

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF MAY 22, 2013

REGULAR MEETING

TO: Don Mette, Chair, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

AGENDA ITEM #7: **CONSIDER AND APPROVE INDEMNITY AGREEMENT WITH
THE COUNTY OF EL DORADO**

RECOMMENDATION

Staff recommends that the Commission receive the following information related to the draft indemnity agreement and, if the negotiations are complete, approve said agreement.

REASON FOR RECOMMENDED ACTION

As the Commission is aware, the implementation of the LAFCO CalPERS contract requires that the County of El Dorado approve a Reallocation Agreement since the effective date of the CalPERS contract is retroactive. The County of El Dorado required that it be held harmless should any charges or penalties arise from the implementation of the LAFCO CalPERS contract. The Commission authorized staff to begin negotiations on an indemnity agreement at the March meeting.

BACKGROUND

Disparate Elements

As the Commission is aware, LAFCO is in the process of negotiating a new retirement contract with CalPERS. In addition, because CalPERS insists on making the contract retroactive, two additional elements not otherwise found in such contracts were introduced: A Reallocation Agreement that must be approved by the County, LAFCO and CalPERS and the effective date of the contract. County staff has objected to certain language in the Reallocation Agreement that LAFCO staff has requested CalPERS to revisit. The matter of the effective date has also not been resolved since the effective date determines how much liability each agency assumes under its respective contract.

As the Commission is also aware, LAFCO stopped making payments into the retirement

system on the advice of CalPERS staff. This has also been a matter of contention for the County. While LAFCO staff does not share this conclusion, the County's concern is that LAFCO's not reporting into the system puts the County in breach of its contract with CalPERS.

In March, the Commission authorized staff to negotiate an "indemnity agreement" to hold the County harmless in case it is subjected to fees or penalty charges associated with the implementation of the LAFCO CalPERS contract. This agreement would be between LAFCO and the County exclusively and separate from the Reallocation Agreement.

Around the same time, LAFCO Counsel was able to negotiate an exception (referred to as "the exception") with CalPERS that allows the reporting of LAFCO employees through the County for both the missing period as well as on a go-forward basis. However, this exception is temporary and subject to numerous caveats. CalPERS must receive an agreement from the County, in writing, accepting these conditions before CalPERS would allow the resumption of reports. It must be emphasized the exception is only a temporary solution. CalPERS has made it clear the LAFCO employees cannot continue to report under the County contract indefinitely. The permanent solution is for LAFCO to have its own contract with CalPERS.

Summary of Where We Are

In essence, this is the status report of where LAFCO is at the moment in this process:

- CalPERS will not initiate a new actuarial report or a new contract until the exception is implemented.
- The County will not agree to implement the exception until an indemnity agreement is in place.
- The County will not consider the Reallocation Agreement until CalPERS' legal department signs off on the requested changes to the language and an indemnity agreement is in place.
- The CalPERS contract will not be implemented until LAFCO adopts a new contract and the Reallocation Agreement is signed off by all three parties.
- LAFCO employees have no retirement benefits until both the exception is in place and a LAFCO contract is implemented.

Breakthrough?

Added to these elements is the challenge of negotiating an indemnity agreement absent a final or near-finalized LAFCO retirement contract. Staff believes it has struck a careful balance to alleviate the potential concerns raised by County staff without forcing the Commission to adopt an overly broad agreement that could jeopardize this agency's finances. At the time of this writing, staff has presented an indemnity agreement to County staff who has not had enough time to review it. LAFCO staff is optimistic that an agreement will be ready for the Commission to consider by the May meeting. If so, staff will forward a copy at a later date, but consistent with the Brown Act. Consequently, the item is on the Agenda so that the Commission can consider its approval.