

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

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M E M O

DATE: January 14, 2013

TO: Eva Hwang, Retirement Contract Analyst
Cynthia Brown, Contract Supervisor
Reuben Jimenez, Contract Division Manager

FROM: José C. Henríquez, Executive Officer

SUBJECT: El Dorado LAFCO's Contract With CalPERS

This memo serves to summarize the difficulties El Dorado LAFCO has had with the California Public Employee Retirement System.

Background

When El Dorado LAFCO became independent from the County in 2003, it either did not or could not pursue its own contract with the California Public Employees Retirement System. Instead, an arrangement was entered with the County of El Dorado and CalPERS whereby LAFCO sent its contributions to the retirement system under the County's employer code. Funds were differentiated from the County's funds by LAFCO having its own "office code."

This arrangement worked fairly well, but it was not without its issues. Among them were delayed notifications from PERS to LAFCO and a reluctance by the County to designate the LAFCO Executive Officer as a retirement administrator within the CalPERS reporting system. Another drawback was that LAFCO was tied to the County's contract with PERS.

In the fall of 2011, CalPERS implemented a new, 100% automated, reporting system called *myCalPERS*. During the transition between *myCalPERS* going live and

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November 2011, LAFCO was able to submit manual reports. That was short-lived because CalPERS was aggressive in moving member agencies to use the new system. However, soon after CalPERS directed us to use *myCalPERS* we discovered that it did not recognize us as a member agency, nor did it have the functionality to use office codes. Consequently, the LAFCO retirement funds were automatically deposited into the County's account, an arrangement neither agency wanted. Further, in mid November 2011 CalPERS ceased using its old manual reporting system, so the only available option was for LAFCO to enter into its own contract.

Contract Process

Starting in November 2011, at CalPERS staff's recommendation, LAFCO stopped making contributions into the system. LAFCO was told that the process of negotiating and implementing a new contract would take approximately six (6) months to complete. The following timeline demonstrates that this has not been the case at all. If necessary, LAFCO can provide other documentation to corroborate any of the dates specified below:

- On or about **November 28, 2011** LAFCO contacts CalPERS about initiating a new contract
- After a several weeks of delay on the part of CalPERS, the process was initiated when the "New Agency Questionnaire" was provided to LAFCO on **December 28, 2011**.
- LAFCO returned the "New Agency Questionnaire" and CON-7 Forms on **December 30, 2011**.
- Because of glitches with the *myCalPERS* system, CalPERS staff delays providing the invoice that starts the actuarial process to LAFCO. Invoice was finally sent to LAFCO on **January 30, 2012**.
- On **February 6, 2012** LAFCO sends payment of \$900 to CalPERS to start the actuarial process.
- According to CalPERS staff, the validation request was sent to the Actuarial Office on **March 12, 2012**. LAFCO is notified that the Actuarial Office has 90 days to produce a report.
- On **June 1, 2012** LAFCO receives the Actuarial Report, due to expire **September 1, 2012**, with instructions to complete the process within 90 days. The letter also states, "A Resolution of Intention (R of I) approved by the agency governing body to create the new agency must be received by this office on or before July 1, 2012 and the new agency effective date must be before July 1, 2012." When LAFCO asked about the July 1 date, the response from CalPERS staff was that the date was not

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applicable to us because LAFCO was already a member agency seeking its own contract and not a “newly formed agency.”

- On **June 28, 2012** LAFCO received instructions to provide the anticipated schedule of agency actions detailing the dates in which LAFCO planned to approve the new contract.
- On **July 5, 2012** LAFCO returned the form with the anticipated dates. LAFCO originally forecast the dates to be August 22, 2012 to adopt the Resolution of Intention, August 23, 2012 to complete the Employee Election and September 26, 2012 to adopt the Final Resolution.
- On **July 5, 2012** CalPERS staff notified LAFCO that the processing of new contracts was on hold pending new rules. In addition, LAFCO was instructed to complete Circular Letter 200-013-12. Over the course of several weeks I had to provide other evidence to support our assertion that LAFCO was, indeed, a public agency. LAFCO’s already scheduled hearings on this matter had to be cancelled.
- After appealing our case to CalPERS management, including speaking to Brad Hanson, LAFCO was notified on **September 19, 2012** that its contract was allowed to proceed. At CalPERS staff’s request, a new Anticipated Schedule of Agency Action was submitted on the same date.
- LAFCO receives a copy of the new contract on **October 8, 2012** via fax after spending several weeks repeatedly asking to be mailed a copy of it. CalPERS staff claims it was sent to the mailroom on September 28, 2012, although to date LAFCO has never received a mailed copy of the contract. This delay causes LAFCO to cancel the September 26, 2012 date to approve the Resolution of Intention.
- On **October 9, 2012** LAFCO receives a copy of the Reallocation Agreement. A copy is forwarded to the County on October 26, 2012 where it has remained unapproved since and with no satisfactory explanation as to why it has languished.
- As indicated in the again-revised Anticipated Schedule of Agency Action, LAFCO adopted its Resolution of Intention on October 24, 2012 and the employee election was held on October 29, 2012. These materials were sent to CalPERS on the week of **October 29, 2012**.
- The Commission completes the Final Adoption on **December 5, 2012**.
- The signed contract was sent to CalPERS on **December 6, 2012**.
- On **January 14, 2012** CalPERS notifies LAFCO a new Actuarial Report is needed and the process must begin anew.

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Impacts to LAFCO

As you can see, the process has been riddled with delays and missteps on the part of CalPERS:

- It was the *myCalPERS* system that led all parties down this path;
- Repeatedly during the entire process, holdups at CalPERS have caused delays between milestones. Each delay was at least three weeks in duration;
- It was CalPERS' decision to hold up the process, just as LAFCO was ready to approve the contract in July 2012, that caused the Actuarial Report to expire.
- Once the clearance to proceed was given on September 19, 2012, the Actuarial Report, a very integral part of the contract, had already expired. It is unknown why CalPERS management allowed the process to continue after, through its actions and inactions, it had caused an important and critical deadline to pass.
- Not to belabor this point, but when CalPERS faxed the contract to LAFCO on October 8, 2012, it did so after the Actuarial Report had expired. But CalPERS staff did not take any corrective action at the time knowing that the Actuarial Report *had* expired (e.g. did not provide an extension to the June 1 report or automatically start a new Actuarial Report once the clearance to proceed was given on September 19, 2012);
- It was CalPERS' decision to start the process again over its own errors. Worse, when it notified LAFCO CalPERS staff indicated that the employer rate may change based on the results of the new Actuarial Report.

LAFCO has made available everything CalPERS has required it to provide and I have done so in a quick manner despite other demands on my workload. In the mean time, we have had to hold retirement funds in a special account, impacting our employees' retirement. Six months into our current fiscal year, we cannot close our Fiscal Year 2011-12 books because we are still holding retirement money. I am in the process of starting the Fiscal Year 2013-14 budget and I cannot make any assumptions about retirement costs because I have no CalPERS rate. On top of all of that, I now have to ask my Commission to re-adopt everything it has already adopted, with the exception that the employer rate has suddenly changed, possibly now it will be higher.

I am not prone to hyperbole in official memoranda to other agencies, so when I say that this experience has been full of deep and profound frustration, I hope you know that I mean it.

The thought of starting again holds no appeal to me and is fraught with additional difficulties. If we were to start again today, it would be 90 days before an Actuarial Report is completed (April 14, 2013). It would be another 90 days to go through the process of contract adoption (July 14, 2013). And that is assuming no setbacks and

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that every milestone is met in a timely fashion, and so far - with all due respect - CalPERS has not met those expectations. Worse, there is no guarantee that after going through the process again the County of El Dorado will implement the Reallocation Agreement. I am facing the very real possibility of ending a second fiscal year with no retirement contract and being unable to close the financial books. Please appreciate that this situation has caused administrative, legal and accounting headaches.

Because of these numerous delays and nightmare of a process, I think I have every ground to respectfully request that CalPERS commit to one of the following two options in writing:

- Option 1:
 - That CalPERS will revisit its decision to start the process anew and take every possible administrative and legal measure to vacate the September 1, 2012 expiration date on the June 1, 2012 Actuarial Report and expeditiously implement the contract LAFCO adopted on December 5, 2012 with no additional information required of LAFCO; or
- Option 2:
 - That LAFCO will not be charged another \$900 to produce the new Actuarial Report;
 - That the Actuarial Report process be expedited and that its completion not take the usual 90 days;
 - That from this point forward LAFCO's contract be processed in a timely manner (e.g. not take a month between milestones); and
 - That CalPERS send to LAFCO a copy of its policy stating that new contracts begin on the date in which an agency is fully independent.

I would understand starting the process again if dates were missed through our fault and because of our delays; but as outlined above that has not been the case. Yet every time it is LAFCO that pays the price for CalPERS' mistakes.

I look forward to your response.