

**SAN DIEGO LAFCO
MINUTES OF THE REGULAR MEETING
SEPTEMBER 9, 2013**

There being a quorum present, the meeting was convened at 9:00 a.m. by Chairman Andrew Vanderlaan. Also present were: Regular Commissioners – Supervisor Dianne Jacob; Supervisor Bill Horn; Mayor Sam Abed; Special District Member/Vice Chairman John Ingalls; Special District Member Bud Pocklington; and City Councilmember Lorie Zapf. Alternate Commissioners – Special District Member Jo MacKenzie, Public Member Harry Mathis and City Councilmember Lorraine Wood. LAFCO Staff – Executive Officer Michael Ott, Assistant Executive Officer Shirley Anderson, Legislative Research Director Harry Ehrlich and Legal Counsel Thomas Bosworth. Absent were: Commissioner: Mayor Jim Janney; Alternate Commissioners – Supervisor Greg Cox and Councilmember Sherri Lightner.

Item 1

Roll Call

The Commission Secretary performed the roll call for the September 9, 2013, LAFCO meeting. With the exception of Commissioner Janney, Alternate Commissioners Cox and Lightner, all other commissioners were present. Alternate Commissioner Wood will vote in place of Commissioner Janney who is absent.

Item 2

Approval of Minutes of Meeting Held August 5, 2013

On motion of Commissioner Abed, seconded by Commissioner Pocklington, and carried unanimously by the Commissioners present; the Commission dispensed with reading the minutes of August 5, 2013 and approved said minutes.

Item 3

Executive Officer's Recommended Agenda Revisions

Chairman Andrew Vanderlaan asked the Executive Officer if there were any agenda revisions. Executive Officer Michael Ott indicated that there were no agenda revisions.

Item 4

Commissioner / Executive Officer Announcements

Chairman Vanderlaan asked the Commission and Executive Officer if there were any agenda announcements. Chairman Vanderlaan made an announcement and congratulated Harry Ehrlich who received an achievement award from CALAFCO at the 2013 Annual Conference. Chairman Vanderlaan thanked Mr. Ehrlich for his contributions to LAFCO and CALAFCO regarding legislative matters and his excellent work provided over the years. Chairman Vanderlaan also announced that it was CALAFCO's 50th Anniversary.

Michael Ott introduced Alyssa Dronenburg, Administrative Assistant, who will assist with the LAFCO's Records Management project.

Item 5

Public Comments

Chairman Vanderlaan asked the public if anyone requested to speak on an item that is not related to the agenda. He indicated that there were no speakers slips received from members of the public for comments.

Item 6

Five-Year Sphere of Influence and Service Review and Proposed Affirmation of Sphere of Influence for the San Diego County Water Authority and Metropolitan Water District of Southern California (MSR/SR 13-41; 13-42)

Chairman Vanderlaan opened the public hearing for Item 6.

Michael Ott provided a brief report to the Commission regarding Item 6 that involves a five-year sphere of influence and municipal service review related to the San Diego County Water Authority and Metropolitan Water District of Southern California.

Shirley Anderson, Assistant Executive Officer, provided a report to the Commission about the two agencies and described their services, geographical information and recommendations regarding sphere of influence, affirmations and service reviews.

Chairman Vanderlaan closed the public hearing.

With no more speakers from the public and no further discussion from the Commission, on motion of Commissioner Pocklington, seconded by Commissioner Ingalls, and carried unanimously by the commissioners present, the Commission took the following actions:

- (1) Find in accordance with the Executive Officer's determination that pursuant to Section 15061(b)(3) of the State CEQA Guidelines, sphere affirmations are not subject to the environmental impact evaluation process because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and the activity is not subject to CEQA.
- (2) Find in accordance with the Executive Officer's determination that pursuant to Section 15306 of the State CEQA Guidelines, the service review is not subject to the environmental impact evaluation process because the service review consists of basic data collection, research, management, and resource evaluation activities that will not result in a serious or major disturbance to an environmental resource. This project is strictly for information gathering purposes as part of a study leading to an action which has not yet been approved, adopted, or funded.
- (3) For the reasons set forth in the *2013 Five-Year Sphere of Influence and Service Review*, accept the written statements in the aforementioned report establishing the

nature, location, and extent of functions and classes of services per Government Code Section 56425(i) and affirm existing spheres for the Metropolitan Water District of Southern California and the San Diego County Water Authority.

(4) Adopt the written Statement of Determinations as shown in Exhibit C.

Item 7

Administrative Approval of a Contractual Service Agreement: City of Escondido/Isabel Martinez - Gabriel Cervantes (OAS/RO13-39)

Michael Ott provided information to the Commission about an Administrative Approval of a Contractual Service Agreement with the City of Escondido and property owners, Isabel Martinez – Gabriel Cervantes, Jr. associated with one single-family residence with a failing septic system.

This item is for information purposes only and no action is required.

Item 8

Carlsbad Municipal Water District; Fairbanks Ranch Community Services District; Leucadia Wastewater District; Olivenhain Municipal Water District; Rancho Santa Fe Community Services District; San Dieguito Water District; Santa Fe Irrigation District; Whispering Palms Community Services District (MSR/SR13-20 to 13-27)

Michael Ott indicated that Robert Barry would provide a brief presentation about the final sphere of influence and municipal service review and determinations associated with Item No. 8.

Robert Barry provided a brief presentation of the information that was requested from the Commission at the June 3, 2013 meeting. He informed the Commission that the draft San Dieguito Municipal Service Review determinations were circulated to the subject agencies and that two out of the eight agencies (Olivenhain Municipal Water District (MWD) and Santa Fe Irrigation District (ID) responded. The revisions made to LAFCO were minor technical clarifications related to infrastructure and service areas related to the draft determinations. Mr. Barry indicated those technical revisions were intergrated into the final determinations for Olivenhain MWD and the Santa Fe ID.

The Commission received the written Statements of Determinations for the San Dieguito MSR water and wastewater agencies, consistent with the recommendations in the May 6, 2013 and June 3, 2013 LAFCO staff reports.

Item 9

Legislative Update Report

LAFCO Consultant Harry Ehrlich provided an update to the Commission on the most recent legislative activity. He indicated staff's recommendation is for the Commission to accept the Legislative Update Report.

The Commission received and accepted the September 9, 2013 Legislative Status report.

Item 10

Ramona Municipal Water District Municipal Service Review Status Report

Harry Ehrlich provided a brief progress report to update to the Commission on the Ramona Municipal Water District (MWD) Sphere and Municipal Service Review (MSR).

The Commission received and accepted the status report on the scope and progress to date on addressing issues relative to the Ramona MWD Sphere and MSR.

Item 11

San Diego LAFCO Website Modification

Robert Barry provided a brief presentation to update to the Commission on the latest changes to improve the LAFCO website. Mr. Barry indicated the changes provide better accessibility to the Commissions' posted public notices, meeting agendas, approved minutes and other LAFCO information.

The Commission received and accepted the staff report regarding the modifications to the San Diego LAFCO website.

Item 12A

Personnel Matter: Discuss the Recommendation of the Executive Officer's Performance/Compensation Review Committee: adjourn to CLOSED SESSION IF NEEDED: PUBLIC EMPLOYEE PERFORMANCE EVALUATION (GOV. CODE § 54957); TITLE: EXECUTIVE OFFICER

Item 12B

Personnel Matter: Reconvene to Public Session if a Closed Session is called, and Approve the Recommendation of the Executive Officer's Performance/Compensation Review Committee

Chairman Vanderlaan provided information regarding the performance evaluation for LAFCO's Executive Officer, Michael Ott and indicated that the matter may be discussed in a closed session if required. Chairman Vanderlaan informed the Commission about the recommendations that the Performance Review Committee (*Commissioners Vanderlaan, Ingalls, Abed and Jacob*) made based on the two meetings held on June 3rd and August 5th. Chairman Vanderlaan indicated that Commissioner Jacob was unable to attend the Committee's meeting on August 5th.

Chairman Vanderlaan asked if the Commission should go into closed session for discussion of the Executive Officer's performance/compensation. The Commissioners present indicated that a closed session was not required.

Chairman Vanderlaan provided a brief report of the Performance Review Committee's conclusions and pending issues. Chairman Vanderlaan also informed the Commission

that the report included additional details of the compensation information that was requested by Commissioner Jacob. Based on the Committee's report, the following recommendations and issues were discussed:

- 1) All committee members agreed that Executive Officer, Michael Ott's performance was rated as excellent;
- 2) The Committee presented two recommendations. It was noted the Executive Officer did not receive any performance based compensation increases during 2011-12. The Committee's recommendation is for a 2% base salary increase retroactive to July 2012. Retroactivity was recommended based on the Executive Officer's 2012 deferral of compensation increases until the completion of several audits. It was noted that the 2% was already included in the budget approved by the Commission for the review period. Chairman Vanderlaan noted that the Audits have since been completed and validate the effectiveness of the Executive Officer's Financial Reporting System; and
- 3) The Committees recommendation for the current review period is between a 3.5% to 4.5% wage increase to be determined by the full Commission.

The following comments and recommendations were made by the Commissioners present:

Commissioner Sam Abed stated that he is an advocate of rewarding excellent performance and Mr. Ott's performance was outstanding. Based on other California LAFCO Executive Officer compensation comparisons, Commissioner Abed highly recommended a retroactive (effective July 1, 2012) wage increase to be 2% for the prior fiscal year review and an increase of 3.5% for the current year for a total accumulative rate of 5.5% (\$9, 251.00/\$182,579.00 annually).

Chairman Vanderlaan restated that the Executive Officer's past performance review and consideration for a wage increase was deferred until after the audit results were completed and audits have since been completed covering multiple fiscal years. The audit results were favorable.

Commissioner Dianne Jacob apologized for missing the second committee meeting and agreed that Mr. Ott has done an outstanding job. Commissioner Jacob stated that the evaluation is not the issue, that the compensation is an issue. She could not support the committee recommendation in terms of compensation effects on the County pension system. Commissioner Jacob stated that the last across the board increase for the County Managers was in 2010 which was a 2% increase, a one-time 2% increase effective July 1, 2013 and another one-time 2% that will be coming up July 1, 2014. Commissioner Jacob said that the 2% one-time in 2013 and the 2% one-time in 2014 are not ongoing monies and that none of the County Managers received any retroactive pay increases.

Commissioner Jacob indicated she would support being consistent with what the County Managers have received. She also stated that if Mr. Ott retired soon, then the committee's recommendation would result in "pension spiking".

Commissioner Jacob questioned why page 5 of the performance chart that was received with the packet had To Be Determined (TBD) placed by the 2013 base salary increase. In response to the question, Michael Ott indicated that at the time the review first began in June, there was not a county wage and benefit package, consequently a figure was not known. In addition, the Commission had not approved the wage and benefit package per minute item no. 2 until the September 9th meeting. Therefore, the charts contained TBD references.

Commissioner Vanderlaan asked if there was anything further to add and Mr. Ott indicated there was not.

Alternate Commissioner Jo MacKenzie asked Commissioner Jacob for clarification on the one-time 2% increase for county employees and whether the increase was basically a bonus that the County has designated as pensionable. Alternate Commissioner MacKenzie indicated that since it is one-time and not added (compounded) to salaries that it is essentially a bonus. In response to the question, Commissioner Jacob indicated that the one-time payout for county employees is not a bonus.

Alternate Commissioner MacKenzie asked if the one-time payout is considered a bonus, but with another name. In response to the question, Commissioner Jacob added that it is not a bonus, and it is one-time. She said that the Board requires its employees to pay more towards their pension - the goal is 50%, and that they received a one-time 2% increase to ease the burden a little bit.

Alternate Commissioner MacKenzie also asked whether the 2% is nonetheless pensionable.

Commissioner Jacob indicated that the 2% is pensionable to the County pension fund.

Commissioner Bill Horn stated that the 2% payment was a motivation for employees to agree to sign the labor agreement. He stated that he does not agree with the retroactive portion of the committee's recommendation. Commissioner Horn added that he thinks Michael (Ott) has done a terrific job. He emphasized that San Diego LAFCO is a leader, but at the same time, there needs to be an upper limit. He added that while the County has far more personnel and greater budgets than LAFCO, LAFCO does have greater independence, but there ought to be an upper limit. Commissioner Horn stated that he realized that it is important to keep the Executive Officer happy and motivated, but at the same time, he needed to make a decision reflective of what LAFCO's overall operation ought to be doing. Commissioner Horn opposed the committee's recommendation.

Commissioner Zapf stated for the same reasons already stated, she is not supportive of retroactive. She expressed concern about impacts to the long-term pension. Commission Zapf asked about the full long-term package if a person lives to 95 years

old. She commented about the pay history going back from 2002 through 2008 and stated that those base salary increases and performance bonuses were quite significant; based on the information that was provided. Commissioner Zapf indicated that she would not support the committee's recommendation.

Commissioner Abed indicated that the committee reached its decision based on eliminating the 5.25% length of service compensation provision that the County repealed. He restated the importance of rewarding performance and everybody agrees that Mr. Ott has done an excellent job. Commissioner Abed said that he could compromise and provide 5% and eliminate the retroactivity. That would be \$8,304.00 and that would bring the total compensation to \$174,392.00.

Chairman Vanderlaan clarified Commission Abed's comment that there would be no consideration for the increase the Executive Officer deferred from the past in 2011-12 and instead a 5% increase now.

Commissioner Abed concurred with Chairman Vanderlaan.

Commissioner Jacob indicated to the Chairman to see if anyone seconds that motion.

Chairman Vanderlaan asked if there was a second a second for discussion.

Vice Chairman Ingalls added that he did not hear a motion, per se, from Commissioner Abed. He stated he wanted to offer comments before a motion was made.

Commissioner Jacob stated that she was not going to make a motion, but suggested that while she could not support a retroactive increase, she could support compensation consistent with County Management. She stated that the best way to resolve the matter is to have the Committee return with a number to the Commission rather than trying to deal with it at the Commission meeting, or have the Mr. Ott return with that number.

Vice Chairman Ingalls stated that as a Commission of eight people, commissioners are all trying to get to the same place at the same time. Vice Chairman John Ingalls discussed the topic of retroactivity. He indicated that the committee members met on August 5th to discuss the matter and noted that the Commission authorized a 2% wage increase for LAFCO staff in 2012, but the Executive Officer voluntarily deferred being considered for this increase until completion of the audits proposals. It was a voluntary deferral of the 2% wage increase that was approved by this Commission for 2012. He also said that the Executive Officer should be recognized for the voluntary deferral because he understood the context of his responsibilities and the importance of the external audits. Vice Chairman Ingalls stated that these facts essentially take the 2% retroactivity, off the table as an issue.

Commissioner Jacob offered a motion to see if the Commission could move forward on the item.

Chairman Vanderlaan indicated that before a motion is made; an issue needs to be emphasized related to the repeal of the 30-year length of service provision being that

Mr. Ott has reached his 30 years of service. Chairman Vanderlaan said that Mr. Ott will essentially be shorted even though Mr. Ott has not made any objections. He indicated that this should be for consideration in the compensation package.

Commissioner Jacob offered a motion. Her motion referred the matter to Mr. Ott and that he return to the Commission with compensation that would be consistent with the compensation that County Managers have received and no retroactive pay.

Chairman Vanderlaan stated there is a motion and asked for a second. The motion was seconded by Commissioner Horn. Chairman Vanderlaan asked if there was any discussion on the motion. No further discussion from the Commissioners.

Chairman Vanderlaan disclosed that he would not be at the October meeting, and that if he is going to be a part of the discussion, it should be deferred to November, so he could be a part of that discussion. Commissioner Jacob indicated that would be acceptable.

Chairman Vanderlaan asked if there were any other comments regarding the motion. He asked if everyone understands the motion. He restated the motion and indicated that the matter will first go back to the committee and the committee will look at formulating something along the lines of what the County has done with their managers and then return the information back to the Commission.

Alternate Commissioner Harry Mathis asked for clarification, if the matter will go back to the committee before it comes to the Commission.

Commissioner Jacob said that was not what was included in her motion; however, if the committee wants it, then fine. She stated that what the Commission would have before it would be compensation consistent with County Managers. She stated she thinks Mr. Ott could put that together.

Chairman Vanderlaan said that the purpose of going back to the committee would provide a chance to review and perhaps make a counter proposal. Commissioner Jacob indicated that would be fine.

Commissioner Lorie Zapf stated that she understands what Mr. Ingalls is talking about and the rationale in making it legal for the retroactive. She said she understands the arguments both ways and thinks based on the discussion at the separate meeting that the Commission needs more time and creativity.

Commissioner Abed clarified that his proposal is not to provide the Executive Officer with a 2% and 5% increase. Rather, the 5% includes the 2%.

Commissioner Jacob stated that she would change her motion to refer this back to the committee to come back and to include what Commissioner Abed has said also on the 5%, and to include what was in her original motion consistent with county management compensation. She stated that both of those numbers would be sent back to the committee and then the Commission would consider them.

Chairman Vanderlaan asked if there was a second; the item was seconded by Commissioner Horn.

Alternate Commissioner Mathis asked for final clarification on the 60-day delay. He inquired if the block of time and whatever decision is made, is that a sort of a penalty for Mr. Ott in terms of what compensation he can get. He asked if the decision can be made without prejudice.

Commissioner Jacob indicated that the continuance is not a penalty and there is no prejudice, but certainly a delay.

Alternate Commissioner Mathis asked if this can be accomplished without prejudice.

Alternate Commissioner Mathis stated that the word "prejudice" means, in a sense that by delaying the matter for 60 days may impact Mr. Ott's potential compensation as a result of the action by this board.

Commissioner Jacob reiterated she would support compensation today consistent with County Managers, but it seems like there is some disagreement on what commissioners want to do. The Chairman said that he can't be at the October meeting so that means a 60-day delay.

Commissioner Zapf questioned if it would not go into effect on the same day through or the beginning of 2014.

Alternate Commissioner MacKenzie said she heard Commissioner Zapf say there was no retroactive pay but only pay going forward, that pay going forward starts January 1, 2014.

Commissioner Abed stated that the retroactivity goes to July 1, 2012 and if there was no retroactivity to that date, then it would be July 1, 2013.

Chairman Vanderlaan asked Mr. Ott if that was his understanding.

Alternate Commissioner MacKenzie indicated she was confused.

Michael Ott said he was a little confused too. He said that one of the confusing aspects of the committee's recommendation is the retroactivity provision. If the retroactivity provision is approved, July 1, 2012, would be the date used to calculate the 2% increase. Mr. Ott explained that this was the deferral date of the potential compensation increase. Once that is decided, Mr. Ott indicated that the Commission could then determine if any compensation increase should be approved for the current review cycle, which is essentially FY 2012-13.

Mr. Ott indicated that what would probably be best would be to schedule a committee meeting to enable the committee to review county compensation practices for positions aligned with the Executive Officer. Mr. Ott said that the Executive Officer position is aligned with the County Planning Director, Public Works Director, Registrar of Voters,

and a few other positions. He said he could work with the Department of Human Resources to get a better handle on any compensation that has been awarded in the County. He asked Supervisor Jacob, if any increases for those positions have been authorized over the past two years and beyond?

Commissioner Jacob reiterated what she had already indicated. She said the last across the board increase was in 2010 for those. She said if the Commission would look at page 3 of what we received this morning maybe that would help. She said Mr. Ott was right, if you look at that base salary increase history. It will be 2.1% in 2013, so that is correct in that column. Commissioner Jacob noted the only thing we are really talking about is the 2013 one-time 2% and the 2014 one-time 2%. She said she thinks the committee can deal with that.

Chairman Vanderlaan asked if there was any additional discussion and said the committee will meet and we'll try to sort this out and bring something back.

Vice Chairman Ingalls added another comment. He said he comes to LAFCO meetings not as a water district commissioner, but as a LAFCO commissioner. He explained that LAFCO is responsible for checking those prospective biases at the door. The point is being a LAFCO commissioner and evaluating the Executive Officer's performance is not based on what some manager in the County is paid. He said he considers it a distraction to have to get up to speed on what the County has done with department managers because the Commission does not employ any department managers. He said the committee has worked very hard at this and come up with enough background but thinks one more meeting would be helpful. Vice Chairman Ingalls stated the question of July 1, 2012, July 1, 2013, and July 2014 effective dates does not constitute retroactivity.

Commissioner Jacob indicated that LAFCO needs to be consistent with the County as a matter of fairness.

Michael Ott asked for clarification on the additional work that needs to be done. He said the Commission will not be reopening what the Commission approved earlier in the day (minute item no. 2 for the August 5th wage and benefit plan that applies to all County employees and LAFCO staff). He said he will be researching with the County Department of Human Resources any performance-based pay allocated to comparable County Managers for the review periods in question.

Alternate Commissioner MacKenzie asked for one more clarification from the Supervisors regarding the two, two percent (2%) county employee increases and whether they were performance-based. She said that what the Commission will be considering in the future is based on performance.

Commissioner Jacob clarified that the two one-time 2% for county employees was confusing. She said the first two percent would be effective, July 1, 2013. There will be another one-time 2% effective July 1, 2014. Those two one-time 2% were to help offset added employee costs because of taking away of the offset. In other words, the County is paying a certain amount of the employee's pension cost and is now taking that back.

Because it is a takeaway, so they (employees) are losing spending capability. The County is giving them (employees) one-time pay in two different allotments each. She emphasized that it is not performance-based; it is just to try to help.

Alternate Commission MacKenzie stated that the question then is, do any of the other department heads, because she is very familiar with the County Planning Director, have they received or are they in line at some point to get a performance-based raise?

Commissioner Jacob stated that as of today, according to the information from the County Department of Human Resources, the answer is no. To date, they have not received any ongoing or performance-based increases since 2010.

Commissioner Abed stated that it is his understanding that the one-time pay is to help offset the retirement obligations and there is no increase in pay salary basically.

Commissioner Zapf asked if the offset employees have to pay for their pension applies to Mr. Ott as well.

Michael Ott indicated that all offsets for LAFCO employees have changed the same as for county employees and there are more out-of-pocket expenses as a result of the new wage and benefit plan approved by the County. Mr. Ott commented to Supervisor Jacob that it sounds like he'll be researching something that she already may have the answer for and that it appears that answers are already known for the county compensation questions.

Commissioner Jacob stated that the research is going to be pretty simple in terms of figuring out what the Executive Officer's compensation would be in terms of being consistent with county management. She said that because everybody seems to have a little different take on this, she's not asking that that decision be made today. Instead, the matter should be referred to the committee and they will return with the numbers, along with what Mr. Abed said about the 5%.

Alternate Commissioner MacKenzie said that she is still confused on when all of this takes place. She said it sounds like the committee will be returning with something like 5 or 6 different scenarios, 2%, straight across, performance-based, at various percentages.

Commissioner Abed commented that a proposal will be made by the committee.

Chairman Vanderlaan expressed his appreciation that the Commission has trust in the committee and that the committee can have that discussion to make it easier on the Commission. The committee's goal would be to come back with having to deal with these issues and come back with a simplified, hopefully a one pager that identifies areas of agreement. If that cannot be done, the options will be presented.

Alternate Commissioner Mathis said that it would be best to just make a recommendation without a lot of scenarios and options.

Chairman Vanderlaan stated that was possible.

Vice Chairman Ingalls indicated that the Commission does have a recommendation.

Commissioner Horn asked if the question could be called and indicated that he is already a half an hour late for an appointment.

Chairman Vanderlaan stated that everybody understands that the matter will go back to the committee and the committee will come back with a report.

Chairman Vanderlaan called for the question and asked all those commissioners in favor to signify by saying aye; and those opposed by saying no:

Ayes: Commissioners Vanderlaan; Horn; Pocklington; Abed; Jacob; Zapf; Alternate Commissioner Wood (voted in the absence of Commissioner Janney)

No: Vice Chairman Ingalls

Absent: Commissioner Janney

Commissioner Vanderlaan noted he has been through a lot of the salary negotiations on both sides of the table. He said these are always very sensitive issues, especially to do in a public forum.

Vice Chairman Ingalls mentioned now that the item is over, the recommendation was to authorize the Executive Officer to receive a 2% annual salary adjustment retroactive to the first payroll period on July 1, 2012. He stated that the 2% was voluntarily deferred. As to that, he stated the Committee has no discussion left really. He commented that sometimes too much detail, takes away from the motion itself.

Chairman Vanderlaan expressed appreciation for Commissioner Ingalls passion and mentioned that it is a difficult subject to handle in many public forums.

There being no further business to come before the Commission, the meeting adjourned at 10:37 a.m. to the October 7, 2013 meeting, in Room 302, County Administration Center.

**Ruth Arellano
Administrative Assistant
Local Agency Formation Commission**