

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

EXECUTIVE OFFICER'S REPORT

AGENDA OF FEBRUARY 27, 2013

REGULAR MEETING

TO: Ron Briggs, Chair, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

PREPARED BY: Erica Sanchez, Policy Analyst

AGENDA ITEM #7: PUBLIC HEARING TO RECONSIDER THE
ENVIRONMENTAL REVIEW AND THE SHINGLE SPRINGS
RANCHERIA REORGANIZATION TO THE EL DORADO
IRRIGATION DISTRICT

LAFCO Project No. 2012-04

PROPONENTS: Cesar Caballero and Kristen Mackey

RECOMMENDATION

Staff recommends that the Commission consider and take action on the following three items:

1. Consider the written request to waive the LAFCO fees associated with the reconsideration; and
2. Consider the written request for reconsideration of the Shingle Springs Rancheria Reorganization to the El Dorado Irrigation District and determine whether reconsideration of the project is warranted; and

If the reconsideration request receives a majority vote, staff recommends the Commission:

3. Receive any oral or written testimony from the applicant or any other interested party and approve or disapprove with or without amendment, wholly, partially, or conditionally, the Shingle Springs Rancheria Reorganization to the El Dorado Irrigation District.

REASON FOR RECOMMENDED ACTION**Fee Waiver**

Per Government Code §56383(a)(4), LAFCO Policy Section 3.7, and the LAFCO Fee Schedule, requests for reconsideration of a Commission resolution are to be accompanied by the reconsideration request fee, which is currently set at an initial deposit of \$1,000. The applicant submitted a request for a waiver of fees (Attachment A) on January 8, 2013.

Government Code §56383(d) allows the Commission to waive fees, partially or in total, on finding that payment of said fees is detrimental to the public interest. The request for waiver must provide an explanation for the request by the proponents.

Reconsideration Request

Per Government Code §56895 the applicant, or any other member of the public, has the statutory right to request that the Commission reconsider a project within 30 days of the prior Commission action. The applicant submitted a request for reconsideration (Attachment B) on January 9, 2013.

BACKGROUND

At the public hearing held on December 5, 2012, the Commission received information and testimony relating to the Shingle Springs Rancheria Reorganization to the El Dorado Irrigation District including a staff report summarizing the project (Attachment B) and oral testimony from members of the public, including the reconsideration proponents. Among the issues discussed were the impacts to EID, the adequacy of the environmental review, and the events surrounding the Shingle Springs Rancheria from 1998 to present.

After considering all of the written and verbal testimony, the Commission voted 4-1 to approve the Reorganization.

Reconsideration Fees

LAFCO bills on an actual time and materials basis, which includes real costs of staff time and legal fees. The philosophy behind the Commission's fee schedule is that applications and other related matters, including reconsiderations, fund themselves. Consequently, each budget assumes a particular amount of revenue will come from applications. While LAFCO does not have a "general fund," the Commission's budget assumes that it only covers administrative matters whose cost cannot be assumed by an individual applicant or proponent. Those administrative costs are covered by the funding agencies.

As it relates to fee waiver or reductions, Government Code §56383(d) establishes the baseline for waiving or reducing fees, stating "The commission may reduce or waive a fee, service charge, or deposit if it finds that payment would be detrimental to the public interest" (emphasis added).

In response to this reconsideration request, LAFCO staff has spent considerable time researching the issue, providing information to the proponents and preparing the item for hearing. Further, in his request for a fee waiver, the reconsideration proponent did not address how it would be detrimental to the public if LAFCO imposed its fee.

Instead, he has argued that the fees are detrimental to him personally. This is important because if the Commission grants the requested waiver of fees, LAFCO will assume all costs associated with the reconsideration request; these costs will not be billed to EID. If LAFCO bears the cost, it would have to use part of its administrative budget. This means that all of the funding agencies, and the public that finances them, will ultimately bear the cost of this reconsideration request. It would not be in the public's best interest to waive the reconsideration fees.

Reconsideration Request

In accordance with Government Code §56895, the applicant submitted a request for reconsideration on January 9, 2013 (Attachment A). The letter outlined the following five summarized reasons as the foundation of the request; 1) lack of Federal Government consent to the original annexation; 2) no waiver of sovereign immunity, negating LAFCO jurisdiction; 3) the December 2009 ruling against EID; 4) a request that LAFCO enforce policies, procedures and conditions on EID and the Rancheria; and 5) failing to verify the legal entity doing business.

The Reconsideration Process

As outlined in Government Code §56895 and LAFCO Policy Section 3.7.6, Reconsideration is a two-step process that may require two separate motions and votes from the Commission.

- (1) The Commission will first consider whether the request for reconsideration is warranted under the specific provisions in Government Code §56895. The Commission may vote to reconsider the matter only if any of the following findings can be made based on substantial evidence in the record:
 - (a) Compelling new evidence exists or new or different facts, including significant and previously unavailable evidence or facts that might alter the LAFCO's decision; or
 - (b) Circumstances related to the project have substantially changed, such as the repeal of an applicable law that might alter LAFCO's decision; or
 - (c) LAFCO's procedures were not substantially followed in the previous hearing(s).

The party requesting the reconsideration bears the burden of proving that any or all of the findings above exist. If substantial evidence of any of these findings are found, then the Commission will approve the request to reconsider and a second vote on the proposal will be necessary. If the Commission does not find substantial evidence for reconsideration, the original approval of the reorganization will stand.

- (2) After receiving all written and oral information regarding the reconsideration, the Commission will reconsider the reorganization proposal. The Commission may approve or disapprove with or without amendment, wholly, partially, or conditionally, the request.

Staff Response to the Reconsideration Request

- 1) NO FEDERAL GOVERNMENT SIGN-OFF; and
- 2) NO WAIVER OF SOVEREIGN IMMUNITY / NEGATES LAFCO JURISDICTION

These concerns speak to the original 1988 annexation, and these were two of the three legal issues surrounding the original 1988 annexation. Indeed, the need to resolve these legal issues was one of many reasons the Commission approved the December 2012 approval of Project 2012-04, the Reorganization of the Shingle Springs Rancheria. If the Commission recalls, through its approval action in December, the 1988 annexation was vacated by the Commission. By vacating the 1988 annexation, the need for a waiver of sovereign immunity and the need for BIA approval of the annexation become null and void.

As for the 2012 Reorganization, EID is the applicant, which Government Code §56654 grants them the ability to be an applicant to LAFCO. No further authorization is required from the Tribe or the Bureau of Indian Affairs (BIA) for applications brought to LAFCO by a public agency. However, LAFCO did receive written consent for the 2012 Reorganization from both the Tribe and BIA, as the occupants and landowner, respectively. Because EID was the applicant for the 2012 application, the requests made by the proponents for items 1) and 2) are not applicable.

- 3) DECEMBER 2009 RULING AGAINST EID

This is a misread of Judge Melikian's 2009 ruling. The Judge indicated that the LAFCO conditions were valid and EID had no statutory or legal authority to set them aside unilaterally. The ruling also said that if EID or the Tribe wanted the restrictions to water service altered or removed, they would have to address them through LAFCO, which is what ultimately lead to the 2012 application. By applying to LAFCO and getting the Commission's approval of Project 2012-04, EID is complying with the Judge's ruling.

- 4) REQUEST THAT LAFCO ENFORCE POLICIES, PROCEDURES AND CONDITIONS ON EID AND THE SHINGLE SPRINGS RANCHERIA

LAFCO will enforce all conditions from the 2012 decision approving Project 2012-04 and EID has agreed to comply with the new conditions of approval; therefore, this is not a valid reason for the Commission to reconsider its December decision.

- 5) FAILING TO VERIFY THE LEGAL ENTITY DOING BUSINESS

Tribal identity and Federal recognition of Native American tribes are not within LAFCO's jurisdiction. In fact, no local government has the authority to do so. Only the Federal Government has the exclusive authority to make these decisions. By dismissing this as a reason to grant reconsideration, the Commission takes no position and will not weigh in on the matter of whether the claims made by Mr. Caballero's and Ms. Mackey's group on their identity have merit or validity.

In addition, this information was submitted by the proponents in writing and verbally in public testimony at the December 5, 2012 hearing, and was already considered by the Commission prior to its approval of Project 2012-04.

After reviewing all of the information submitted by the reconsideration proponents, staff has found that the request does not meet the narrow provisions set forth in Government Code §56895; therefore, staff recommends denial of the reconsideration request. Staff also did not find the payment of fees to be detrimental to the public interest pursuant to Government Code §56383(d), and recommends denial of the fee waiver request as well.

Regardless of the outcome of the two votes, the determinations of the Commission will be final and conclusive. There are no other appeals processes, either to this Commission or any other legislative body.

ATTACHMENTS

Attachment A: Fee Waiver Request

Attachment B: Reconsideration Request

Attachment C: 2012-04 Staff Report (including attachments)