

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

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AGENDA OF JUNE 25, 2008

REGULAR MEETING

TO: Francesca Loftis, Chair, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

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

RECOMMENDATION

Staff recommends that the Commission receive the following information regarding attempts to resolve the legal issues surrounding the Shingle Springs Rancheria Annexation to the El Dorado Irrigation District (EID) from twenty years ago, including new information received from the Bureau of Indian Affairs.

REASON FOR RECOMMENDED ACTION

The purpose of this workshop is to provide the Commission and the public with an overview of the efforts made to resolve the legal issues surrounding the annexation.

INFORMATION

Over the past year, LAFCO staff has attempted to work with EID staff and the Shingle Springs Band of Miwok Indians (Tribe) and its representatives to resolve the legal issues surrounding the annexation without resorting to litigation. As the Commission is aware, State Law does not have an appeals process for LAFCO actions after the expiration of the reconsideration period (thirty days after LAFCO acts per Government Code §56895). Once the Commission makes its decision, only the courts and LAFCO itself (through a subsequent action) may remove or set aside a LAFCO action.

The annexation history of the Shingle Springs Rancheria Annexation to the El Dorado Irrigation District (LAFCO Project #87-15) is described in Attachment A and will not be

covered in this staff report except to stress that while there was a waiver of the Tribe's sovereign immunity for the 1987 Annexation Agreement between EID and the Tribe [with Bureau of Indian Affairs (BIA) consent], there was no such waiver or BIA consent for the annexation itself with the LAFCO conditions.

Legal Implications

LAFCO staff has concluded that the 1988 annexation was flawed because of the conditions imposed and the apparent lack of BIA approval or a waiver of Tribal sovereign immunity for that annexation. Because Native American tribes are considered to have sovereign rights with respect to tribal land, Federal statutory and case law have established that state and local entities have no jurisdiction over tribal lands unless there is a specific waiver of tribal sovereignty.

Prior to the LAFCO application, the Tribe and the BIA consented to such waiver under a 1987 Annexation Agreement between the Tribe and EID. However, there is no record that the Tribe waived its sovereign immunity with respect to LAFCO or the annexation process. In addition, there is no record in the LAFCO files of BIA having approved the annexation itself. In contrast to BIA's approval to the Tribe's 1987 Agreement with EID regarding the annexation, there is no document specifically addressing the LAFCO process or subsequent action. Even if the BIA approval of the 1987 Tribe/EID Annexation Agreement is somehow considered to represent approval of the annexation, it appears that BIA never considered or approved the annexation as it was approved by LAFCO, with conditions that were not contemplated in the Annexation Agreement.

Although the 1989 EID Conducting Authority Resolution asserts that it "secured by an instrument in writing dated November 2, 1988" the required consent from the Secretary of the Interior on behalf of the BIA, there is no record that such consent was granted. There is a November 2, 1988 letter from EID to the Bureau of Reclamation (USBR) requesting their approval to serve USBR water on the Rancheria, but it is unknown whether that letter is what the resolution references. Although the Tribe and possibly EID have claimed to have a copy of the BIA approval, neither the Tribe nor EID has ever provided a copy to LAFCO despite repeated requests for it.

In an effort to find the missing BIA approval of the annexation, LAFCO staff submitted Freedom of Information Act requests to two BIA offices: The Central California Agency, which has jurisdiction over El Dorado County, and the Pacific Regional Office, whose jurisdiction encompasses the states of California, Hawaii, Oregon and Washington. On June 11, a letter from the Pacific Regional Office indicates that they "were unable to locate any responsive documents" that reflected BIA approval. The letter goes on to say, "Please be advised that this is not a refusal to disclose documents but rather a notification that there are no documents to disclose." On June 14, 2008, LAFCO received a response from the Central California Agency stating, "Upon staff review of our files for Shingle Springs Rancheria, we were not able to locate any documents per your request." Copies of those two letters are found in Attachment B. If BIA does not have that approval on file, it strongly suggests that the approval and consent were never given, which raises serious questions about the validity of the annexation.

Staff Efforts

As that Commission is aware, after LAFCO renders its decision, within 30 days any person may file a written request that the Commission reconsider its decision. If no reconsideration request is filed, the decision is final upon all parties and it cannot be appealed to another entity outside of the courts. In other words, no other body has the legal authority to overrule LAFCO. Consequently, there are only two legal ways to resolve these legal uncertainties: Going to court to seek legal relief from LAFCO's decision or submitting a new petition that replaces a past LAFCO action with a new one.

Given the intractable legal positions of the three parties – the Tribe, LAFCO and EID – and given the significant exposure to litigation for the latter two entities for the past 20 years, in 2007 staff sought a breakthrough that would resolve these issues in a legally-supportable manner. Those efforts are detailed in Attachment C; however as the Commission knows those efforts were not successful.

Staff has received several questions from the public regarding its motivations for pursuing "Modified Option #3," which was the Tribe seeking an out of agency service agreement to secure additional water in the short term followed by a reorganization proposal (detachment from EID with concurrent annexation). While this may sound defensive, staff's motivations were simple: Given the legal uncertainties surrounding this flawed annexation, what would be the best legal mechanism to resolve these issues without litigation? Staff was aware that working within the confines of the 1988 annexation would continue to expose this Commission to litigation.

New Legal Questions

On May 28, 2008, EID adopted the MOU with the Tribe under the assumption that the LAFCO conditions are not "legally valid or binding upon EID." However, EID does not have the authority under the law to make those determinations by itself. In addition, this action assumes that the annexation is valid although the LAFCO conditions are not, which may not be the case. However, the larger question of the annexation's validity is still unresolved. Since there is no record of such approval by the Tribe or the BIA for the LAFCO action beyond the Annexation Agreement, there is a question whether LAFCO had standing to approve the annexation with those conditions. Therefore, staff has serious reservations about the validity of the annexation, and it appears likely that if there is a legal challenge the courts would conclude that the annexation was void from its inception.

Attachments

- Attachment A: Annexation History: Shingle Springs Rancheria Annexation to EID (LAFCO Project #87-15)
- Attachment B: Copies of the BIA Offices' Responses to LAFCO's Freedom of Information Act Requests
- Attachment C: Chronicle of Events Regarding Staff's Efforts to Work With EID and the Tribe