

SUBJECT

Consider the following proposals regarding Reclamation District governance in the West Sacramento hydrologic basin:

1. City of West Sacramento proposals: Reorganization to detach the City portion of Reclamation District (RD) 537 and establish it as a subsidiary district (LAFCo #925) and a Change of Organization to establish RD 900 as a subsidiary district (LAFCo #926).
2. RD 900 alternative proposal: Reorganization of RD 900 and RD 537 to provide flood protection and levee maintenance for the West Sacramento Basin Levee System and, optionally, to transfer interior drainage responsibilities to the City (LAFCo #930).

RECOMMENDED ACTION

1. Receive staff presentation.
2. Hold the Public Hearing.
3. Adopt Resolution 2019-10 approving a reorganization (LAFCo #926) as follows, subject to terms and conditions (Attachment A):
 - A. RD 900 is reorganized as a subsidiary district of the City of West Sacramento (Action 1);
 - B. That portion of RD 537's territory and its SOI within the boundaries of the City of West Sacramento is detached from the district (Action 2);
 - C. The SOI of RD 900 is amended to include the area detached from RD 537 and RD 537's SOI (i.e. State Maintenance Area 4) (Action 3);
 - D. RD 537's detached territory, RD 537's SOI, and the balance of RD 900's SOI in the West Sacramento Basin Levee System are annexed into RD 900 (Action 4).
4. Deny application #925 as unnecessary and deny application #930 as inferior to application #926 as conditionally approved.
5. Determine that the Project is exempt from CEQA per CEQA Guidelines Sections 15061(b)(3) and 15320, and direct staff to file a Notice of Exemption.

Staff's recommendation achieves the substance of the City's proposals while allowing RD 537 to continue to exist as an independent special district in the Lower Elkhorn Basin to serve the portion of its current territory outside City limits. The City's proposal #925 is impractical because it would require formation of a new district to serve the portion of RD 537 inside the City, which requires a petition of landowners (see Government Code §§ 56100 & 56859; Water Code §§ Water Code section 50300 et seq.). The policy objective of ensuring assets of RD 537 and RD 900 are restricted to the benefit of the property owners who generated the funds to acquire them will be served by the conditions of approval and the requirements of California law that assessments proceeds be expended only for the benefit of property in the assessment district which generated them. Thus, current RD 900 assets will serve that portion of the City and RD 537 assets will be divided between the surviving RD 537 and the portion annexed to RD 900 as a subsidiary district of the City and restricted to use in the areas which generated those assets.

PROPOSAL DESCRIPTIONS

City Proposals

On August 24, 2018, the City of West Sacramento submitted two proposal applications to: (1) detach the City portion of RD 537 and establish it as a subsidiary district (LAFCo #925); and (2) establish RD 900 as a subsidiary district (LAFCo #926). The subsidiary districts would remain as separate agencies, and the city council would be designated as, and empowered to act as, the ex officio board of directors of the districts. These proposals legally cannot, and will not, change the existing assessments collected by RD 537 and RD 900.

Components of the City's proposals:

- Detach City portion of RD 537
- Establish detached portion of RD 537 as a subsidiary district of the City
- Establish RD 900 as a subsidiary district of the City

RD 900 Alternative Proposal

On December 1, 2018, RD 900 submitted an alternative proposal to reorganize RD 900 by annexing into it all remaining territory within the West Sacramento Basin Levee System (that currently is served by RD 537 and State Maintenance Area #4), including the ring levees and territory inside the basin. The proposal also includes the option of transferring all interior drainage services to the City. RD 900 would solely provide flood protection and levee maintenance for the West Sacramento Basin Levee System (excluding the U.S. Army Corps of Engineers' navigation levee and deep-water ship channel). RD 900 would remain as an independent district with its own land-owner governing board elected by land owners. This would not change the existing assessments collected by RD 537 and RD 900, but assessments collected in the City portion of RD 537 for levee maintenance would be transferred to RD 900 as the successor agency and assessments for interior drainage would be transferred to the City if it assumed this service. State law will require assessments to continue at current levels and to be expended for the benefit of those who pay them unless a new assessment is proposed and approved by those to be assessed pursuant to Proposition 218, California Constitution, article XIII D, section 4.

Proposal Components:

- Detach City portion of RD 537
- Annex the City portion of RD 537, RD 537's sphere of influence and all remaining areas within the West Sacramento Basin Levee System (i.e., RD 900's sphere of influence and State Maintenance Area #4) into RD 900
- Optionally, transfer all interior drainage services (including associated assessment revenue, rights of way and other assets) to the City of West Sacramento

GOVERNANCE CONTEXT AND FRAMEWORK

History of Reclamation Districts

Reclamation districts are responsible for protecting development in floodplain lands through levee operations, maintenance, design, and construction. Reclamation districts may also perform other duties, and in some cases enterprise activities, including irrigation, drainage, and groundwater recharge. Reclamation districts originated in 1850 when the U.S. Congress passed the Reclamation Act authorizing lands to be purchased and placed into reclamation holdings for preservation and use. A series of California laws followed, including allowing counties to sell "swamp land" for \$1 per acre for reclamation (1855) and authorizing County Boards of Supervisors to impose assessments on property for improvement and maintenance (1861). From 1866 to 1911, the authority for oversight of reclamation districts changed from the Swamp Land Commission to County Boards of Supervisors and then to the State Board of Reclamation. When the Legislature created LAFCos, reclamation districts came under the LAFCo oversight as to service boundaries and spheres of influence (SOIs).

Over 100 years passed since the creation of reclamation districts without substantial change in flood protection planning. The old plan consisted of a levee and river bypass system, which successfully reduced the frequency of flooding and largely limited it to agricultural lands. These levees, however, did not have sophisticated design or seepage controls, resulting in periodic failures. Over the years, rural homes, urban subdivisions, and high-value permanent crops were developed on these lands. A new flood protection plan for California's Central Valley was long overdue. After Hurricane Katrina in 2005, the United States Army Corps of Engineers (USACE) evaluated much of California's Central Valley flood control system and determined it was substandard in light of heightened (200-year) standards implemented after Katrina. In 2007, the State Legislature directed the Department of Water Resources and the Central Valley Flood Protection Board (CVFPB) to prepare a new flood protection plan for California's Central Valley.

2012/2017 Central Valley Flood Protection Plan Context

Flood management in the Central Valley is affected by a complex framework of public agencies (over 300 in the Sacramento Basin and over 200 in the San Joaquin Basin). Local governance is complicated by multiple small levee maintaining agencies (LMAs) with limited resources, including staff, revenues, and legal authority. Flood management in Yolo County along the Sacramento River System is currently carried out by 15 local agencies including: 12 reclamation districts (RDs); one drainage district; one levee district; and one county service area. In addition, the California Department of Water Resources (DWR) and USACE maintains portions of the System in Yolo County.

As noted in the Central Valley Flood Protection Plan 2017 Update (page 3-46), enhanced regional governance can empower groups of local agencies to more effectively pool and leverage funding and resources, enhance collaboration and coordination, coordinate political advocacy, and create shared ownership of the flood system. Regional planning and project implementation is greatly improved through enhanced regional governance. Regional governance not only improves collaboration among local agencies within a region, but also facilitates more effective partnering with State and federal governments, greatly helping to define and achieve a shared regional vision. Strong regional governance and shared understanding of roles and responsibilities will support a shift toward system-scale, long-term, outcome-driven resource management that balances a broad array of public values and priorities. Dialogues should be fostered within a structured, transparent process that includes schedules, actionable recommendations, and stakeholder engagement. A levee is only as strong as its weakest and most poorly maintained reach and, when levees fail, catastrophic liabilities can arise, and litigation tends to target every agency with any impacts on the reach that failed. For example, when Monterey County's levee along the Pajaro River failed, flooding a wide area, hundreds of property owners sued both Santa Cruz and Monterey Counties and their respective flood control agencies, along with CalTrans. (*Arreola v. County of Monterey.*) Similarly, the State faced very large liabilities in a 1995 flood south of Marysville when a levee failed there. (*Paterno v. State.*) Thus, cooperation on a drainage-basin-wide basis is essential.

In an effort to improve statewide flood management, DWR funded a locally led Regional Flood Management Plan process in six Central Valley regions. The intent of the effort includes establishing a common vision among regional partners, articulating local and regional flood management needs and priorities, describing regional financing strategies, and establishing improved regional governance for implementation. Through interaction with these regional groups, DWR has advanced the idea of Local Maintenance Area (LMA) consolidation. This concept, which arose in the aftermath of the Hurricane Katrina disaster, is founded on the belief that it would be more efficient for existing LMAs to voluntarily collaborate, enabling them to "speak with one voice" (e.g. on matters affecting multiple LMAs whose levees protect the same hydrologic basin), perform consistent operations and maintenance (O&M), and increase emergency response capabilities (source: Yolo County Flood Governance Study 2017, p. 60).

2014 Yolo County Flood Governance Study Recommendations

The Yolo County Flood Governance Study, which was prepared for the Lower Sacramento/Delta North Region and funded by DWR, recommended a combination of the "regional communication and collaboration network" (Alternative 2) and a "hydrologic basin" approach (Alternative 3). The study recommended that each of the five "basins" develop their own version of coordinated governance: 1) Knights Landing; 2) Elkhorn; 3) Woodland; 4) West Sacramento; and 5) Clarksburg. These designations are consistent with current engineering logic, and formally coordinate areas that are either already working together, and/or depend on each other's compliant flood infrastructure management (i.e., all will be subject to flooding if any of them loses a flood fight). The Study found that while reclamation districts are best suited to conduct routine O&M and on-site emergency response, some flood management activities would be better accomplished at the regional level. According to the Study, Yolo County residents would be better served if each basin provided a consistent level of maintenance and flood response and either functioned as one entity or in a coordinated manner.

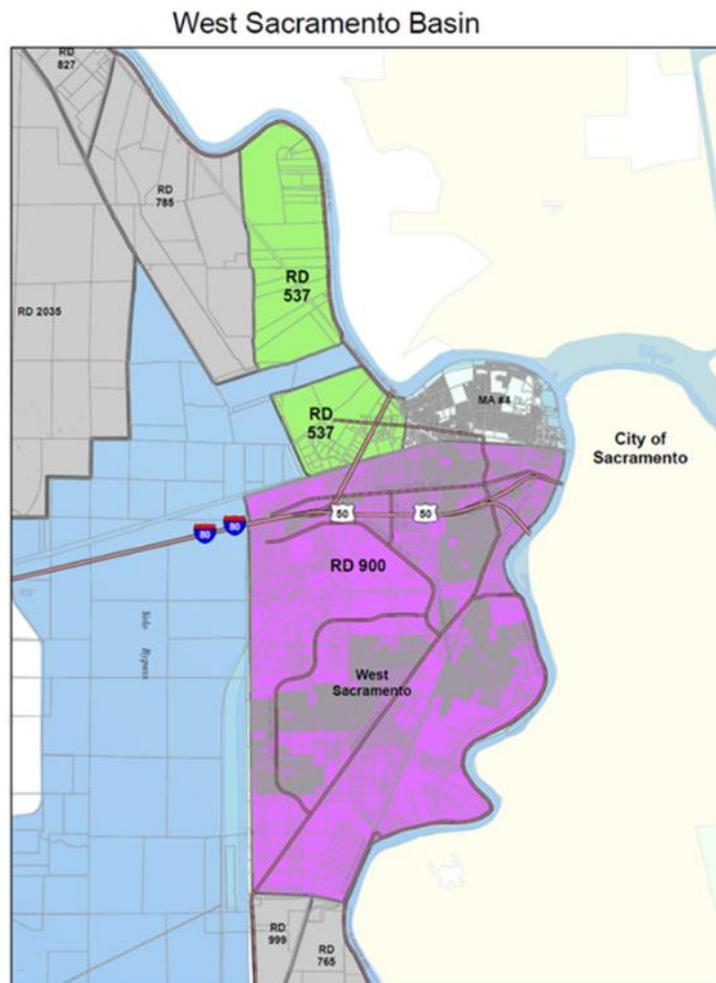
For the West Sacramento Basin, the 2014 Governance Study found that the West Sacramento Area Flood Control Agency (WSAFCA) is an already well-functioning JPA comprised of the City of West Sacramento, RD 537, and RD 900 and no major recommendations were needed for this area. However, WSAFCA does not include Maintenance Area #4, which is managed by DWR, or the Navigation Levee, which is maintained by the USACE. Further, WSAFCA, as currently operating, does not serve as the lead entity for the West Sacramento Basin to provide a uniform level of maintenance and flood fighting capability.

LAFCo 2018 Municipal Service Review (MSR) Governance Recommendations

In its 2018 MSR, LAFCo recommended the agencies responsible for levee O&M in each hydrologic basin develop governance solutions that will provide for a uniform level of services so that the protected area is not at risk due to inconsistent maintenance or flood fighting capabilities. The governance solution for the basins could take a variety of forms, including: agency merger/consolidation, contracts for shared services, MOUs, or JPAs. The goal for each basin is to achieve equal service standards, consistent maintenance standards (which may require consistent fee/assessment structures), and improved coordination during

flood events. LAFCo's 2018 MSR can be found on its website: <https://www.yololafo.org/reclamation-districts>

For the West Sacramento Basin, at its December 2017 meeting, LAFCo considered whether the MSR should recommend the City or one of the existing reclamation districts be the lead agency for the Basin. The Draft MSR report contained two options for the RD governance within the City: subsidiary districts governed *ex officio* by the City Council, or a consolidated RD independent of the City. At the meeting, LAFCo requested additional information from staff and directed staff to bring the item back for a subsequent meeting to select a recommended governance structure. On February 22, 2018, based on the information and analysis in the LAFCo staff report, LAFCo ultimately recommended that the RDs serving properties within the City boundaries become subsidiary districts of the City, specifically noting it would still welcome an application from the affected RDs (RD 900 and RD 537).



The following is the MSR recommendation that LAFCo ultimately adopted on February 22, 2018:

The City of West Sacramento has expressed a willingness to absorb RD 900 and RD 537 (the portion south of the weir) and consolidate services with the City either as a merger or a subsidiary district. LAFCo recommends RD 900 and RD 537 become subsidiary districts to the City. To approve such a consolidation, LAFCo would need to make a finding that the public service costs would likely be less than or substantially similar under City governance and that consolidation promotes public access and accountability for services. The Districts have expressed their opposition to being absorbed in any manner by the City and provided reasons for such opposition. The City should take over responsibility for DWR Maintenance Area #4 levee maintenance and conduct an annual inspection of the Navigation Levee to confirm that the USACE maintenance is

being conducted to the same standard as the rest of the basin and advocate (either on its own or through the JPA) for any needed improvements to achieve the goals of basin-wide governance. The City of West Sacramento has provided a Financial Analysis that compares existing costs to projected costs of City consolidation of services (merger and subsidiary district).

FACTORS TO BE CONSIDERED IN PROPOSAL REVIEW

Government Code Section 56375 authorizes LAFCo to review and approve proposals for "changes in organization" and "reorganizations" (i.e. more than one change in organization proposed or approved concurrently) consistent with policies adopted by the Commission. Government Code Section 56880 authorizes LAFCo to impose a wide variety of conditions on a proposal that it approves. Government Code Section 56021 defines "changes of organization" to include annexation and dissolution of special districts, among other actions. According to Section 56118, any proposal for a subsidiary district shall contain a request "either a merger or the establishment of a subsidiary district, as may be determined during the course of the proceedings." A merger of the RDs into the City within the City's territory, whereby the RDs would cease to exist, was considered during the 2018 MSR process and was not ultimately recommended. Doing so has two significant disadvantages: it would likely expose the City's general assets to the enormous liabilities that can follow a levee failure and it would not necessarily ensure that RD assets are used only for levee maintenance and drainage services, but would rather make those general fund assets of the City as are its other public works improvements.

In accordance with Government Code Section 56668, the factors to be considered in the review of a proposal include, but are not limited to, all of the following. Factors that are especially pertinent to this decision are emphasized in bold.

*(a) Population and **population density**; land area and land use, 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.*

Discussion

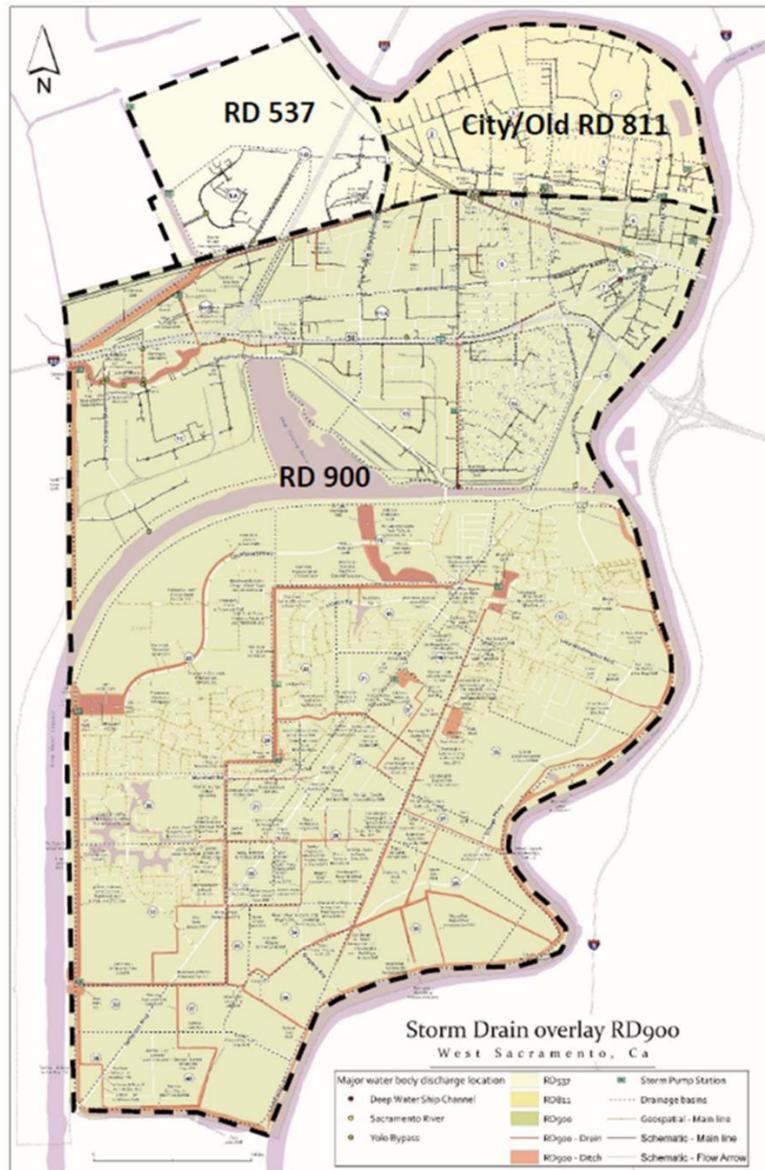
The reorganization of the reclamation districts and their boundaries would better align with drainage basins, separating urban from rural populations and development patterns (with corresponding differences in levee maintenance standards, i.e. 100-year versus 200-year protection). Both proposals would detach the City portion of RD 537, separating the urbanized portion from its rural remainder.

*(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.***

Discussion:

There is an ongoing need for levee maintenance and interior drainage services, which are funded through the RDs' existing assessments. This need will become even more important as the City continues to develop and its population increases. RD 900's present services are "acceptable" according to DWR inspection reports, whereas DWR considers RD 537's "minimally acceptable." Sufficient revenues are generated from RD 537 and RD 900's assessments to cover the present cost of services. The costs of serving RD 537's territory within the City may go up if annexed to RD 900 to bring O&M up to common and "acceptable" standards, but this cost can be accommodated in the assessment range landowners have approved. The City of West Sacramento has indicated it would maintain the subsidiary district(s) as separate operations and not bring them physically into City Hall, as was done with the Sacramento-Yolo Port District, which could alter overhead costs. Rather, the City's Community Development Director has indicated the RD's staff and offices would remain as is. Therefore, services are anticipated to be adequate under both the City and RD 900 proposal and costs would remain stable per the adopted Prop 218 assessment approved by the

landowners. Both proposals would have to continue to operate within the RDs' revenue stream as authorized by its landowners.



(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.

Discussion: Both proposals would detach the City portion of RD 537, separating its urban social and economic interests from its rural areas, which has been commonly agreed is needed. In terms of local governmental structure, RD 900's proposal would combine this detached portion of RD 537 with RD 900 into one district governed by its own landowner board elected by landowners. The RD proposal also offers to transfer interior drainage services to the City, which would simplify the number of agencies involved in this system. The City's proposal would not combine these two districts, but would make them subsidiary districts with common city council ex officio boards elected by all residents of the City without respect to land ownership. State and local LAFCo policy prioritizes district consolidations over maintaining multiple districts with common board composition and prefers multi-purpose agencies (i.e., cities and counties) over single-purpose agencies (special districts).

(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 (re: conversion of open space or ag land).

Discussion:

The conformity of both proposals with adopted Yolo LAFCo policy is described in detail below. Neither proposal will result in the conversion of open space or agricultural land. Each maintains existing services to existing territory and has no growth-inducing impacts, although the recommended action is expected to better serve anticipated growth in the City.

(e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.

Discussion:

Both proposals would serve to maintain the integrity of rural agricultural lands by detaching the urban portion of RD 537 so that the remainder of RD 537 can focus on rural landowner interests and maintenance standards.

(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.

Discussion:

Both proposals would have definite and certain boundaries that do not divide parcels or create islands of territory.

(g) A regional transportation plan adopted pursuant to Section 65080.

Discussion:

Not applicable to RD governance.

(h) The proposal's consistency with city or county general and specific plans.

Discussion:

Both proposals would be consistent with the City's General Plan. The County's General Plan is not applicable as only incorporated areas are affected by these proposals.

(i) The sphere of influence (SOI) of any local agency which may be applicable to the proposal being reviewed.

Discussion:

RD 900s' proposal would include annexing both its SOI and RD 537's SOI into RD 900. The City's proposals do not annex those areas into a single district, although this could be achieved instead through terms and conditions. Staff recommends that RD 537 and RD 900's SOIs be annexed into RD 900.

(j) The comments of any affected local agency or other public agency.

Discussion:

Both RD 537 and RD 900 object to the City's proposals, just as the City opposes the RD 900 proposal. The CVFPB has taken no position on either proposal so long as its maintenance agreements and standards are achieved and maintained. LAFCo also received a letter from the Sacramento Area Fire Fighters Local 522 union objecting to the City's proposal (neither an "affected" nor a public agency). Both response letters are provided in Attachment B.

*(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.*

Discussion:

There are no issues or concerns that RD 900 is fully capable of providing the services. RD 537 has historically relied on contractors to perform its services. Under RD 900's proposal, it would take over these services within the City. Information has been provided to LAFCo documenting the sufficiency of revenues for RD 537 and RD 900, in addition to a division of RD 537's assessment should interior drainage services be transferred to the City. The City has expressed concerns, but has not declined to consider accepting responsibility for consolidated interior drainage services in the City. Information to support sufficiency of revenues is provided in Attachment C.

*(l) **Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.***

Discussion:

Not applicable to RD governance.

*(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***

Discussion:

This is not applicable to RD governance, as both proposals would continue to maintain 200-year flood protection standards to ensure housing development may continue in areas now zoned for residential use.

*(n) **Any information or comments from the landowner or landowners, voters, or residents of the affected territory.***

Discussion:

One comment letter expressing concern with the City's proposal has been submitted by Martha Guerrero, a West Sacramento City Councilmember, speaking for herself and not the City Council or the City. LAFCo staff has received two calls so far from residents expressing concern about the City governing RD 900 as a subsidiary district. Presumably, LAFCo will hear more comments during the public hearing. All written comments submitted thus far are provided in Attachment B.

*(o) **Any information relating to existing land use designations.***

Discussion:

RD governance will not affect existing land use designations.

*(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.***

Discussion:

Levee protection is being provided equally to all people within the City regardless of race, culture, and income. However, RD representation is not being provided equally because the Reclamation District Law allows only landowners to elect the districts' governing bodies and to serve on them. As a result, a large number of residents who are directly impacted by the RDs' services (i.e. renters) are unrepresented on the RD boards. The City's proposal will provide a board elected by all residents, including renters. RD 900's proposal does not address this issue.

*(q) **Information contained in a local hazard mitigation plan, information contained in a safety element of a general plan, and any maps that identify land as a very high fire hazard zone pursuant to Section 51178 or maps that identify land determined to be in a state responsibility area pursuant to Section 4102 of the Public***

Resources Code, if it is determined that such information is relevant to the area that is the subject of the proposal.

Discussion:

The West Sacramento Basin is designated as a 200-year floodplain. Both proposals will provide for continued flood protection services.

In addition to the factors identified in Government Code Section 56668, Yolo LAFCo has compiled the following Standards of Evaluation for Reorganization Proposals:

2.1 Choice of Entity

The provision of municipal services in highly urbanized areas by cities rather than by counties or special districts is favored. The further development of single purpose autonomous districts is disfavored. The formation of multi-purpose special districts contiguous to existing cities is disfavored. The creation of a multiplicity of small cities is disfavored. Accommodating additional growth within, or through the expansion of, the boundaries of those local agencies which can best accommodate and provide necessary governmental services and housing for persons and families of all incomes in the most efficient manner feasible is favored.

Discussion:

Although a full merger of the RDs into the City would further this goal, that option was considered and not recommended in the 2018 MSR for various reasons, most notably City liability and the desire to maintain district finances separate from the City. Therefore, both these proposals would continue to have services provided by a special district. It is the subject of this hearing to determine if RD 900 services are best provided under the leadership of an independent board comprised of landowners or the West Sacramento City Council. Consolidation of agencies is preferred.

2.2 Duplication of Authority

The inclusion of territory within a city in one or more districts with common powers, or within two or more districts with common powers, is disfavored. The Commission shall determine whether an application violates the policy set forth in the preceding sentence. If the determination is in the affirmative, the Commission shall provide each affected city or district an opportunity to express its views to the Commission.

Discussion:

See the discussion under 2.1.

2.3 Territory to be Included

The division of existing identifiable communities is disfavored, but at the same time the inclusion of heterogeneous economic and social interests within the same entity is favored. The division of existing communities identifiable on the basis of appreciable social, economic, or other factors is disfavored. The division of existing commercial districts is disfavored. The inclusion of contiguous or nearby urban areas within the same entity is favored. The inclusion of separate existing contiguous or nearby communities identifiable on the basis of appreciable, social, economic, or other factors is favored. Consistency with current spheres of influence is favored. Conformity with appropriate city or county general and specific plans is favored. The location of boundary lines of areas proposed for annexation to cities or districts so as to promote productivity and preservation of agricultural land is favored. Proposals which result in significant or serious operational or economic problems or disruptions of existing services in remaining adjacent territory are disfavored.

Discussion:

RD 537 currently spans both rural and urban areas with somewhat incompatible economic and social interests with differing levels of required flood protection. Both proposals will serve to divide RD 537 consistently with each hydrologic basin's common social and economic interests. Both proposals are consistent with spheres of influence, conform to the city's general and specific plans, and do not impact agricultural productivity or preservation. Nether proposal would result in significant operational problems or service disruptions.

2.4 Economic Feasibility of Proposed Formations

If the proposal is for the formation of a new agency, the proponents shall demonstrate the economic feasibility of the proposed formation, taking into account both the assessed valuation of the subject territory and any other sources of revenue, compared to the type and cost of the services proposed to be provided.

Any economic feasibility study shall include and address the following considerations:

- a) Infrastructure needs or deficiencies;*
- b) Growth and population projections for the affected area;*
- c) Financing constraints and opportunities;*
- d) Cost avoidance opportunities;*
- e) Opportunities for rate restructuring;*
- f) Opportunities for shared facilities;*
- g) Government structure options, including advantages and disadvantages of consolidation or reorganization of service providers;*
- h) Evaluation of management efficiencies; and*
- i) Local accountability and governance.*

A proposal for the formation of a new agency shall also be accompanied by an analysis of the availability and economic feasibility of obtaining the proposed services from other private and public agencies.

Discussion:

The City's proposal, on its face, would potentially include forming a new RD for the detached RD 537 territory. As noted above, this appears to be impracticable, as State law allows an RD to be formed only by petition of affected property owners. However, this policy requires LAFCo to consider consolidation or other reorganization options. Staff's recommendation would be to annex the detached portion of RD 537 into RD 900, just as the RD 900 proposal does, resulting in only one subsidiary district of the City (RD 900) and one surviving, independent RD (RD 537).

2.5 Future Service

In evaluating a proposal, the Commission shall consider not only present service needs of the area under consideration, but shall also consider future services which may be required to take care of future growth or expansion. If a proposal is submitted to extend services into a previously unserved unincorporated area or to create a new service provider with the power or authority to extend services to urban type development in a previously unserved unincorporated area, the Commission will review the proposal to ensure that it is consistent with the policies set forth in State law and LAFCo policies.

Discussion:

Both proposals would serve the current and future needs of growth within the City. An extension of services into unincorporated areas is not anticipated since the City's recently adopted General Plan accommodates all growth within its existing boundaries.

2.6 Description, Service Plan, and Timetable Required

Any proposal to annex shall be accompanied by a service plan that describes the extension and financing of services and timing of major milestones of any related development project.

Discussion:

See the discussion under Policy 2.5. Services are already provided in both proposals' affected territory and an extension and financing of additional services is not needed. Existing RD assessments would continue and would be restricted by state law to serving the property owners who pay them.

2.7 Terms and Conditions

Any term or condition recommended for the Commission to impose pursuant to Government Code § 56885.5 et seq. must be presented by a statement in writing that includes a description of each proposed term and condition. If the term or condition is proposed by an affected public agency, the statement in writing must be signed by the chief legislative or administrative officer of the agency. If the term or condition is proposed by a proponent, it must be signed by one of the proponents. In the absence of protest, the Commission shall evaluate the proposed terms and conditions on the basis of the written statement. In the

case of a protest that is not resolved at the public hearing, the Commission may direct the Executive Officer to negotiate with the opposing parties and may also authorize independent evaluation of issues involved in the dispute.

Discussion:

Terms and conditions recommended by staff are presented in the resolution. No terms and conditions have been proposed by either applicant.

2.8 Boundaries (excerpted to keep relevant language)

Boundary descriptions of territory included in any proposal shall be definite and certain. Boundaries which follow existing political boundaries and natural or manmade features such as rivers, lakes, railroad tracks, roads and freeways are favored. Boundaries which create islands, strips, or corridors are disfavored.

Discussion:

Both proposals include boundaries that are definite and certain. No islands, strips or corridors would be created.

2.9 Pre-Zoning (applicable to City annexations only)

Discussion:

Not applicable.

2.10 Regional Housing (applicable to proposals that would affect a city's ability to achieve its Regional Housing Needs Allocation.

Discussion:

Not applicable.

2.11 Water and Water Availability (applicable to proposals that include the provision of potable water services).

Discussion:

Not applicable.

2.12 Environmental Justice

The extent to which the proposal will promote environmental justice shall be considered. 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.

Discussion:

Please see Section 56668, item (p) above discussing representation on the RD boards.

2.13 Property Tax Transfer Negotiations

Property tax exchange negotiations must be completed and filed with the Executive Officer before a Certificate of Filing may be issued.

Discussion:

Revenue and Taxation Code Section 99 requires the Yolo County Board of Supervisors to negotiate on behalf of any special district affected by an organization change. Because the Yolo County Auditor's Office has determined the subject districts do not receive any property tax revenue, there is no property tax revenue subject to a negotiated exchange and therefore a negotiation is not needed. Yolo County's notification of this determination to the districts on March 14, 2019 is included as Attachment D.

Other Issues from the Municipal Service Review Process

In addition to state mandated factors and Yolo LAFCo's own policies, several other issues were raised during the MSR process, which were further evaluated after the various proposals were submitted.

The City's Liability for Flood Events

LAFCo staff requested legal opinions from RD 900 and the City regarding whether the City's proposal to establish the RDs as subsidiary districts increases the likelihood of direct liability in the case of a levee failure (see Attachment E). The RD's and City's legal memos agree that the City would not assume liabilities merely by virtue of having a shared board with a subsidiary district. Although there is little likelihood of "vicarious" or "alter ego" liability, other factors such as financial connection, financial support, being party to indemnification agreements, and participation in planning, construction and operation of flood control projects may give rise to "direct" liability for the City's direct participation in flood-related activities. For example, the City already has some level of involvement in flood protection projects, but has asserted that it can manage the liabilities by being "committed to maintaining the Reclamation Districts as financially strong, operationally distinct legal entities from the City." (See July 3, 2019 Letter from Aaron Laurel, included in Attachment E.)

In response to the City, RD 900 argued the City will have control over RD 900's finances and "all aspects of levee rehabilitation projects undertaken by WSAFCA." (See July 11, 2019 Letter from James Day, included in Attachment E.) However, RD 900 attributes the City Council's actions while servicing as the ex officio board of a subsidiary district with the City itself, when the two are not the same. Further, there is no indication that the CVFPB will require the City to enter into an assurance agreement, as RD 900 believes. (*Id.* at p. 2.)

The liability discussion during the MSR process focused on liability from the perspective of protecting the City's general fund. The issue should also be considered from the perspective of the public the agencies serve and making the community whole, should there be a flood event. Therefore, staff requested the insurance policies for RD 537 and RD 900 (see Attachment F). The coverage limits are sufficient to make the districts themselves whole after a flood event, but would not go very far towards covering the public's property damage following a flood. RD 537 has a general aggregate limit of \$3 million and RD 900's corresponding limit is \$10 million, and emergency funding from state and federal governments may provide additional funding. However, this serves to highlight there is another side to the liability issue and LAFCo's consideration. Depending on the operational arrangement between the City and its subsidiary district, the City may have some exposure to liability, but having a larger governmental body bearing the financial responsibility may not necessarily be a bad thing in terms of incentivizing protective measures and helping the community recover from a flood. As a result, the question of the City's liability -- whatever it may be -- does not weigh for or against either proposal.

Proposal Implications to WSAFCA JPA

WSAFCA is a joint powers agency formed by the City, RD 900, and RD 537. Staff also asked RD 900 and the City to provide legal opinions as to whether the City's proposal would affect WSAFCA. The opinions also agree that none of the proposals would have a legal impact on the JPA, which will continue to exist, although any reorganization certainly will create some practical issues for the JPA. Even if RD 537 is reorganized to serve only the Lower Elkhorn Basin with no geographic area common to the other members, it will remain a member of WSAFCA (but might negotiate its withdrawal from the JPA). If RD 900 were established as a subsidiary district, the City Council would control the appointment of 4 of the 6 seats of the existing WSAFCA board (RD 900's and the City's seats), something not envisioned when the JPA was formed. The JPA agreement has terms for member withdrawal and changing board composition. Although these issues are relevant, they will need to be handled by WSAFCA as they are outside LAFCo's jurisdiction. State law gives LAFCo little authority over JPAs at present, although proposals to increase LAFCo authority over JPAs arise in the Legislature regularly.

City as Financial Stewards of Levee Maintenance Funding

Representatives from the RDs have expressed concern the City would misuse RD funds if the RDs became subsidiary districts. The basis for concern cited to LAFCo was the City's historic use of its development impact fee that is designated for flood protection. These are fees collected by the City upon issuance of a building permit (part of the overall permit fees), to go towards 200-year flood protection projects.

The nexus study which provides the justification and basis for the City's development impact fee specifically contemplates the construction of levee improvements to bring the City from 100-year to 200-year flood protection. The impact fee structure has been set according to the "risk of being affected by an uncontrolled

flood event”, i.e., levee failure. The City has a separate development impact fee program for drainage in the Southport area, so there is a distinction in the fee programs between levee improvements and interior drainage.

From the time the fee was initially collected in 2009 until 2016, the fee appears to have been expended on levee-related public improvements such as transfers to WSAFCA for project contributions, the West Sacramento Levee Improvement Program (WSLIP), and Levee Project Management/Support. However, beginning in FY 2016/17, the City began expending impact fees towards interior storm drainage projects and not levee improvements as stated in the nexus study, as noted in the table below.

Fiscal Year	Expenditure	Description	Amount
2016/17	Storm Drain Master Plan	Evaluate existing storm drain system	\$937,553
2017/18	Washington Neighborhood Infrastructure Plan	Storm drain improvements as part of roadway improvements	\$300,000
2017/18	Storm Drain Master Plan	Evaluate existing storm drain system	\$323,440
2018/19*	Storm Drain Master Plan	Evaluate existing storm drain system	\$327,670

* City's Transaction Report provided to LAFCo goes only through 6/19/2019

It's not LAFCo's role to determine if these funds are being correctly allocated by the City. The Yolo County Grand Jury noted this issue as a concern in its FY 2018/19 report entitled "Flood Management in the Urban Environment – Yolo LAFCo and the Role of RDs 537 and 900 within the City of West Sacramento" yet did not investigate and report on the issue. Details as to the use of these funds is also not likely to be picked up by an audit of the City's finances. Information regarding the City's engineering study to support the in-lieu fund and expenditures for the last five fiscal years appears in Attachment G.

The RDs are primarily funded by assessments subject to Proposition 218, California Constitution, article XIII D, section 4, which requires assessment proceeds to be spent only for the benefit of the parcels which pay them. Thus, RD assessment revenues flowing to an expanded RD 900 existing as a subsidiary district of the City would be required to be spent for the benefit of the current RD 900 territory and the portion of RD 537 within the City. Thus, the RDs' concern seems less applicable to the present proposals than to development impact fees.

More broadly conceived, this issue arises in any multi-purpose agency and can arise in single-purpose agencies, too. Government agencies have limited financial resources and are under pressure to find ways to spread costs. While these financial pressures create concern, it is also one of the primary reasons a complete district merger with the City was removed from the 2018 MSR recommendation. Under both proposals, the districts' funding and accounting will remain separate from the City's, allowing for transparent accounting of costs and agency funds to avoid commingling. If necessary, assessed property owners can enforce RD 900's duty to spend assessment proceeds for the benefit of those who pay them via the political process.

Staff Recommendation

Government Code Section 56001 provides some guidance on the Legislature's priorities as to district governance:

“The Legislature finds and declares that a single multipurpose governmental agency is accountable for community service needs and financial resources and, therefore, may be the best mechanism for establishing community service priorities especially in urban areas. Nonetheless, the Legislature recognizes the critical role of many limited purpose agencies, especially in rural communities. The Legislature also finds that, whether governmental services are proposed to be provided by a single-purpose agency, several agencies, or a multipurpose agency, responsibility should be given to the agency or agencies that can best provide government services.”

State and local policy's preference for a single multipurpose governmental agency (i.e. the City) would make a merger with City of West Sacramento the first choice, which would terminate the districts and transfer functions, services, assets, and liabilities to the City. (See Gov. Code § 56056.) But LAFCo has

rejected that option for the reasons stated above. Although a full district merger into the City would typically be most in line with State policy, the subsidiary district model provides a compromise solution that addresses liability for floods as well as concerns regarding transparency and commingling of flood protection funding.

Both proposals will serve to ultimately consolidate services under RD 900, but take slightly different approaches as to district governance. The key question is whether RD services can best be provided by RD 900 as an independent district with its own landowner board of trustees, or as a subsidiary district with the city council elected by all voters acting as its *ex officio* board. Staff recommends government services can best be provided with the city council acting as RD 900's board because it represents all constituents, not just landowners, through a more robust and inclusive election process (RD seats sometimes fail to attract many candidates, limiting voter choice; that has rarely happened to the City) and is thereby more accountable to the community. Overlapping agencies with different boards tend to have inherent conflict and any resulting power struggles do not serve community interests. The City has more resources that it can leverage to bring state and federal funding to flood protection projects and can do so more efficiently without coordinating among multiple agencies and boards. As a result, establishing the districts within the City as subsidiary to the City would more closely advance the interests described in Government Code Section 56001.

However, the City's proposal application #925 is impractical because Government Code sections 56100 and 56859 require a new Reclamation District to be formed via landowner petition. Therefore, staff recommends that the City's proposal application #926 be accepted with terms and conditions such that the detached City portion of RD 537, RD 537's SOI (i.e., State Maintenance Area #4), and RD 900's SOI be annexed into RD 900, as suggested in RD 900's proposal. This will result in the boundaries of RD 900 including all the territory within, and aligning with, the West Sacramento Basin Levee System, as a subsidiary district to the City. Staff's recommendation achieves the substance of the City's proposals while allowing RD 537 to continue to exist as an independent special district to serve the portion of its current territory outside City limits.

Terms and Conditions

The policy objective of ensuring assets of RD 537 and RD 900 are restricted to the benefit of the property owners who generated them will be served by the conditions of approval and the requirements of California law that assessments proceeds be expended only within the assessment district which generated them. Thus, current RD 900 assets will serve that portion of the City and RD 537 assets will be divided between the surviving RD 537 and RD 900 as a subsidiary district of the City and restricted to use in the areas which generated those assets. The terms and conditions will provide for a subsequent negotiation between RD 537 and RD 900 to determine how RD 537's funds would be apportioned between its rural and urban areas.

The terms and conditions will also encourage RD 900 to continue its efforts to negotiate in good faith with the CVFPB to assume State Maintenance Area #4 to achieve the goal of common operations and maintenance standards for this basin.

Staff recommends the reorganization of RD 900 (Action 1) to become a subsidiary district be effective upon the filing of a Certificate of Completion immediately following the close of the protest hearing. This would allow the City Council to be seated as the *ex officio* Board and direct RD 900's coordination with RD 537 on the division of RD 537's assets and liabilities through the development of a Financial Plan per Condition No. 4 of the proposed resolution. If the RDs cannot agree on a Financial Plan, then the Executive Officer will propose a plan to the Commission for its consideration and approval. Actions 2-4 of the Resolution (annexation of the detached portion of RD 537 as well as RD 537's and RD 900's SOIs) would become effective when LAFCo files a Statement of Boundary Change with the State Board of Equalization.

Protest Proceedings

If LAFCo approves the proposal, protest proceedings will follow. LAFCo staff will give notice of the protest hearing to all landowners and registered voters in the affected territory (i.e. the entire West Sacramento Basin) via 1/8th page display ads in the **West Sacramento News Ledger**. Direct mailing of notices is not required because the mailing lists exceed 1,000 (there are roughly 13,000 - 14,000 parcels in the affected territory).

- Landowner Protest: If protests are filed by fewer than 25% of the number of landowners owning less than 25% of the assessed value of land, the Commission shall order the reorganization. If 25% to 50% of the landowners file protests, the Commission shall order the reorganization subject to an election. Over 50% landowner protest terminates the proposal.
- Registered Voter Protest: If protests are filed by fewer than 25% of the number of registered voters in the affected territory, the Commission shall order the reorganization. If 25% to 50% of the registered voters file protests, the Commission shall order the reorganization subject to an election. Over 50% registered-voter protest terminates the proposal.

California Environmental Quality Act (CEQA)

CEQA Guidelines Section 15320 (Class 20) provides for a Categorical Exemption for Changes in Organization of local agencies that do not change the geographical area in which previously existing powers are exercised. One of the specific examples cited includes "consolidation of two or more districts having identical powers." In addition, the so-called "common sense" exemption applies "[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (CEQA Guidelines § 15061(b)(3)). The proposals are similar, in that they would change the governance of existing agencies without changing the scope of services provided. Therefore, staff recommends LAFCo direct staff to file a Notice of Exemption for this project.