

Chronicle of Events Regarding Staff's Efforts to Work With EID and the Tribe

LAFCO staff initiated discussions with EID on April 25, 2007 when the LAFCO EO and Counsel met with EID Counsel to discuss options to address the 1988 Rancheria annexation. The options explored were:

- EID files a lawsuit against LAFCO and seeks a judicial ruling on the validity of the annexation and the conditions;
- During the municipal service review (MSR) process, EID requests LAFCO to evaluate the impacts to its systems if it were to provide services to the casino. If LAFCO finds that EID has sufficient capacity or the impacts to its systems are manageable, LAFCO could declare it would not enforce the conditions; or
- EID files a district petition with LAFCO seeking the detachment of the tribal land with concurrent annexation (to be referred to as "Option #3"). The new proposal relies upon a district petition because LAFCO cannot initiate its own reorganization proposals and it was assumed that the Tribe, for its own reasons, would be uneasy about initiating a landowner petition (although it should be noted that the Rancheria is owned by the United States, adding to the legal uncertainty of the Tribe's initiation of the annexation proceedings in 1988).

Because it was the stated desire of all parties to avoid a lawsuit, the first option was dismissed and only the latter two options were seriously considered. In addition, the second option was considered problematic in that it could potentially invite a third party lawsuit.

EID Counsel stated that he would present these options to the EID Board on May 14, 2007 and LAFCO staff did the same on May 23, 2007, both in closed session meetings. The goals were to gauge the interest of the respective governing boards, their desire to proceed, and if needed, their permission for staff to approach the Tribe. On May 24, LAFCO staff teleconferenced with EID Counsel to confirm that the sense from both boards was to proceed with meeting the Tribal representatives.

On June 6, 2007 EID Counsel and LAFCO staff met with representatives of the Tribal Council and their legal team to discuss the three options. The Tribal legal representatives inquired about Option #3, which is technically called "a reorganization". LAFCO staff explained that a petition to detach the Tribal lands with a concurrent annexation, if approved, would remove the 1988 annexation and its conditions. The concurrent annexation would allow the Tribe the opportunity to procure the water it needs for, what was at the time, the proposed casino. The two actions would be inseparable so that it would not be possible to approve the detachment without approving the annexation. This petition would be processed in the same manner as all other petitions and it would afford the opportunity for public comment. In addition, the new petition would allow for the full disclosure of the impacts of the annexation on EID. In effect, Option #3 achieved three crucial goals: make the proceedings and information public; provide a legal mechanism to address the 1988 annexation; and, a have a current evaluation of the service impacts to EID based on the final use of those

resources. If the Commission denied Option #3, the Tribe does not lose much because the denial would revert the situation back to the conditions of the 1988 annexation.

It became apparent that the Tribal representatives were concerned about timelines, since they wanted to meet their goal of opening a casino in the fall of 2008 and were concerned about the length of time for LAFCO to process such a complex project. LAFCO Counsel offered a variation in that the Tribe could enter into an "Out of Agency Service Agreement" (OASA) with EID to secure the additional water for the casino, followed by a reorganization proposal. As the Commission is aware, the OASA, although quick, is only a temporary method to secure services under the law. The Tribe indicated they would consider the modified Option #3.

On June 26, 2007 the EO met with Tribal representatives to discuss the mechanics and timelines of the modified Option #3. In the same month, LAFCO Counsel exchanged at least two e-mails with Tribal representatives on the same issue. However, little action occurred for the next few months until September 6, 2007 when EID Counsel notified LAFCO staff that EID would not initiate either the original Option #3 or the modified Option #3.

Nothing else was heard from either party until EID Counsel informed various interested people of its workshop on April 28 to discuss a new legal opinion by the Department of Interior Regional Solicitor regarding the LAFCO conditions. This opinion, based upon a legal brief prepared by the Tribe's attorneys, stated that, "In the event the record reflects that the conditions imposed by LAFCO regulate land use rather than water delivery, we agree a court is likely to find the LAFCO conditions are preempted by federal law...." Based on this conclusion, EID Counsel recommended to his Board of Directors that they should reconsider their 2002 position that the LAFCO conditions were binding.

At a Special Meeting on May 8, 2008, the Commission authorized the Chair, Vice Chair and LAFCO staff to meet with their EID counterparts to explore the possibility of re-initiating the modified Option #3. The reasoning was that draft memorandum of understanding (MOU), to be unveiled by EID on May 12, 2008, was very similar to the OASA in the modified Option #3. A meeting was held on May 14, 2008 between LAFCO and EID representatives to discuss the MOU and the differences between it and the modified Option #3. The EID President and Vice President indicated that the modified Option #3 merited further discussion and directed EID Counsel to mention LAFCO's proposal to the Tribe and allow LAFCO to participate in a meeting with EID and the Tribe. However, on May 16, 2008, the Tribe Chairman and his legal team indicated that they were uninterested in pursuing the modified Option #3.