

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
EXECUTIVE OFFICER'S REPORT

July 13, 2016 (Agenda)

July 13, 2016  
Agenda Item 7

LAFCO 16-02 Detachment from the Byron Bethany Irrigation District (BBID)

PROPONENT Contra Costa County, Resolution 2016/3

SYNOPSIS

The County has applied to Contra Costa LAFCO to detach 480± acres from BBID located in two separate areas in the unincorporated Discovery Bay area (west) as shown on the attached map (Attachment 1). The two areas encompass areas where the service boundaries of BBID and the Town of Discovery Bay Community Services District (DBCSD) overlap. The overlap areas contain numerous parcels located in six tax rate areas. The DBCSD provides potable water, wastewater and other services to the Discovery Bay area, including the overlap area. BBID is an irrigation district and does not provide water service to the overlap area as further discussed below.

BACKGROUND

BBID was formed in 1914 and provides agricultural water service in addition to delivering raw untreated water to the Mountain House community and the City of Tracy. BBID is a multi-county district serving portions of Alameda, Contra Costa and San Joaquin counties. BBID's services area is 30,000± acres, with a population of 13,000 (including the Mountain House community). The district serves approximately 160 water connections including 150 agricultural surface irrigation uses and 10 municipal/industrial surface users. BBID's relies on surface water with primary sources being the Central Valley Project Surface Area and pre-1914 water rights with Alameda, Contra Costa and San Joaquin counties. BBID operates as an enterprise district, with its primary revenue sources being property tax and service charges and fees.

San Joaquin is designated the principal county for LAFCO proceedings. In February 2016, Contra Costa LAFCO requested, and San Joaquin LAFCO approved, the transfer of jurisdiction to allow Contra Costa LAFCO to process the detachment proposal.

DBCSD was formed in 1998 as the successor agency to County Sanitation District No. 19 (SD 19). The district provides water, sewer collection and disposal, levee maintenance, parks and recreation maintenance, landscaping and recreational services. The district's service area is 5,760± acres with a population of approximately 14,000. DBCSD serves 5,523 service connections (residential, commercial, irrigation). DBCSD relies on groundwater with six groundwater irrigation wells. DBCSD operates as an enterprise district and with a significant portion of its overall revenue from charges for services, and a minimal amount of property tax revenue.

Prior to the development of Discovery Bay West, the subject areas were used for agricultural purposes. BBID provided irrigation water for the agricultural uses in the area existing at the time. BBID receives a portion of the 1% property tax (Ad Valorem) in these areas. Once residential development replaced the agricultural uses in the area, BBID irrigation water was no longer used, and SD19/DBCSD began providing water service to the area. These areas were never detached from BBID, and BBID continues to receive property taxes from these areas, currently estimated at \$685,000 per year.

Historically, there was discussion regarding BBID serving as a back-up water supply to these areas. However, it has since been determined that DBCSD has an adequate water supply, and that having an additional irrigation water supply source provided by BBID appears to have limited value within the next 15-20 year planning horizon.

The issue of the overlap in service boundaries first came to the attention of Contra Costa LAFCO in 1993 in conjunction with annexation of the Albers property to SD 19 (DBCSD's predecessor district). At that time, the Commission discussed detachment from BBID in conjunction with Albers annexation. BBID staff requested that LAFCO defer the detachment pending completion of BBID's groundwater management plan. The issue of detachment from BBID remained unresolved and annexations to DBCSD continued, perpetuating the overlap.

In 2014, Contra Costa LAFCO completed its 2<sup>nd</sup> Round Countywide Water/Wastewater Municipal Services Review (MSR) and sphere of influence (SOI) updates. The MSR covered eight cities and 20 special districts including BBID and DBCSD.

The MSR included a discussion of the overlap area, noting that districts' water systems have very different infrastructure, given that BBID relies on surface water and DBCSD relies on ground water; and that it is unlikely that BBID could provide water service to the overlap areas without incurring significant cost to build a new water system for this area. The MSR recommended that consideration be given to detaching the overlap areas from BBID; and that further study should be undertaken to fully analyze the service and fiscal implications of such a detachment to both residents and the BBID.

In late 2015, there were a number of meetings with the affected agencies. In November 2015, the Contra Costa County Board of Supervisors (BOS) voted unanimously to pursue the detachment, and directed County staff to prepare a resolution of application to LAFCO. In early December 2015, the DBCSD voted unanimously to support the detachment.

## DISCUSSION

In January 2016, the County submitted applications to Contra Costa and San Joaquin LAFCOs to detach the overlap areas from BBID. Included with the County's application was a request that San Joaquin LAFCO transfer jurisdiction to Contra Costa LAFCO. As noted above, San Joaquin is designated the principal county for LAFCO proceedings, as defined by Gov. Code §56066 (i.e., the county having the greatest portion of the assessed value, as shown on the last equalized assessment roll of the county or counties, of all taxable property within the district). Contra Costa LAFCO submitted a request to San Joaquin LAFCO for transfer of jurisdiction, which San Joaquin LAFCO approved on February 11, 2016.

Gov. Code §56668 sets forth factors that the Commission must consider in evaluating a proposed boundary change as discussed below. In the Commission's review, no single factor is determinative. In reaching a decision, each is to be evaluated within the context of the overall proposal.

### **1. Consistency with the Sphere of Influence (SOI) of Any Local Agency:**

The areas proposed for detachment are within the SOIs of both BBID and DBCSD. The subject areas are also inside the County's Urban Limit Line. Presently, there is no proposal to modify

BBID's SOI in conjunction with the proposed detachment. If appropriate, an application to detach the subject areas from BBID's SOI can be submitted in the future.

**2. Land Use, Planning and Zoning - Present and Future:**

Land uses in the subject areas include primarily single family residential; the areas also include parks, a manmade lake, school, commercial, and open space. The County General Plan designations for the areas include: Agricultural Core (AC), Agricultural Lands (AL), Commercial (CO), Multiple-Family Residential – Low Density (ML), Office (OF), Open Space (OS), Parks/Recreation (PR), Public/Semi-Public (PS), Single-Family Residential – High Density (SH), and Single-Family Residential – Medium Density (SM). The Zoning designations include: General Agricultural (A-2), Heavy Agricultural (A-3), Exclusive Agricultural (A-40), and Planned Unit (P-1).

The subject areas are surrounded primarily by residential to the east and north, and mostly agricultural lands and agricultural core to the west and south. There are currently no known entitlement applications pending for properties in the subject areas. *No land use changes will occur as a result of the proposed detachment.*

**3. The Effect on Maintaining the Physical and Economic Integrity of Agricultural Lands:**

As noted above, the subject areas include some land designated for agricultural uses. The subject areas contain no Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. No portion of the subject property is currently under a Williamson Act Land Conservation Act agreement. *The proposed detachment will not result in the loss of agricultural land.*

**4. Topography, Natural Features and Drainage Basins:**

The subject property is flat with manmade bodies of water within the area; surrounding areas relatively are primarily residential to the east and agricultural to the west.

**5. Population:**

*The proposed detachment will have no effect on population.*

**6. Fair Share of Regional Housing:**

In its review of a proposal, LAFCO must consider the extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the regional council of governments. *The proposed detachment will have no effect on regional housing needs.*

**7. Governmental Services and Controls - Need, Cost, Adequacy and Availability:**

Whenever an application for a change of organization or reorganization is submitted to LAFCO, the applicant must also submit a plan for providing services within the affected territory (Gov. Code §56653). The plan shall include all of the following information and any additional information required by the Commission or the Executive Officer:

- (1) An enumeration and description of the services to be extended to the affected territory.
- (2) The level and range of those services.
- (3) An indication of when those services can feasibly be extended to the affected territory.

- (4) An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.
- (5) Information with respect to how those services will be financed.

The property currently receives water service from DBCSD. The subject areas are also served by various local and regional agencies including, but not limited to, Contra Costa County, Byron Brentwood Knightsen Union Cemetery District (BBKUCD), East Contra Costa Fire Protection District (ECCFPD), and DBCSD. *No change in the provision of service is proposed.*

#### **8. Timely Availability of Water and Related Issues:**

The proposal before the Commission is to detach two areas from BBID. As noted above, these areas currently receive water service from DBCSD. The proposal to detach these areas from BBID will have no foreseeable impact on water service to the subject areas, as BBID does not currently, nor is anticipated to, provide water service to the subject areas.

DBCSD indicates that it has adequate capacity to continue to serve the subject areas today and in the future, and supports the detachment from BBID.

#### **9. Assessed Value, Tax Rates and Indebtedness:**

The areas proposed for detachment are within tax rate areas (TRAs) 66043, 66047, 66048, 66050, 66055, and 66056. The assessed value for the subject areas is \$182,410,892 (2015-16 roll). As noted above, BBID currently received approximately \$685,000 per year of the property tax within the six TRAs. Pursuant to the Revenue and Taxation Code, whenever there is a proposal to modify the boundary of a special district, the County negotiates the tax exchange on behalf of the districts. The County is required to consult with the affected districts. Consultations occurred with BBID, DBCSD and BBKUCD. Also, the County had discussions with ECCFPD, recognizing that ECCFPD lacks sufficient funding resulting from low property tax allocations which have resulted in reductions in ECCFPD's fire and emergency medical services, despite increasing call volumes. This situation has necessitated supplemental funding from the County and the cities of Brentwood and Oakley to temporarily sustain ECCFPD.

On June 14, 2016, the BOS adopted a property tax exchange resolution providing that BBID's share of the base and annual tax increment in the subject TRAs that would otherwise be allocated to BBID, shall be allocated to Contra Costa County. Further, the BOS directed County staff to prepare a second property tax exchange agreement to transfer, each year, the reallocated tax revenue from the six subject TRAs from the County to ECCFPD for so long as the taxes continue to be allocated to the County, unless an application to initiate dissolution of ECCFPD is filed with LAFCO, at which point the property tax transfer would automatically terminate. BBID submitted a letter to the County indicating that the District takes strong exception to the "pass-through" property tax exchange agreement recently adopted by the BOS, and prefers that the property tax currently going to BBID in the subject areas, be allocated directly to ECCFPD.

#### **10. Environmental Impact of the Proposal:**

Contra Costa County, as Lead Agency, has determined that the proposal is exempt from the California Environmental Quality Act (CEQA) pursuant to sections 15061(b)(3). The LAFCO environmental coordinator agrees with this determination.

## **11. Landowner Consent and Comments by Any Affected Local Agency:**

According to County Elections, there are more than 12 registered voters in the areas proposed for detachment; thus, the subject areas are considered inhabited.

In the case of inhabited boundary changes, LAFCO will conduct a protest hearing should the Commission receive an objection from any landowner owning land with the subject areas, or any registered voter residing with the subject areas. Absent any objection received before the conclusion of the commission proceedings on July 13, 2016, the Commission intends to waive protest proceedings.

Regarding comments from affected local agencies, LAFCO is aware that DBCSD supports the proposed detachment.

Also, LAFCO recently received a request from Rick Gilmore, General Manager, BBID. BBID is both an affected local agency and affected landowner. Mr. Gilmore requests that LAFCO exclude two BBID owned parcels (APNs 011-190-044 and -045) from the proposed detachment, as these parcels are part of BBID's pipeline corridor (see Attachment 2). The parcels were deeded to BBID in conjunction with a previous Centex homes development in the area.

Mr. Gilmore also requests that these parcels be detached from DBCSD's boundary, as DBCSD services are not needed to serve these parcels. Should the Commission exclude the two parcels from the proposed detachment, there will continue to be an overlap (BBID/DBCSD) with regard to these two parcels. To remedy this, BBID could apply to LAFCO to detach these two parcels from DBCSD; or the Commission could continue the matter to allow proper noticing, and consider both the exclusion of the two parcels from the proposed detachment and the detachment of the two parcels from DBCSD at a future LAFCO meeting.

An option to exclude APNs 011-190-044 and -045 from the proposed detachment is presented for the Commission's consideration. However, given the timing of the request, detachment of these parcels from DBCSD was not included in LAFCO published notices, nor was it included on the LAFCO agenda; thus, the Commission cannot consider detachment of these two parcels from DBCSD at the hearing on July 13, 2016. Mr. Gilmore indicates that he supports continuing the matter to allow the Commission to consider both actions requested. Should there be costs associated with re-noticing and re-publishing, BBID would consider covering these costs. As an alternative, Mr. Gilmore supports excluding the two parcels from the proposed detachment.

LAFCO staff discussed Mr. Gilmore's request with County and DBCSD staff, and there was no concern expressed.

Also, in May, LAFCO received correspondence from Sharon Smith and Kris Frederickson objecting to the proposed detachment. Based on property owner and registered voter information obtained, it appears that neither individual is a landowner or registered voter within the area proposed for detachment.

In accordance with LAFCO's statutory noticing requirements [Gov. Code §56157(h)], LAFCO noticed this hearing in a display ad in a newspaper of general circulation. The statute provides

that if the total number of notices required to be mailed exceeds 1,000, then notice may instead be provided by publishing a display advertisement of at least one-eighth page in a newspaper, at least 21 days prior to the hearing. The total number of notices for this proposal exceeded 1,000.

#### 12. **Boundaries and Lines of Assessment:**

The areas proposed for detachment follow lines of assessment. A map and legal description to implement the proposed boundary change have been approved by the County Surveyor.

#### 13. **Environmental Justice:**

LAFCO is required to consider the extent to which proposals for changes of organization or reorganization will promote environmental justice. As defined by statute, "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 proposed detachment is not expected to promote or discourage the fair treatment of minority or economically disadvantaged groups.

#### 14. **Disadvantaged Communities:**

In accordance with Senate Bill 244, local agencies and LAFCOs are required to plan for disadvantaged unincorporated communities (DUCs). Many of these communities lack basic infrastructure, including streets, sidewalks, storm drainage, clean drinking water, and adequate sewer service. LAFCO actions relating to Municipal Service Reviews, SOI reviews/amendments, and boundary changes must take into consideration DUCs, and specifically the adequacy of public services, including sewer, water, and fire protection needs or deficiencies, to these communities. According to the County GIS/Demographics division, the areas proposed for detachment do not meet the criteria of a DUC.

### ALTERNATIVES FOR COMMISSION ACTION

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

- Option 1** Adopt this report and approve the detachment as proposed by the applicant (County).
- A. Determine that the proposal is exempt from CEQA pursuant to sections 15061(b)(3).
  - B. Adopt this report, approve LAFCO Resolution No. 16-02 (Attachment 3), and approve the proposal, to be known as the *Detachment from the Byron Bethany Irrigation District* subject to the following terms and conditions:
    1. That Contra Costa County has delivered an executed indemnification agreement providing for the County to indemnify LAFCO against any expenses arising from any legal actions challenging the detachment.
    2. The detachment has no effect on BBID's authority to collect taxes for bonded indebtedness.
  - C. Find that the subject territory is inhabited, and that LAFCO will conduct a protest hearing should the Commission receive an objection from any landowner owning land with the subject areas, or any registered voter residing with the subject areas. Absent any objection

received before the conclusion of the commission proceedings on July 13, 2016, the Commission intends to waive protest proceedings.

**Option 2** Adopt this report and approve the detachment, excluding APNs APNs 011-190-044 and -045 as requested by BBID.

- A. Determine that the proposal is exempt from CEQA pursuant to sections 15061(b)(3).
- B. Adopt this report, approve LAFCO Resolution No. 16-02 (Attachment 3), and approve the proposal, to be known as the *Detachment from the Byron Bethany Irrigation District* subject to the following terms and conditions:
  1. That Contra Costa County has delivered an executed indemnification agreement providing for the County to indemnify LAFCO against any expenses arising from any legal actions challenging the detachment.
  3. The detachment has no effect on BBID's authority to collect taxes for bonded indebtedness.
- C. Find that the subject territory is inhabited, and that LAFCO will conduct a protest hearing should the Commission receive an objection from any landowner owning land with the subject areas, or any registered voter residing with the subject areas. Absent any objection received before the conclusion of the commission proceedings on July 13, 2016, the Commission intends to waive protest proceedings.

**Option 3** Adopt this report and DENY the proposal.

**Option 3** CONTINUE this matter to a future meeting.

**RECOMMENDED ACTION:**

**Option 1 - Approve the detachment**

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

Attachments

- 1 – BBID Detachment Map
- 2 – BBID Detachment - Option 1 Map
- 3 - Draft LAFCO Resolution 16-02

c: David Twa, County Administrator, Contra Costa County  
Julie Enea, Contra Costa County Administrator's Office  
Rick Gilmore, General Manager, BBID  
Catherine Kutsuris, Interim General Manager, DBCSD





**RESOLUTION NO. 16-02**

RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
 MAKING DETERMINATIONS AND APPROVING A DETACHMENT  
 FROM THE BYRON BETHANY IRRIGATION DISTRICT

**WHEREAS**, a proposal submitted by Contra Costa County to detach two areas from the Byron Bethany Irrigation District (BBID) was filed with Executive Officer of the Contra Costa Local Agency Formation Commission pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code section 56000 et seq.); and

**WHEREAS**, the Executive Officer has examined the application and executed her certification in accordance with law, determining and certifying that the filing is sufficient; 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**, at a public hearing held on July 13, 2016, 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, provision of services, and related factors and information including those contained in Gov. Code §56668; and

**WHEREAS**, the proposed detachment will correct a boundary overlap between BBID and the Town of Discovery Bay Community Services District as discussed in LAFCO's 2014 Countywide *Water/Wastewater Municipal Services Review*; and

**WHEREAS**, the Local Agency Formation Commission finds the proposal to be in the best interest of the affected areas and the total organization of local governmental agencies within Contra Costa County.

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

1. The proposal is exempt from CEQA pursuant to sections 15061(b)(3).
2. Said detachment is hereby approved.
3. The subject proposal is assigned the distinctive short-form designation:

**Detachment from the Byron Bethany Irrigation District**

4. Said territory is found to be inhabited. In the case of inhabited boundary changes, LAFCO will conduct a protest hearing should the Commission receive an objection from any landowner owning land with the subject areas, or any registered voter residing with the subject areas. Absent any objection received before the conclusion of the commission proceedings on July 13, 2016, the Commission intends to waive protest proceedings.
5. 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.
6. Contra Costa County has delivered an executed indemnification agreement providing for the County to indemnify LAFCO against any expenses arising from any legal actions challenging the detachment.

Contra Costa LAFCO  
Resolution No. 16-02

- 7. The detachment has no effect on BBID's authority to collect taxes for bonded indebtedness.
- 8. All subsequent proceedings in connection with this detachment shall be conducted only in compliance with the approved boundary set forth in the attachment and any terms and conditions specified in this resolution.

\* \* \* \* \*

PASSED AND ADOPTED THIS 13<sup>TH</sup> day of July, 2016, by the following vote:

AYES:  
NOES:  
ABSTENTIONS:  
ABSENT:

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MARY N. PIEPHO, CHAIR, CONTRA COSTA LAFCO

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

Dated: July 13, 2016

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Lou Ann Texeira, Executive Officer