

**LASSEN COUNTY LOCAL AGENCY FORMATION COMMISSION**

Herlong Chapel 160 DS Hall Avenue Herlong, CA 96113

**SPECIAL MEETING**

June 27, 2016 - 6:00 p.m.

Meeting was called to order at 6:08 p.m. by Chairperson Eid.

Roll call of members present: Jim Chapman, Jeff Hemphill, Brian Wilson, and Chairperson Todd Eid.

Staff Present: John Benoit, Executive Officer and Gwenna MacDonald, Clerk.

Motion by Commissioner Hemphill to approve the agenda as submitted; Commissioner Wilson provided a second and the motion carried. Ayes: Hemphill, Wilson, Chapman, and Eid.

**Correspondence**

There was no correspondence.

**Minutes**

Motion by Commissioner Chapman to approve the minutes of the June 13, 2016 meeting; Commissioner Hemphill provided a second and motion carried. Ayes: Chapman, Hemphill, Wilson and Eid.

**Public Comments**

**Pat Williams**, General Manager, HPUD, informed the Commission that the exterior lights on the Herlong Chapel building have not worked in years, and since the building is often used for public meetings it presented a hazard. The County owns the building and he requested that it be brought up to current building standards.

Commissioner Chapman responded that the Board of Supervisors was aware of the issue, and the problem was more complicated than changing out a burned light bulb. The County Engineer was working to identify a solution as the problem is located somewhere within an extensive infrastructure system.

**6. PUBLIC HEARING: Consolidation of Herlong Public Utility District and West Patton Village Community Services District**

Mr. Benoit thanked those present for attending the public hearing which was scheduled to consider the consolidation of two districts, the West Patton Village Community Services District and the Herlong Public Utility District. The consolidation involved the dissolution of the West Patton Village CSD and consolidating the functions and territory with the Herlong PUD, which would then become the successor agency with the merger of the existing service district boundaries. Both Boards have approved substantially similar resolutions of application requesting that LAFCo initiate proceedings for the consolidation. As a Public Utility District, HPUD is authorized by law to provide the services currently provided by West Patton Village, there is no proposed change to the property taxes, and initially the two boards would be merged and then through attrition with the expiration of terms, the board would be reduced to five members over time.

Mr. Benoit reviewed the next steps in the process, which were to dissolve the West Patton Village Community Services District, establish benefit zones, maintain the integrity of funds between the respective Districts, and then essentially a Utility District is created as a new entity.

Mr. Benoit described the legal function of LAFCo in the process and that it is authorized by the Government Code to approve or conditionally approve the proposal of the districts to effect the consolidation. He explained the advantages to consolidation which include:

- The two districts provide the same types of services in close geographic proximity to each other, allowing for efficiencies and economies of scale to be achieved through consolidation;
- The two districts' wastewater and water systems are already interconnected which will facilitate the consolidation;
- Consolidation of the districts will benefit the community by making readily available certified staff and enhanced financial resources;
- Improved efficiencies regarding maintenance of facilities and equipment currently operated by the districts,
- Easier to obtain grant funds and loans and will facilitate bond financing, making such financing less expensive.

Chairperson Eid requested that audience members who wish to speak sign the attendance sheet for the record.

Commissioner Wilson asked that any representatives from the West Patton Village CSD and HPUD Boards share their comments.

Chairperson Eid opened the public hearing at 6:23 p.m. and invited comments.

**Jim Swistowicz** stated that on page 3, paragraph 5 of the resolution, it states that the merger will not take place until the system is fit. He asked what is wrong with the system that would need to be corrected before the consolidation takes place.

**Vivian Peterson**, West Patton Village CSD Manager, informed the Commission that the Herlong PUD Board passed a new resolution and that the West Patton Village CSD Board had not had the opportunity to review or revise their resolution accordingly. She added that the HPUD Board was down to four members, but that they have replaced the fifth member. She asked if the West Patton Village CSD would only be allowed to have two members on the new board, if there could only be seven members.

Commissioner Chapman noted that the language on Page 5 is different from what had been presented to LAFCo at the last meeting.

**Pat Williams**, General Manager, Herlong Public Utility District, explained that the resolution is different from the one which had been passed and presented to LAFCo. The Board met and considered information that they received regarding the condition of the West Patton Village CSD infrastructure, and placed an additional condition on the resolution. The resolution was passed, and the prior one rescinded. HPUD has been made aware of the results of the video testing of the West Patton Village system, and the entire system has failed. HPUD cannot assume liability for any possible ground water contamination that may be pre-existing and he provided pictures to the Commission of the condition of various lines. He added that the HPUD Board had one vacancy and reached out to West Patton Village, inviting them to appoint a board member and they declined.

Chairperson Eid commented that HPUD has known for some time that the system was in poor shape, so certainly this has not come as a complete surprise.

Mr. Williams stated that they have had a pretty good idea that the system was in very poor shape, but now they have evidence, and it involves the entire system. There are problems with tree roots, and crumbling lines where there is dirt inside the line, indicating the potential for ground water contamination. HPUD cannot assume that liability if the State Water Board comes and demands that it be replaced and assesses fines because that places a financial burden on existing HPUD customers.

Commissioner Chapman commented that the condition of the system has been discussed for a long time, but now with pictures it is a reality. He asked Mr. Williams how he envisioned the problem being solved and an estimated expense.

Mr. Williams replied that there would need to be a preliminary engineering report completed, which would take approximately 30 days, at around \$20,000. The environmental work would likely come back as exempt, and they would have to look at funding sources, and there are two available; USDA or State Funding. The application process can be completed on line through USDA, and that can take about 90 days, to include the financial study. The design work would need to be completed, which can be between 60 and 90 days, and Mr. Williams estimated the cost to replace the entire system at around \$1.5 million.

Chairperson Eid asked if there were any emergency relief funds available through USDA.

Mr. Williams responded that there weren't, however given the public health nature of the project that could mean the potential for more available need-based grant money.

Commissioner Chapman stated that given the amount of expertise with the process that Mr. Williams has, it would be preferable to have HPUD in charge of the project to make sure it moves forward as quickly as possible, because ultimately it is what benefits the community that is the most important.

Mr. Williams agreed, but stated that it is also a huge liability given the potential for existing and future groundwater contamination, and that is not something his Board feels comfortable assuming responsibility for.

Commissioner Hemphill stated that he understands HPUD's position, but something has to be done and HPUD has the expertise and experience to make it happen quickly.

Mr. Williams stated that he was more than willing to do whatever it takes, however he has determined that he cannot work with West Patton Village CSD staff. He cited examples of information that they were either unwilling or unable to provide, and he has gotten nowhere in his attempts to work with them. He added that as long as the existing staff was involved he was unable to do anything else at this time.

Commissioner Wilson discussed the timeline estimates that Mr. Williams provided, noting that under the best of circumstances if everything went smoothly, it will likely take up to two years to complete the project, and allowing West Patton Village CSD to take the lead in the process will probably add even more time to it because they are not experienced in projects of this magnitude. In the meantime, the residents have a septic system that has completely failed. He asked Mr. Williams what he saw as the reality in moving forward.

Commissioner Chapman added that when the Lahontan Water Board gets involved, they will not care whether the Districts and management are getting along or not, and they can fine up to \$10,000 per day for violations such as this.

Mr. Williams responded that he would prefer that HPUD take the lead on bringing the system up to current minimum standards.

An unnamed audience member complained about the condition of her home's plumbing, and demanded that the Commission do something to fix it.

Commissioner Chapman replied that the Commission has spent almost five years in trying to bring about a solution to the existing problem. It dated back to the recommendation made in the Municipal Service Review that the Districts should consolidate, and the Boards were in agreement but had never been able to work together to initiate the consolidation. A year ago, LAFCo was invited to step in to attempt to move the process forward, and it led to the current meeting which was supposed to be a blessing in the process of merging the two Districts together. A public meeting was scheduled, the Commission traveled to Herlong to conduct an evening meeting in order to provide an opportunity for the public to comment on the consolidation, only to find that the respective Boards are no closer to working together than they were three or four years ago.

Chairperson Eid explained that LAFCo does not have the regulatory authority, based upon the Government Code, to order work on the system, or to have any enforcement authority over the West Patton Village CSD. The purpose of LAFCo is to oversee the process of one District dissolving, and the formation of a new District to provide services to customers. How that service is provided is up to the District's Board. He stated that he supported coming to Herlong in the evening to conduct a special meeting because the opinions of the residents that will be affected by the consolidation are very important to him, and he wants to hear from everyone that took the time to attend the public hearing. He asked Mr. Williams what the way forward should be.

Mr. Williams responded that with the way things stand and given the condition of the system, there is no way for HPUD to move forward with assuming the responsibility and liability of a system that has completely failed.

Mr. Benoit stated that resolutions have been adopted by both Boards, and there are two conditions that are in question. LAFCo does have the authority to add or change the conditions listed in the resolution and could in fact force the consolidation at this time, regardless of the provision that HPUD has included in their most current resolution. He discussed options for HPUD to implement that would protect their existing customers from any costs that develop as a result of taking on the West Patton Village system, such as the establishment of benefit zones.

Vivian Peterson, West Patton Village CSD, explained the process that occurred during the video testing of the system. She said that Lahontan has become involved and that people were having their wells tested, and so far there has been no water contamination identified. She said that there are places where the sewer lines have to be replaced, and she had been in contact with an engineering firm out of Reno to move forward with the process of obtaining grant funding, identifying where all of the laterals are located, and West Patton Village CSD is taking steps to move forward.

**John Everett** commented that at this point, the arguing between the two Districts is getting nowhere and it is the people who are suffering. He has attended Board meetings on both sides, and he understands why HPUD does not want to accept the system, but they are the most capable to fix the problem. A patch here and there is not going to cut it, and the whole system needs to be replaced and HPUD has the experience to do it.

**Rob Mitchell** stated that he does not have any questions other than why has it taken five years for something to be done about the system when it just keeps getting worse. Lahontan has known and been involved since last November, so the State's involvement is already happening.

Commissioner Chapman explained the role of Lahontan. He served on the Board in the 1980's, and now that they are aware of the situation, they will be watching to see what steps the Districts will take to remedy the problem. If the Lahontan Board does not see a willingness to act on the issues and move forward, if they continue to see the Districts arguing amongst themselves and not making any progress then they will step in, and that is what needs to be avoided. It is not LAFCo's responsibility to fix the sewer system, it is the function of LAFCo to oversee the process of two Districts working together to provide services to customers, and that means to fix the system. So far, the Districts have been unable to do that.

Rob Mitchell talked about a situation with a blocked septic line and his struggle to deal with West Patton Village CSD Management to remedy the problem, and does not understand why all the questions are directed to HPUD when they are not the ones currently responsible for the condition of the septic system.

Commissioner Wilson added that this is not a case of "that's not our job to fix the problem" it is that LAFCo does not have the legal authority to take the action to order a District to fix the system. The Commission has scheduled the meeting to hear comments, listen to public testimony regarding a consolidation of two Districts, and to provide the affected residents an opportunity to voice their concerns. The Commission is addressing Mr. Williams and asking him questions because he is the one who has been the most involved in the process, and HPUD has been the most vocal presence in the boardroom over the past several years, begging for a solution. Now that the meeting is scheduled and the Commission has come to Herlong to hold what was assumed to be the final public hearing before the consolidation takes place, it is shocking to learn that at the last minute, HPUD has added conditions that were not talked about a few months ago. This information is very surprising to the Commission, and it is very unexpected based upon the discussion that was held only two weeks prior at the regular LAFCo meeting.

Rob Mitchell asked if there were any State agencies that the Commission could turn things over to in order to keep the process moving.

Commissioner Chapman replied that the Commission has a few choices; turn the resolutions back to the Board for each District to continue trying to come up with an agreement, or turn it over to the Health Board or Lahontan and allow them to step in and work with it.

**Eric Neesen** stated that for three years he has been attending both the HPUD and the West Patton Village CSD board meetings. He has been vocal, and because often times he has been the only public member at the meetings, he has become nothing but a nuisance that they ignore. He chastised those present for not being involved all along, so that the Board would take them all seriously. The Boards have procrastinated, side stepped, and he is seen as nothing but

an agitator. He stated that the West Patton Village CSD does not want to give up their power, but it is time all of the residents step up, attend all of the meetings, and demand that something be done to fix the problem.

**Felix Flores**, HPUD Boardmember, commented that the solution is very simple. West Patton Village CSD can schedule a special meeting, remove their existing management, and agree to enter into a contract with HPUD to manage the replacement of the system. They can stay involved, retain their Board and all of their assets, and HPUD will not assume the liability for a failed system, but can take the lead in moving the project forward as quickly and efficiently as possible.

**Soledad McKee** stated that she has lived in the area for 15 years, and would have never purchased a home there if she had known about any of this. She said that the West Patton Village CSD has not been honest or professional, and she used to attend their Board meetings but was told point blank that it did not matter what people said or thought. She was told years ago that the infrastructure in the system was failing, and she supported dissolving West Patton Village and having HPUD take over.

**Jim Swistowicz** commented that last week it was suggested that West Patton Village CSD contract with HPUD to take the lead on making the system whole, and it was discussed for a few hours, but there was still no determination. He suggested that West Patton Village CSD call a special meeting, as was suggested by Mr. Flores, and let the residents decide if they want to move forward with HPUD taking the lead. If something is not done, then as it stands, everyone's home is worthless because there is not a functioning sewer system.

**Anthony Struve** stated that he has lived in Herlong for two years, and he has gone to meetings. He has had sewer back up issues where he lives, and the problem with having the wells tested is that Lahontan requires it to be the property owner who authorizes the testing and a lot of the landlords are refusing to agree to do it.

Commissioner Wilson thanked everyone for their comments and input, stating that the LAFCo Commission does have the power to enforce a disbanding of the West Patton Village CSD and forcing the Districts to consolidate, but that is not necessarily the best idea. It is not often done in California and it also puts the Commission in jeopardy for forcing a consolidation. Both Boards working together is still the best solution. He requested Mr. William's comment.

Mr. Williams stated that the Commission might have to force it because from his standpoint, there is nothing more that can be done with the existing West Patton Village CSD management, and he has no expectation that anything will change as a result of the new information or this public hearing. It is important to protect all of the rate payers and with the establishment of benefit zones, that could be done. The HPUD Board wants to move forward but unfortunately from the liability stand point has been advised not to.

Commissioner Hemphill stated that there is a serious health issue involved and they have to move forward to remedy it, one way or the other.

Commissioner Chapman commented that forcing the consolidation would be the first time it has ever occurred in Lassen County. There have been two resolutions passed by the HPUD Board and the West Patton Village CSD Board, but the application has not been initiated. He thanked Mr. Benoit for all of his work in the process, and pointed out that the resolutions passed by the Boards do not have to be identical, but they have to be 'substantially similar' and in this case,

there is only one difference. LAFCo does not have to go back to both Boards and tell them to start over. LAFCo is here because both Boards have petitioned to move forward with oversight of what is essentially an arranged marriage between two service districts. LAFCo has that authority, and now that the pictures have been provided to show exactly how bad the system is, LAFCo has an obligation to move forward with bringing about the consolidation. The public testimony has been consistent, and the situation should not have gotten to this point. He cautioned those present that they did not want to have Lahontan step in and take charge, or they could potentially shut the whole system down and start assessing fines.

**Eula Johnson**, West Patton Village CSD Boardmember, stated that it is clear that the system is in trouble, and she agreed with the comments made, and that the issue need to be moved forward as quickly as possible.

**Cindy Wheeler**, HPUD Boardmember, asked if there would be any way to work with Lahontan to exempt HPUD from liability for the existing condition of the system. She supported the proposal to eliminate the existing management of West Patton Village CSD and contract with HPUD to run the system.

Chairperson Eid stated that the Commission is in a position to make a decision, or to leave tonight hoping that the West Patton Village CSD Board will make a decision to contract with Pat Williams and move the process forward. He does not support putting off the problem any longer and relying on the Boards to start working together, because so far they have proven that they are unable to do so.

Felix Flores, HPUD, stated that the West Patton Village CSD does not have the management or experience to deal with a problem this significant, and HPUD does. West Patton Village CSD does not have the knowledge or resources, and does not even have any idea how much money they have. He suggested tabling the matter and working to have a contract drawn up between the two Districts so that HPUD can manage the existing West Patton Village District.

**Sandy Raffelson**, Finance Manager HPUD, supported the concept, stating that she was proud of the community for coming out and participating in the hearing process, and she is proud of Pat Williams for stepping up to the plate. She added that if HPUD could contract to West Patton Village CSD, then West Patton Village's insurance would remain in effect to cover the liability for any possible contamination issues.

Commissioner Hemphill stated that he had a problem with the solution that was proposed, because there is no guarantee from West Patton Village CSD that the Board will actually vote to do as suggested, and contract with HPUD. He asked Ms. Johnson for some assurance that the Board would vote to support that.

Eula Johnson, West Patton Village CSD Boardmember, responded that two Boardmembers had discussed the option, and talked about scheduling a special meeting. At that time they would consider and discuss the proposal, but she was unable to provide a guarantee.

Felix Flores, HPUD Boardmember, stated that it should be the mandate of the people, and what the people want and support is how the Board should vote.

An unidentified member of the audience stated that the Environmental Protection Agency would still hold the individuals responsible for the problem of groundwater contamination, and asked if

it would take everyone going to the media and getting the word out that way in order to get something done.

Commissioner Wilson stated that he is in the insurance business, and insurance policies often have tails that cover future losses and future claims, and asked if there had been a legal opinion regarding the coverage that might be offered by West Patton Village's policy, even if HPUD were to assume responsibility for the system.

Pat Williams stated that HPUD is a public agency and is part of a risk pool, and that West Patton CSD is in the same pool. The insurance representative has told HPUD that there will be liability to HPUD if they assume the system.

Commissioner Chapman commented that just because the two Districts merge doesn't mean West Patton Village's liability just disappears. The reality is, that now HPUD is aware of the extent of the system failure and that there are pictures being provided, that they have a responsibility as well. He stated that his responsibility tonight as a Commissioner is to make a decision that is best for the residents and to move forward with the process that has been talked about for years.

An unnamed member of the audience stated that he is a resident in the area and has been without a functioning sewer system for 9 weeks. He knows that the West Patton Village CSD is not going to work with HPUD, and he suggested giving the Boards 30 days to prove that they will, or else move forward with forcing the consolidation process.

Chairperson Eid said that the Commission has a responsibility to move forward, and while it isn't LAFCo's job to fix the sewer system, it is their job to make sure the two Districts are working together to find a solution, and it does not look like they are any closer to an agreement tonight than they have been in the past.

Felix Flores said that it does not seem necessary to mandate a consolidation, when a solution to contract with HPUD has been proposed that would benefit everyone.

An unidentified woman in the audience stated that it does not seem right to let West Patton Village CSD off the hook for the liability, and she supported allowing them 30 days to schedule a meeting and contract with HPUD.

There being no further comments, Chairperson Eid closed the public hearing at 8:14 p.m.

Commissioner Wilson made a motion of intention to move forward with the adoption of Resolution No. 2016-0003 to take place at the regular meeting scheduled for August 8, 2016, with the stipulation that West Patton Village CSD contract with HPUD by that date in order to facilitate the system replacement; Commissioner Hemphill provided a second and the motion carried by polled vote. Ayes: Wilson, Hemphill, Chapman and Eid

Chairperson Eid thanked everyone for their comments, and stated that the community cannot grow without some type of action taken.

Commissioner Chapman added that at the August 8, 2016 meeting, it will be clear what commitment the Boards have to working together to finding a solution for the community.



**7. Bylaw Amendment to adopt policy regarding Legislative Process Participation for Lassen LAFCo** Mr. Benoit explained that the proposed policy amendment would allow him to represent Lassen LAFCo by participating in the legislative process through the submittal of letters regarding Lassen LAFCO's position on various relevant topics. The policy provides flexibility, given the timing of meetings and deadlines for submitting comments. Any letter or email submitted would be provided to the Commission prior to forwarding to the State, and would be discussed at the next available Commission meeting.

Motion by Commissioner Hemphill, second by Commissioner Chapman, to approve Resolution No. 16-0004; motion carried. Ayes: Wilson, Hemphill, Chapman and Eid.

Motion by Commissioner Hemphill, second by Commissioner Wilson to adjourn until August 8, 2016; motion carried. Ayes: Chapman, Hemphill, Wilson and Eid.

The meeting adjourned at 8:19 p.m.

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Todd Eid, Chairperson

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Approved \_\_\_\_\_  
Gwenna MacDonald, Recording Secretary