

**MINUTES OF JUNE 25, 2008**

**STATE OF CALIFORNIA, COUNTY OF EL DORADO**

**1. CLOSED SESSION**

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representative: Executive Officer

No reportable actions were taken.

**2. CALL TO ORDER AND ROLL CALL**

The meeting of the Local Agency Formation Commission held June 25, 2008, was called to order at 5:35 p.m. by Chair Loftis in the meeting room, Building C of the Government Center, 2850 Fair Lane, Placerville, California. Regular Members present were: City Members Carl Hagen and Ted Long, District Members Ken Humphreys and Harry Norris, County Members Ron Briggs and James R. Sweeney and Public Member Francesca Loftis. Others present were: Alternate City Member Roberta Colvin, Alternate Public Member Norm Rowett, Alternate District Member Michael Cooper, Executive Officer José C. Henríquez, Policy Analyst Erica Sanchez, and LAFCO Counsel Andrew Morris.

**ROLL CALL - VOTING MEMBERS:**

Briggs, Hagen, Humphreys, Loftis, Long, Norris, and Sweeney

**3. CONSENT CALENDAR**

- A. ADOPTION OF AGENDA
- B. MINUTES OF THE REGULAR AND SPECIAL MEETINGS OF MAY 21, 2008
- C. APPROVAL OF CLAIMS

**MOTION**

Commissioner Humphreys moved to adopt the consent calendar, second by Commissioner Long.

**ACTION**

The Commission voted unanimously to approve the motion.

**4. PUBLIC FORUM/PUBLIC COMMENT**

Chair Loftis opened the public forum. No member of the public addressed the Commission.

**5. SELECTION OF THE ALTERNATE PUBLIC MEMBER TO LAFCO**

Mr. Henríquez reviewed the staff report with the recommendation that the Commission receive the information relating to the selection of the Alternate Public Member to LAFCO and proceed accordingly.

The Commission opted to conduct another election. After the results of an open ballot election were announced, Mr. Rowett was elected as the Alternate Public Member.

**6. REVIEW AND CONSIDER THE DRAFT LAFCO EMPLOYEE BENEFITS POLICIES**

Mr. Henríquez reviewed the staff report with the following recommendations:

Staff recommends that the Commission:

1. Receive and review the Draft Employee Benefits Policy;
2. Consider any changes to the Draft Policy; and
3. Approve the Draft Policy, which will be incorporated into the Commission's Policies and Guidelines.

**MOTION**

Commissioner Humphreys moved to adopt the Amended Section 2.3.2 of the Employee Benefits Policies Option #2, second by Commissioner Long.

**ACTION**

The Commission voted unanimously to approve the motion.

**MOTION**

Commissioner Long moved to adopt the Employee Benefits Policies as recommended by the Employee Benefits Ad Hoc committee and amended by staff, second by Commissioner Briggs.

**ACTION**

The Commission voted unanimously to approve the motion.

**7. APPROVAL OF THE AMENDED CONFLICT OF INTEREST CODE**

Mr. Henríquez reviewed the staff report and recommended that the Commission:

1. Receive the amendment and update to its Conflict of Interest Code, adopt the amendments and direct counsel to coordinate with the County Board of Supervisors for final review.
2. Approve Resolution L-2008-28 and direct staff to make the appropriate filings and processes.

**MOTION**

Commissioner Long moved to adopt the Amended Conflict of Interest Code, second by Commissioner Humphreys.

**ACTION**

The Commission voted unanimously to approve the motion.

**8. NOMINATIONS FOR THE CALAFCO GOVERNING BOARD AND ACHIEVEMENT AWARDS**

Mr. Henríquez reviewed the staff report and recommended that the Commission receive the information related to the openings on the CALAFCO Board of Directors and on the CALAFCO Achievement Awards and provide direction to staff should the Commission wish to submit nominations in either category.

The Commission took no action on this matter other than to direct staff to do further research on the time commitment and return the item at a later date.

**9. PUBLIC WORKSHOP REGARDING THE SHINGLE SPRINGS RANCHERIA ANNEXATION TO THE EL DORADO IRRIGATION DISTRICT (LAFCO PROJECT #87-15)**

The Commission received a report from the Executive Officer and LAFCO Counsel on the legal questions surrounding the 1988 Shingle Springs Rancheria Annexation to EID, including new information received from the Bureau of Indian Affairs. Also included in this report were staff's efforts in 2007 to find a workable legal mechanism to resolve these issues. The Commission had several questions on this matter, LAFCO's ability to respond to these concerns, whether LAFCO should be the appropriate party to respond, and the implications of EID's recent actions. The Commission directed staff to place an item on the July agenda so that they may request opinions from various agencies on the application of legal precedence to these questions.

Chair Loftis opened item to public comment.

Ron Dosh, representing Voices for Rural Living (VRL), addressed the Commission. Mr. Dosh stated that his understanding, from the newspaper and from other people who were at the EID meeting, is that Mr. Fonseca was indicating that the Tribe does not need EID's water. Mr. Dosh rhetorically asked why EID is placing itself in such a legally perilous position, and why EID is so "hell-bent for leather" to provide the water. Mr. Dosh stated that, VRL opposes the MOU and any action by LAFCO in aiding EID in what it is doing with the Tribe, for the reasons stated in Mark Voelker's letter, dated June 25, 2008, and distributed to the Commission earlier today.

Mr. Dosh said that VRL is urging that LAFCO should direct EID, if it has the power to do so, to rescind its premature entry into the MOU, prepare an EIR on the proposed MOU, review the MOU's consistency (or lack thereof) with applicable County General Plan, zoning and building restrictions, and abide by LAFCO'S prohibition against the provision of water and sewer services to the proposed commercial uses of the Rancheria. He stated that VRL was at this meeting to go on record that it urges LAFCO to do what it can to enforce its own contract and its own conditions.

Matthew Adams, Counsel representing the Shingle Springs Band of Miwok Indians, addressed the Commission. Mr. Adams stated, as he understood Mr. Sweeney, the Agenda proposes no action here and he submits that none is needed. For purposes of making sure that the record is accurate and full, he commented that, first, the Solicitor has already determined that the conditions are not valid as a matter of federal law. That is separate and apart and in addition to any violations of state law associated with the conditions. Second, he believes that there has been an unusual amount of attention paid to the Tribe's sovereign immunity tonight and, while normally he would not object to public outreach on the subject of Tribal sovereignty, with respect, he thinks this is a "red herring." As he mentioned, the conditions have already been determined to be invalid as a matter of federal law and the Tribe, obviously, is under no obligation to waive its sovereignty for conditions that are a legal nullity. Third, as a matter of clarification, he noted that the conditions were imposed by, proposed by, LAFCO, they were not proposed by either EID or the Tribe. In addition, he noted the Commission's concern with the actual availability of water. On that subject, he noted that the process had been subject to full evaluation under both NEPA and CEQA. Those were public processes, the public was invited to comment, as were public agencies. Several public agencies availed themselves of that opportunity.

In addition, Mr. Adams addressed the topic of "the decline and fall of LAFCO." He stated there had been plenty of concern that if this matter is allowed to slide, that LAFCO will serve no purpose. The fact is that state law does give LAFCO the right to enforce any valid condition on an annexation. To his knowledge, there is no restriction on that provision of state law and LAFCO remains free to enforce any valid condition, as long as the law allows it. Mr. Adams also noted for the record, that until recently, it appeared that LAFCO staff's position was that the annexation was valid, as were the conditions, or at least that the conditions were invalid.

Mr. Henríquez spoke to place on the record that staff has not admitted to the "invalidity" of the LAFCO conditions. In both his presentations, both in private and in public, he said that the conditions were controversial and that there is a legal cloud surrounding those conditions; but, that has never been admitted either in private or public. He respectfully disagreed with Mr. Adams' assertion that staff's position was that the conditions were invalid. He stated he doesn't believe he said it and he didn't believe he ever said it, and it is not stated on his slides.

Mr. Art Marinaccio of Shingle Springs, representing himself, stated he thinks the Solicitor General's opinion, as written, points out to the most important task that the Commission has in the next month is clearly defining the question. He believes the question is: Is the annexation valid or isn't it? Clearly, the Tribe was asked to agree to some conditions as part of the annexation. He thinks one of the real issues that has to be asked is whether the Tribe can petition if it is not the property owner. What implication does that have on the validity that the property owner was never in front of LAFCO? He asserts that LAFCO was talking to the tenant and they agreed to something that the Solicitor General, maybe appropriately or inappropriately, said LAFCO didn't have a right to ask

them. LAFCO has requested under the Freedom of Information Act from the Bureau of Indian Affairs (BIA) their acceptance of that deal; BIA had said they had no such acceptance of that deal. LAFCO offered to the property owner an annexation with conditions that they never accepted. Was there an annexation? Mr. Marinaccio believes there was no annexation. He believes the conditions failed because there was no annexation, and that may be the sole question to be asked from the Solicitor General. He questioned if there was no annexation, then Option 3 is the only available option. That the property owner, the Bureau of Indian Affairs, needs to make an application to EID and an application for annexation to LAFCO that needs to be processed with the proper CEQA document and he agreed with Ron Dosh's assessment of what needs to be analyzed.

## 10. OTHER BUSINESS

### A. LEGISLATION

Mr. Henríquez reviewed the LAFCO-related bills in the legislature.

### B. COMMISSIONER ANNOUNCEMENTS

### C. COUNSEL REPORT

None

### D. EXECUTIVE OFFICER REPORT

Mr. Henríquez discussed the letter he received from Mr. Mackey, one of the main proponents to the Smith Flat Annexation to the City of Placerville, stating that the service impacts would be roads and police protection; it is already within the fire district. Mr. Henríquez stated that he would put the subject on July's Agenda.

## 11. ADJOURNMENT

### MOTION

Commissioner Long moved to adjourn the meeting, second by Commissioner Norris.

### ACTION

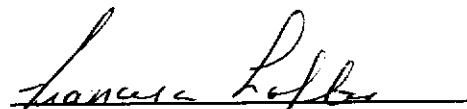
The Commission voted unanimously to approve the motion.

Chair Loftis adjourned the meeting at 8:25 pm.

**APPROVED BY THE COMMISSION  
AUTHENTICATED AND CERTIFIED**



Interim Clerk to the Commission



Chairperson