 LAFCO MSR, the Contra Costa Grand Jury issued Report No. 1607 "*Delta Levees in Contra Costa County: How Well Do We Protect This Vital Safety System?*" The report raised concerns about the condition of the levee system, and associated physical and financial risks. The report noted the fragility of the levee system and the lack of funding, and recommended the districts share resources and knowledge among RDs; educate residents of the RDs; and increase involvement and participation by the various entities that benefit from the levee system.

The 2015 LAFCO MSR report contained similar recommendations and suggested that RDs explore the feasibility of entering into mutual aid agreements with adjacent RDs to formalize a plan for assistance and the use and distribution of resources in times of need and/or emergency situations; and to consider a shared website with the other RDs in Contra Costa County.

Both the LAFCO and Grand Jury reports recognize that the Delta levees are vulnerable, in need of repair and maintenance, and pose a risk to Contra Costa and surrounding counties. These reports also acknowledge that efforts to repair and improve the levee system are difficult given the cost, time to implement and political controversy.

California State Controller's Office (SCO) - Notice of Inactive Districts – In January 2017, the SCO sent letters to 14 LAFCOs and to a number of County Auditors asking for updates regarding identified inactive districts. Both Contra Costa LAFCO and the Contra Costa County Auditor received letters. The SCO indicates it is cleaning up its records in an effort to have inactive districts dissolved and removed from the State's rolls.

LAFCOs received these letters with a request for information to help the SCO update their records and to facilitate dissolution of inactive districts. The SCO knows that LAFCO has the power to dissolve and reorganize districts and expects LAFCOs to take the appropriate action.

In response to the SCO's letter of January 2017, LAFCO staff confirmed that RD 2121 is inactive, and noted that The Commission previously adopted a zero SOI for RD 2121 signaling a future change of organization (e.g., dissolution), and that a proposed dissolution would be submitted to the Commission for consideration.

LAFCO staff shared with RD 2121 the SCO's letter and LAFCO's response. At that time, an RD 2121 representative contacted the LAFCO office and indicated that the District was currently looking into State funding opportunities and should not be dissolved.

Legislation Enacted to Address Inactive Districts – In September 2017, the Governor signed Senate Bill 448 which defines "inactive districts" and requires the SCO to publish a list of inactive special districts and notify LAFCOs of inactive districts in their county. The bill requires LAFCO to initiate dissolution of inactive districts within a specified timeframe following notification from the SCO, unless LAFCO determines that

the district does not meet the criteria for “inactive district.” SB 448 also establishes an expedited process for LAFCOs to dissolve inactive districts. SB 448 became effective January 1, 2018.

LAFCO Subcommittee - In October 2017, the Commission appointed a subcommittee composed of Commissioners Burgis, McGill and Skaredoff. The Commission directed the subcommittee to meet with RD 2121 representatives and explain the LAFCO concerns and obligations of an active independent district.

On November 1, 2017, the subcommittee and LAFCO staff met with a District representative and toured the levee. At that time, we learned that RD 2121 had acquired fill material at little/no cost, and had improved a portion of its levees, which, as reported by the District, now meets/exceeds FEMA standards. Also, RD 2121 acknowledged that it has little/no funding, no assets, no financial documents, is inactive and does not currently function as a public agency.

In conjunction with the meeting/tour, subcommittee members offered to assist RD 2121 with governance and administrative matters (e.g., compliance, financial reporting, etc.). As a follow-up to the meeting/tour, Commissioner McGill met with a District representative to discuss next steps.

In January 2018, the subcommittee provided an update to the Commission regarding the meeting/tour and subsequent communications with the District. The update also included a summary of basic legal requirements that RD 2121 should consider taking to operate lawfully, along with recommended activities to enhance fiscal responsibility, transparency and good governance. In accordance with the Commission’s direction, LAFCO sent a letter to RD 2121 reiterating the basic requirements for districts and requesting an update to the Commission by June 30, 2018.

On April 4, 2018, LAFCO received a letter from RD 2121 thanking LAFCO for explaining the State requirements and for acknowledging the challenges faced by the District. The District explained that they operate a small family farm and the State’s requirements place a burden on their small operation. Consequently, their small family-run District can no longer remain an independent district.

In May 2018, the Commission considered all of this information and adopted a resolution initiating dissolution of the RD 2121.

DISCUSSION

Factors for Consideration - Government Code (GC) §56668 sets forth factors that the Commission is required to consider in evaluating any change of organization (e.g., dissolution). In the Commission's review and evaluation, no single factor is determinative. In reaching a decision, each is to be evaluated within the context of the overall proposal. These factors are analyzed in Attachment 2, and other factors are discussed below.

Tax Rates, Assessed Value, Assets and Liabilities - The subject area includes one tax rate area: 72009. The assessed value for the proposal area is \$1,218,842 based on the 2017-18 roll.

RD 2121 receives no property tax funding, has no current assessments, no assets and no liabilities.

Designation of Successor Agency and Plan for Service - The Cortese Knox Hertzberg Local Government Reorganization Act of 2000 provides that should LAFCO dissolve a district, it shall identify the effective date of dissolution, designate a successor agency to wind up the affairs of the extinguished agency, and may apply other terms and conditions with its action pursuant to GC §§56885 – 56890.

If the territory of a dissolved district is located entirely within the unincorporated territory of a single county, the county is deemed the successor agency pursuant to GC §57451(b). RD 2121 is located entirely in unincorporated Contra Costa County. However, given RD 2121 has no assets or liabilities, is a “landowner” district, and all assets (e.g., land, property, etc.) are wholly owned by two partnerships, there is no need to designate a successor agency. LAFCO staff will coordinate with the landowners, if necessary, regarding any final steps to wind up the affairs of RD 2121.

Commission Proceedings – A dissolution may be initiated by LAFCO pursuant to GC §§56375(a).

In accordance with SB 448 relating to dissolving inactive districts, the following provisions were added to the Government Code:

56042 "Inactive district" means a special district that meets all of the following:

- (a) The special district is as defined in Section 56036.
- (b) The special district has had no financial transactions in the previous fiscal year.
- (c) The special district has no assets and liabilities.
- (d) The special district has no outstanding debts, judgements, litigation, contracts, liens, or claims.

56879(a) On or before November 1, 2018, and every year thereafter, the Controller shall create a list of special districts that are inactive, as defined in Section 56042, based upon the financial reports received by the Controller pursuant to Section 53891. The Controller shall publish the list of inactive districts on the Controller's Internet Web site. The Controller shall also notify the commission in the county or counties in which the district is located if the Controller has included the district in this list.

(b) The commission shall initiate dissolution of inactive districts by resolution within 90 days of receiving notification from the Controller pursuant to subdivision (a), unless the commission determines that the district does not meet the criteria set forth in Section 56042. The commission shall notify the Controller if the commission determines that a district does not meet the criteria set forth in Section 56042.

(c) The commission shall dissolve inactive districts. The commission shall hold one public hearing on the dissolution of an inactive district pursuant to this section no more than 90 days following the adoption of the resolution initiating dissolution. The dissolution of an inactive district shall not be subject to any of the following:

- (1) Chapter 1 (commencing with Section 57000) to Chapter 7 (commencing with Section 57176), inclusive, of Part 4.
- (2) Determinations pursuant to subdivision (b) of Section 56881.
- (3) Requirements for commission-initiated changes of organization described in paragraph (3) of subdivision (a) of Section 56375.

Before LAFCO can dissolve RD 2121, LAFCO must hold a public hearing on the proposed dissolution. In conjunction with today's hearing, LAFCO published a legal notice in the *Contra Costa Times* (all editions), and mailed notices to all landowners and registered voters within the subject area, as well as to all landowners and voters within 300 feet of the subject area. As of this writing, no comments were received.

Given RD 2121 meets the definition of "inactive district" (GC §56042), the provisions of GC §56879 apply and the protest hearing is waived.

Environmental Impact of the Proposal - The LAFCO initiated proposal to dissolve RD 2121 is a jurisdictional change and has no physical effects on land use or the environment. As Lead Agency, LAFCO finds the project exempt pursuant to the California Environmental Quality Act (CEQA) pursuant to Class 20 – Changes in Government Organization (section 15320). The LAFCO Environmental Coordinator reviewed the document and finds it adequate for LAFCO purposes.

CONCLUSION

One of the fundamental goals of LAFCOs is to ensure the efficient and effective provision of municipal services in an accountable manner. The proposed dissolution will terminate a struggling and inactive district

and relieve the landowners of government requirements which the District believes places a burden on their small operation.

ALTERNATIVES FOR COMMISSION ACTION

After consideration of this report and any testimony or additional materials that are submitted the Commission should consider approving one of the following options:

- Option 1**
1. Approve the dissolution and required findings as proposed pursuant to the following:
 - a. The affected territory is located entirely within an unincorporated area of Contra Costa County.
 - b. The reason for the proposal is to dissolve a district that is inactive, has struggled for years with administrative, governance, financial and infrastructure matters.
 2. Find that the project is Categorical Exempt pursuant to the California Environmental Quality Act (CEQA) Class 20 – Changes to Government Organization.
 3. Find that the subject territory is uninhabited, meets the criteria of an inactive district pursuant to GC §56042, and that the protest proceedings are hereby waived pursuant to GC §56879.
 4. Adopt LAFCO Resolution No. 18-09A (Attachment 3) approving dissolution of RD 2121 and setting forth the Commission's terms, conditions, findings and determinations.

Option 2 DENY the proposal to dissolve the RD 2121.

Option 3 If the Commission needs more information, CONTINUE this matter to a future meeting.

RECOMMENDED ACTIONS:

Approve Option 1 to dissolve RD 2121

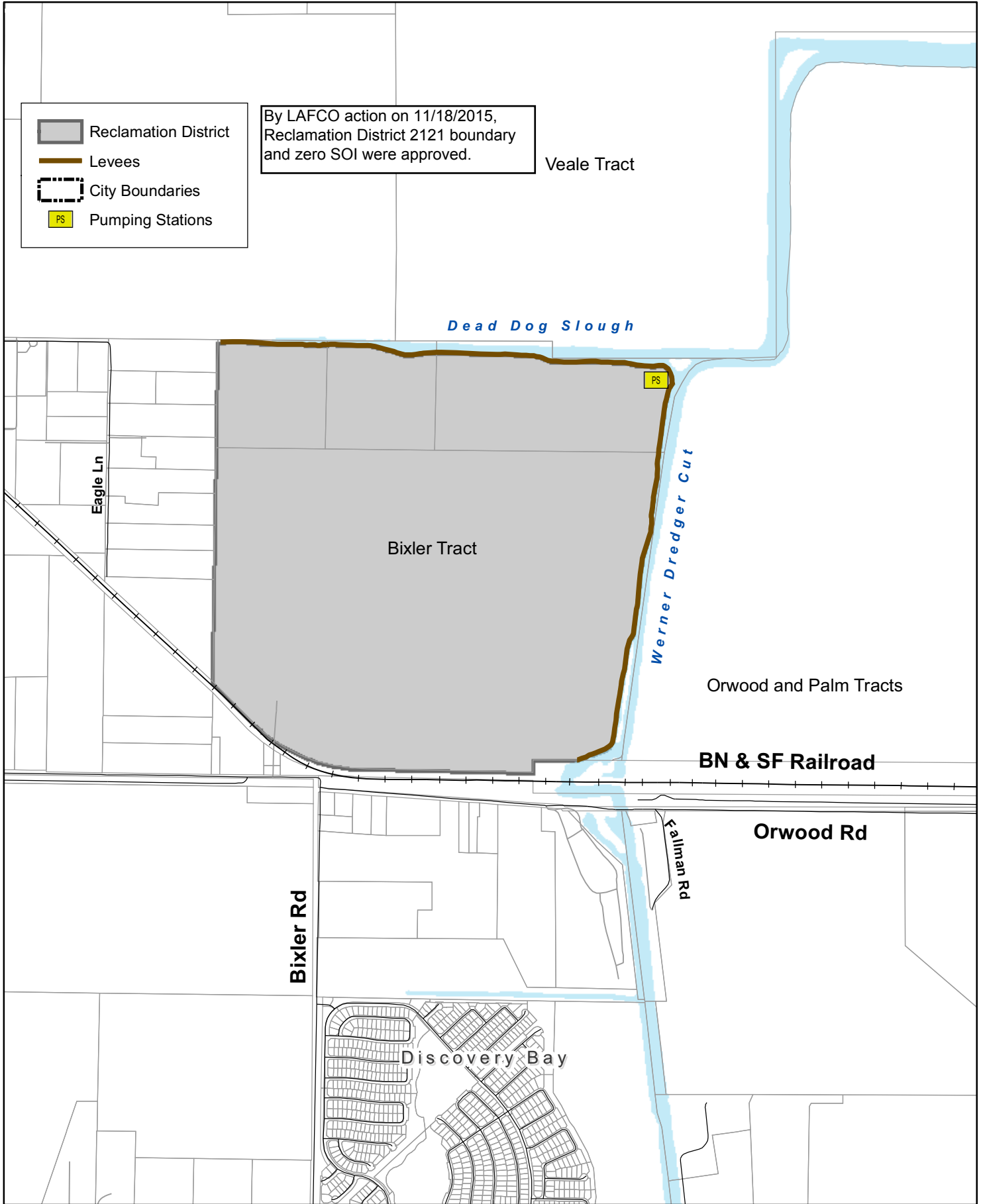
LOU ANN TEXEIRA, EXECUTIVE OFFICER
CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION

Attachments:

1. Map of RD 2121
2. Factors for Consideration (GC §56668)
3. Draft LAFCO Resolution No. 18-09A

c: Distribution

RD 2121 Boundary and Zero SOI



DISSOLUTION OF RECLAMATION DISTRICT (RD) 2121
Factors for Consideration (California Government Code §56668)

FACTOR	COMMENTS
(a) Population and population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.	The subject area is in unincorporated east Contra Costa County located along the westerly edge of the Delta, approximately three miles east of the City of Brentwood. The area comprises 584± acres and four parcels. The District is outside the countywide urban limit line (ULL) and agriculture is the predominant land use (crops, cattle grazing). The population is approximately 10 (zero registered voters).
(b) The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas. "Services," as used in this subdivision, refers to governmental services whether or not the services are services which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.	The landowners maintain the levee system currently and following dissolution. The District has no assets or liabilities. All assets (land, property) are wholly owned by two family partnerships.
(c) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.	It is not anticipated that dissolution of the District would affect adjacent areas or the local government structure of the County.
(d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities in Section 56377. <i>(Note: Section 56377 encourages preservation of agricultural and open space lands)</i>	The subject area is designated for agricultural uses and is located outside the ULL. The dissolution would have no effect on development or on policies and priorities in Section 56377.
(e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.	The subject area will remain in agricultural use following dissolution.
(f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.	The parcels that comprise the subject territory have specific boundary lines that are certain and identifiable.
(g) A regional transportation plan adopted pursuant to Section 65080.	N/A

FACTOR	COMMENTS
(h) The proposal's consistency with city or county general and specific plans.	The dissolution will have no effect on the County General Plan.
(i) The sphere of influence (SOI) of any local agency which may be applicable to the proposal being reviewed.	The dissolution will have no effect on the SOIs of any local agency.
(j) The comments of any affected local agency or other public agency.	As of this writing, no agency comments were received.
(k) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.	N/A
(l) Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.	N/A
(m) The extent to which the proposal will affect a city or cities and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.	N/A
(n) Any information or comments from the landowner or owners, voters, or residents of the affected territory.	As of this writing, no comments were received.
(o) Any information relating to existing land use designations.	The County's General Plan designation for the area is Agricultural Lands (AL) and the zoning designation is General Agriculture (A-2 – parcel 5-acre minimum) adjacent to Agricultural Preserve (A-4 - parcel 40-acre minimum). No changes to the existing land uses will result from this change of organization.
(p) The extent to which the proposal will promote environmental justice. As used in this subdivision, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services.	The dissolution will have no effect on environmental justice or to the fair treatment of people of all races, cultures and incomes.
56668.5. The commission may, but is not required to, consider the regional growth goals and policies established by a collaboration of elected officials only, formally representing their local jurisdictions in an official capacity on a regional or subregional basis. This section does not grant any new powers or authority to the commission or any other body to establish regional growth goals and policies independent of the powers granted by other laws.	Dissolution of RD 2121 will not affect or be affected by Plan Bay Area, in that the Plan focuses on Priority Development Areas (PDAs) and Priority Conservation Areas (PCAs); and the affected territory is neither.

RESOLUTION NO. 18-09A**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
MAKING DETERMINATIONS AND APPROVING DISSOLUTION OF
RECLAMATION DISTRICT 2121 (Bixler Tract)**

WHEREAS, on May 9, 2018, the Contra Costa Local Agency Formation Commission (LAFCO) adopted a resolution initiating dissolution of Reclamation District (RD) 2121 pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (Section 56000 et seq. of the Government Code); and

WHEREAS, the Executive Officer has issued a certificate of filing deeming the application complete; and

WHEREAS, at the time and in the manner required by law the Executive Officer has given notice of the Commission's consideration of the proposal; and

WHEREAS, the Executive Officer has reviewed available information and prepared a report including her recommendations therein, and the report and related information have been presented to and considered by the Commission; and

WHEREAS, the Commission heard, discussed and considered all oral and written testimony related to the proposal including, but not limited to, the Executive Officer's report and recommendation, the environmental document or determination, Spheres of Influence (SOIs) and related information; and

WHEREAS, RD 2121 is located entirely within unincorporated Contra Costa County, north of Discovery Bay, near the intersection of Bixler Road and Orwood Road, east of Eagle Lane and south of Dead Dog Slough; and

WHEREAS, RD 2121 comprises 584± acres, with a population of approximately 10 residents; and

WHEREAS, RD 2121 was formed in 1984 to provide reclamation services (i.e., levee maintenance, flood control, drainage); and

WHEREAS, in 2004, 2009 and 2015 LAFCO completed Municipal Services Reviews covering reclamation services and learned that RD 2121 was experiencing financial, operational and governance challenges; and

WHEREAS, in November 2015, the Commission adopted a zero SOI for RD 2121 signaling a future change of organization (i.e., dissolution); and

WHEREAS, LAFCO determines that dissolution of RD 2121 is consistent with the findings and recommendations of the MSRs and with the Commission's prior action adopting a zero SOI for RD 2121; and

WHEREAS, RD 2121 is an inactive district as defined in Government Code section 56042; and

WHEREAS, RD 2121 currently has no assets or liabilities and can be dissolved pursuant to Government Code section 56879; and

WHEREAS, because RD 2121 has no assets or liabilities, there is no need for the Commission to identify a successor under Government Code section 57451.

NOW, THEREFORE, the Contra Costa Local Agency Formation Commission DOES HEREBY RESOLVE, DETERMINE AND ORDER as follows:

1. The subject proposal is assigned the distinctive short-form designation:
DISSOLUTION OF RECLAMATION DISTRICT 2121
2. RD 2121 is located entirely within unincorporated Contra Costa County. The boundaries of the affected territory are found to be definite and certain as approved and set forth in Attachment 1, attached hereto and made a part hereof.
3. The proposal was initiated by LAFCO, the subject territory is uninhabited, and the protest proceedings are hereby waived pursuant to Government Code section 56879.
4. Notice of the Commission's hearing regarding this proposal was advertised in the *Contra Costa Times*, and notices were mailed to all landowners and registered voters within the subject area, as well as landowners and voters within 300 feet of the subject area and affected and interested agencies and individuals.
5. In reviewing this proposal, the Commission has considered each of the factors required by Government Code section 56668.
6. The Commission finds that dissolution of RD 2121 is Categorically Exempt pursuant to the California Environmental Quality Act Class 20 – Changes to Government Organization.
7. The effective date of the dissolution shall be the date of filing the certificate of completion of the proposal.

* * * * *

PASSED AND ADOPTED THIS 8th day of August 2018, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

MICHAEL R. MCGILL, CHAIR, CONTRA COSTA LAFCO

I hereby certify that this is a correct copy of a resolution passed and adopted by this Commission on the date stated.

Dated: August 8, 2012

Lou Ann Texeira, Executive Officer