

Supervisor Briggs 4-8-14 #8

# EL DORADO COUNTY HEALTH ALLIANCE



DATE: May 19, 2000  
TO: The Honorable Wm. S. Bradley  
Supervisor District I  
FROM: El Dorado County Health Alliance  
SUBJECT: Tobacco Litigation Settlement Funds

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MAY 19 1 57 PM '00  
BOARD OF SUPERVISORS  
EL DORADO COUNTY

The undersigned health related organizations in El Dorado County strongly urge you to take advantage of the unprecedented opportunity afforded to our community by the recent tobacco litigation settlement. El Dorado County is in a position to make decisions that will have tremendous and long lasting impacts on the health of our county and its local communities.

These funds give El Dorado County a once-in-a-lifetime opportunity to build upon our assets and address health care needs, so that we can take significant steps toward improving the health of our community, particularly the most vulnerable populations.

The tobacco lawsuit was predicated on the fact that cigarette addiction leads to serious and costly health problems. While the settlement terms do not specify how the funds are to be used, we strongly believe that the funds should be used for health and health care. We urge the board to use the tobacco settlement funds to increase access to health care and to supplement, not supplant, existing health care programs and expenditures.

We ask that you consider creating and placing El Dorado County's tobacco litigation settlement funds in a health trust. Options for comprehensive strategies to use the funds for improving the health of our community could then be studied. Strategies could be developed after careful, collaborative consideration of the best use of the funds for our community's future health.

We believe El Dorado County Board of Supervisors must use these settlement funds for the purpose for which they were intended, "the advancement of public health, the implementation of important tobacco-related measures," as outlined in the

*Under separate cover*  
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FOR THEIR INFORMATION

capital improvements. The settlement agreement with the tobacco industry was to recover the costs of smoking related illnesses and other claims including the illegal marketing of tobacco products to our children. Other localities have designated significant portions of these funds for health while Santa Barbara, San Diego, Santa Clara, and Alameda counties have direct 100% of their funds for health care including tobacco use prevention and education.

We would propose the following: El Dorado County Board of Supervisors to direct El Dorado County's settlement funds received in years two (2) through six (6) into a special interest bearing account to provide a revenue stream for health and tobacco control related programs. Eighty-five percent (85%) of the funds will be used for health related programs and fifteen percent (15%) will be directed towards tobacco control and education. Furthermore, we request the El Dorado County Board of Supervisors to create a mechanism to assess and prioritize the County's health related needs and disperse the funds accordingly. After year six (6) at least ten percent (10%) of funds should be designated for health related expenditures.

We realize that, as with the identification of any resource, there are more requests than funds available. We also realize that the disposition of the funds will generate a great deal of healthy debate as to the best strategies for improving health and access to care; however, their use in any other way than for health care purposes will mean that we lose an unprecedented opportunity to improve the health of our community.

Sincerely,



P.J. Lo Duca

El Dorado Health Alliance

Organizations Represented:

Marshall Hospital

Barton Memorial Hospital

Snowline Hospice

Elder Options Professional Care Management

El Dorado County Tobacco Prevention Coalition

Hospital Council of Northern and Central California

Marshall Foundation

El Dorado Community Round Table on Human Rights

Better Breathers Club

Health Depot

Marshall El Dorado PHO

**INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS OF EL DORADO COUNTY**

The County Counsel has prepared the following title and summary of the chief purpose and points of the proposed measure:

**AN INITIATIVE MEASURE REQUIRING SPECIFIED SUMS FROM TOBACCO SETTLEMENT MONIES TO BE USED FOR HEALTH RELATED PROGRAMS AND CONTROL OF TOBACCO USE.**

In November, 1998, California and other states entered into a Master Settlement Agreement (MSA) with several tobacco companies for the purpose of settling pending lawsuits. In those lawsuits, the states sought monetary damages and other relief from the tobacco companies for costs incurred by the state for providing medical care related to tobacco usage, and for alleged violations of unfair competition, antitrust and false claims statutes.

Under the terms of the MSA, the tobacco companies are required to make payments in perpetuity to the participating states. The payments are estimated to total approximately \$206 billion through the year 2025. In addition, the tobacco companies have agreed to certain restrictions on advertising and to fund a public education program. The State of California's share of the settlement monies is an estimated \$25 billion through 2025.

The distribution of California's share of the settlement monies to local agencies is governed by a Memorandum of Understanding (MOU) between the State of California, the counties and four specified cities. Under the terms of the MOU, the State will receive 50% of the settlement monies, and 50% will be distributed to the counties and four cities. The Californian Legislative Analyst's Office estimated that El Dorado County will receive a total of \$47,642,000, through the year 2025. Payments for the first and second years were estimated at \$584,000 and \$1,559,000, respectively, for a total of \$2,143,000. The actual amount received by the County for those two years was \$1,969,725.01. Payments for the second year (2000) through the sixth (2005) are estimated to range between \$1.5 million and \$1.7 million annually.

Neither the MSA nor the MOU restricts the use of the funds in anyway. The revenues are general fund monies which may be used by the County, in its discretion, for any lawful County purpose. Neither the MSA nor the MOU require that the settlement monies be used for health related purposes or for any other specific purpose.

The proposed initiative, if approved by the voters, would require that the tobacco settlement revenues received by the County of El Dorado for years two (2) through six (6), be placed in an account to provide a revenue stream to be used for health and tobacco control related programs. 85% of those funds are to be used by the County for health related programs and 15% for programs aimed at controlling the use of tobacco. The initiative does not affect settlement monies received by the county for the first year of payment (1998). After the sixth year, the initiative would require that a minimum of 10% of the revenues received shall be designated for health related expenditures. The remainder could be used for any lawful County purpose.

**NOTICE TO THE PUBLIC**

**THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER.  
YOU HAVE THE RIGHT TO ASK.**

**TERS ONLY**

New Registration	<b>1</b>	<i>PRINT</i> YOUR NAME	RESIDENCE ADDRESS ONLY	
		<i>SIGNATURE</i> AS REGISTERED TO VOTE	CITY	ZIP
NO PO BOXES, NO ROUTES, NO ABBREVIATIONS, NO DITTO MARKS				
New Registration	<b>2</b>	<i>PRINT</i> YOUR NAME	RESIDENCE ADDRESS ONLY	
		<i>SIGNATURE</i> AS REGISTERED TO VOTE	CITY	ZIP

## NOTICE OF INTENT TO CIRCULATE A PETITION

### I Notice

Notice is hereby given by the proponents whose names appear hereon of their intention to circulate the petition with the County of El Dorado for the purpose of directing the El Dorado County Board of Supervisors to use Tobacco Litigation Settlement funds received by it for the purpose for which they were intended through the Master Settlement Agreement.

### II Statement of Reasons for the Proposed Petition:

The State of California and several localities sued the tobacco industry to recover a portion of the money that taxpayers spend paying for tobacco-related diseases. As a result, California will receive about one billion dollars (\$1,000,000,000) from the tobacco industry, dived between the state and local governments, every year. El Dorado County expects to receive between \$1.5 million (\$1,500,000.00) and \$2 million (\$2,000,000.00) per year.

The intent of this initiative is to require El Dorado County to use these settlements funds for the purpose for which they were intended, "the advancement of public health, the implementation of important tobacco-related measures," as outlined in the settlement agreement reached with the tobacco industry and not for general County capital improvements. The settlement agreement with the tobacco industry was to recover the costs of tobacco-related illnesses and for the illegal marketing of tobacco products to our children. Santa Barbara, San Diego, Santa Clara, and Alameda counties have directed 100% of their funds for health care including tobacco use prevention and education while other localities have designated significant portions of these funds for health care.

### III Written Text of the Initiative:

El Dorado County shall direct El Dorado County's settlement funds received from tobacco settlement litigation for years two (2) through six (6) into a special interest bearing account to provide a revenue stream for health and tobacco control related programs. Eighty-five percent (85%) of the funds shall be used for health related programs and fifteen percent (15%) shall be directed towards control of tobacco use.

The El Dorado County board of Supervisors shall create a mechanism to assess and prioritize the county health related needs and disburse the funds accordingly. A minimum of ten percent (10%) of the revenues received for years after year six (6) shall be designated for health related expenditures.

The settlement funds controlled by this section shall be supplement to all existing levels of expenditure with out supplanting current funding for any existing programs or other existing health related appropriation.



# *The County of El Dorado*

## **Office of the Chief Administrative Officer**

Michael B. Hanford  
Chief Administrative Officer

Thomas E. Soike  
Assistant Chief Administrative Officer

August 16, 2000

Board of Supervisors  
330 Fair Lane  
Placerville, CA 95667

Re: Impacts Associated with the Tobacco Initiative

Dear Board Members:

On July 25, 2000, the Board directed that the Chief Administrative Officer and County Counsel along with other appropriate department heads prepare a study of the impacts associated with the Tobacco Initiative pursuant to Elections Code 9111, and report back to the Board on August 22, 2000. The Board also added that staff identify potential uses of 25% of the Tobacco Settlement monies for the next one and one-half years for public health issues and needs with emphasis on needs of the indigent and elderly. Staff was also asked to meet with the proponents of the Initiative to obtain input from them on potential uses with the understanding that the Board was not making an absolute commitment for the use of these monies.

### **OVERVIEW:**

In order to review the impacts of this Initiative, one must realize that discussions on the use of the Tobacco Litigation monies occurred at various times with the first Board discussion occurring in 1998. In February of 1999 the Board took formal action to adopt a policy to direct that any "Tobacco Settlement" payments be earmarked within the General Fund for County Capital facility needs.

In that February report to the Board that was agenzized on February 28, 1999, the following information was shared with the Board and the public and resulted in the Boards adopting the policy to use these monies on capital facility needs:

*Birthplace of the Gold Rush*

330 Fair Lane - Placerville, CA 95667-4197

Phone (530)621-5567 - Fax (530)626-5730

"Last year California, along with other States, entered into an agreement with the four major tobacco companies settling lawsuits brought by States against the tobacco industry. Payments received from the settlement will be shared by the state, counties and some cities. Payments are to be made in perpetuity with the first payment to be received by El Dorado County as early as this fiscal year.

There are many uncertainties as to how long, or if, our County will receive these payments. The Federal Government could affect the amount and how we receive payment; a reduction in cigarette sales will have an impact; other lawsuits by nonparticipating local governments could reduce the amount received; and bankruptcy by the tobacco companies could effect payment. There are too many variables that can hamper our receipt of these funds to consider their use for ongoing program costs. Because of this we are recommending that the Board set these moneys aside to be used for capital facility needs. If payments are received, we will be able to provide much needed and long awaited facility improvement. If they are not forthcoming the county will not be in a worse position than currently exists. We would envision this working much like in the 1970's when the Board at that time designated Revenue Sharing from the Federal Government to be used for Capital improvements, thus allowing the County to construct our current government center. The vision we develop now can positively affect the residents of our County for many years to come."

Based on the policy adopted by the Board, your staff has planned the use of these monies for capital facilities including the new Justice Center. Since the early 90's when the State took a substantial amount of property taxes from the County we have been unable to adequately plan for needed facilities. This Tobacco Litigation money is the only source of revenue in the past ten years that allows consideration for new facilities and in particular facilities for the Courts, Juvenile Hall and Sheriff. In February of 2000, the Board further directed the CAO to return to the Board for the purpose of discussing the securitization of Tobacco Settlement funds. Much discussion has occurred regarding securitization as the Board has indicated their desire to proceed in this manner but the County has been delayed due to the filing of the Tobacco Initiative. It is not clear what would happen with the securitized money if the Initiative was later to be approved by the voters. It may also be difficult to securitize with the Initiative pending because investors may not feel confident and therefore a deep discount penalty would have to be paid in order to securitize.

I have discussed this matter with our financial advisor and he indicates that we can still securitize around the Initiative. That is, we can comply with setting the money aside as outlined in the Initiative and securitize the remaining amount. If we were to do this, it would produce between \$15 - \$16 million that could be used for Capital facilities such as the Justice Center or other capital facilities as the Board determines. This amount is approximately \$7-\$8 million less than the securitization would bring without having to consider the Tobacco Initiative and will probably require the Board to re-examine the scope of the Justice Center project. While it is not as much as initially planned, it could still help significantly in proceeding with

capital facilities. The set-aside money would be available to be used pursuant to the Initiative if successful, or by the Board for capital facilities if not successful or if determined to be invalid by a court.

This is the second initiative that has been filed in recent months that would direct money that would otherwise be within the Board's discretionary budget authority. Between these two initiatives there could be approximately six million dollars annually that would be directed in our budget without Board discretion and would not be available for other very valuable programs or projects. If other initiatives impacting the budget happen in the future, the Board would lose what current authority you now have over budgetary matters in the County.

### **LEGAL ANALYSIS:**

County Counsel has prepared a legal analysis that he will file separately with the Board. It is similar to the analysis provided for the Road Initiative and describes various options that the Board may wish to consider when taking action on the Tobacco Initiative.

### **USE OF 25% FOR 18 MONTHS:**

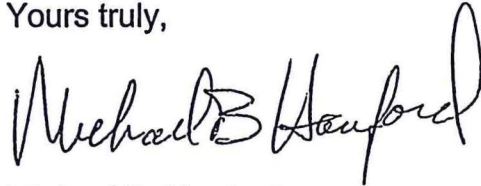
Our Director of Public Health has met with the proponents of the Initiative regarding the 18-month set-aside and its possible use if the Board so directs. The proponents identified three priority areas for consideration which are: community clinics, expanded housing, and support services for senior citizens, and a forum that engages the community to explore, discuss, and address health needs in the county.

County Department Heads reiterated their support for the establishment of a Community Clinic on the Western Slope with any remaining funds devoted to vouchers for use at the Barton community Clinic in South Lake Tahoe. A plan for achieving this goal by using six years of Tobacco Settlement residual funds was submitted to the Board on July 25, 2000 (Item #90). The plan would need to be modified to reflect the change in funding from a six-year funding stream to a one and one-half funding stream. Other program changes might be necessary given that the one and one-half year funding stream would most likely be less than the six year one.

Relative to the use of 25% of the next year and a half of Tobacco Settlement monies, concurrence was reached between the two groups regarding the establishment of a Western Slope Community Clinic and improving the access to care and the financial stability of the other community clinics located in the County.

Additionally, both the Health Alliance and the County Department Heads reiterated the value of funding existing and new services that could be sustainable over time.

Yours truly,

A handwritten signature in black ink that reads "Michael B. Hanford". The signature is written in a cursive style with a large, looped initial "M".

Michael B. Hanford  
Chief Administrative Officer

cc: County Counsel  
Auditor Controller  
Treasure, Tax-Collector  
Public Health  
Community Services  
Mental Health  
CAO Staff



#52

EL DORADO COUNTY  
OFFICE OF  
THE COUNTY COUNSEL

RECEIVED

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BOARD OF SUPERVISORS  
EL DORADO COUNTY

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August 18, 2000

Legal Assistants  
RUDY LIMON  
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Paralegal  
TERESA M. STARINIERI

Board of Supervisors  
County of El Dorado  
330 Fair Lane  
Placerville, CA 95667

**Re: Proposed Initiative Measure Regarding Use of Revenues from Tobacco  
Litigation Settlement; Analysis Under Elections Code Section 9111**

Honorable Supervisors:

**I Introduction**

The County Elections Department has certified as sufficient and submitted to the Board of Supervisors an initiative petition entitled, "An Initiative Measure Requiring Specified Sums from Tobacco Settlement Moneys to be Used for Health Related Programs and Control of Tobacco Use." On July 25, 2000, the Board requested that the Chief Administrative Officer, in consultation with County Counsel and other appropriate staff, submit a report on the fiscal, social and legal ramifications and possible legal propriety or legal vulnerability of the proposal, pursuant to Elections Code section 9111. This memorandum constitutes that portion of the report which addresses the legal issues.

This office previously prepared a similar report, dated July 13, 2000, in connection with an initiative measure which sought to direct a portion of the County's vehicle license fee revenue to road maintenance and related purposes. The focus of this initiative is different from the earlier one, and does not raise some of the same interpretational issues. However, the fundamental legal issues relating to the validity of, and potential challenges to, the two initiatives are essentially similar. In our July 13, 2000, report we discussed a range of possible bases for challenging the earlier initiative for the purpose of full discussion. Some were rejected as viable legal grounds for a challenge. Others were identified as presenting valid bases for questioning the validity of the measure.

For the sake of brevity, we will not report herein the discussion of all legal issues, including those rejected. Instead, we will set forth those issues which raise serious concerns regarding the validity of this measure, as they did with the prior memo.

This memorandum provides an overview of the scope of the electorate's reserved power of initiative, and describes the two bases on which we conclude the validity of the initiative measure may be challenged. We conclude that two potential bases for challenge have legal merit: first, that the proposal would usurp financial and budgetary duties that are exclusively delegated to the Board of Supervisors by the Legislature; and second, that by doing so, the proposal would impermissibly impair the exercise of an essential governmental power or function.

## II Issues Regarding the Legal Validity of the Proposal

### A. The Scope of the Voters' Initiative Power-An Overview.

The California Constitution reserves to the voters the power "to propose statutes. . .and to adopt or reject them." (Cal. Const., Art. II, § 8(a).) The El Dorado County Charter neither adds to nor detracts from that power: it states that the County's voters may exercise the power of initiative "pursuant to general law." (El Dorado County Charter, § 102a.)

In California, the initiative power is liberally construed by the courts to uphold the democratic process: "[I]t is our solemn duty to jealously guard the precious initiative power, and to resolve any reasonable doubts in favor of its exercise. [citations] As with the statutes adopted by the Legislature, all presumptions favor the validity of initiative measures and mere doubts as to validity are insufficient." (*Legislature v. Eu* (1991) 54 Cal.3d 492, 501.) Courts will presume, absent a clear showing of the Legislature's intent to the contrary, that legislative decisions of a Board of Supervisors are subject to initiative. (*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 777.)

Still, the reach of the voters' initiative power is not unlimited. The courts have periodically invalidated initiatives, or directed that they not be placed upon the ballot, based upon a variety of legal principles. Two of these principles are applicable here.

First, the right of initiative does not apply when the state Legislature restricts the right as part of the exercise of its power to pre-empt local legislation on matters of statewide concern, by delegating legislative authority exclusively to the legislative body. (*DeVita v. County of Napa* (1995) 9 Cal.4th 763,776; *Committee of Seven Thousand v. Superior Court ["COST"]* (1998) 45 Cal.3d 491, 511-512.) The second applicable principle is closely related to the first. A long line of cases has held that the initiative or referendum power is not applicable where the inevitable effect of the measure would be to greatly impair the exercise of an essential governmental power or function. (See, e.g., *Simpson v. Hite* (1950) 36 Cal.2d 125, 134; *Geiger v. Board of Supervisors* (1957) 48 Cal.2d 832, 839 [referendum].) Ballot measures have frequently been invalidated under this principle when they would interfere with a local legislative body's responsibilities for fiscal management. (*Birkenfeld v. City of Berkley* (1976) 17 Cal.3d 129, 143.)

While we conclude that two of the arguments appear to be viable and would have a significant likelihood of prevailing, there is no case law considering this particular situation. In the absence of such directly applicable precedent, and in light of the strong presumption in favor of the

validity of the exercise of the initiative power by the voters, the outcome of any litigation cannot be predicted with certainty. Any challenge to the validity of an initiative measure adopted by the voters must be viewed as having an initial hurdle to overcome notwithstanding the potential merit of the claim. As has been called to the Board's attention in regard to previous matters, the courts are often disinclined to entertain pre-election challenges to ballot measures unless the legal invalidity of the measure is clear. Nevertheless, courts have ordered measures to be removed from the ballot in circumstances which raised issues similar to those which might be raised in this instance. In this instance, we believe that the issues raised can be determined as a matter of law on the face of the ballot measure. This fact weighs in favor of pre-election review.

In this case, there may be an added impetus for the courts to decide the case on a pre-election basis. The initiative purports to commit the revenues from the tobacco litigation settlement for the second through sixth years. We are now in the second year. This initiative will not appear on the ballot until the election in March, 2002. The two additional reasons why pre-election review may be appropriate are: 1) it would not interfere with the election process which will not commence for 1 ½ years; and, 2) pre-election review would eliminate the obvious cloud hanging over the status of those funds pending the election.

B. The "Exclusive Delegation" Issue.

The presumption in favor of the right of initiative is rebuttable upon a definite indication that the state Legislature has intended to restrict that right as part of the exercise of its power to pre-empt all local legislation in matters of statewide concern. (*DeVita, supra*, 9 Cal.4th at 776; *COST, supra*, 45 Cal.3d at 511-512.) This restriction can come in one of two ways. One is that the Legislature circumscribes the local body's discretion to the point that the local body is engaging merely in administrative, not legislative, acts. For the reasons explained in our prior memorandum, we do not believe that the proposed measure implicates that sort of arrangement.

The second way in which the Legislature can restrict the initiative power in matters of statewide concern is by delegating the exercise of local legislative authority exclusively to the legislative body, thereby precluding the voters' exercise of legislative powers via the initiative. (*DeVita, supra*, 9 Cal.4th at 776; *COST, supra*, 45 Cal.3d at 511.) No fixed rules exist for determining whether the Legislature has restricted the voters' initiative power through "exclusive delegation" in any given situation, but the California Supreme Court has prescribed a set of guidelines for courts to follow. The paramount factors are: 1) statutory language, with references to "legislative body" or "governing body" raising a weak inference of exclusive delegation, and references to the "board of supervisors" raising a stronger inference; and 2) whether the subject at issue is a matter of statewide concern, or more a municipal affair, with the former indicating a greater probability of intent to bar the initiative. (*DeVita, supra*, 9 Cal.4th at 776; *COST, supra*, 45 Cal.3d at 501, 505-507.) Any other indications of legislative intent are also to be considered. (*Id.*)

Returning to the Government Code statutes (§§ 29000 *et seq.*) that prescribe the budget process, the statutory language meets the Supreme Court's first test for raising a strong inference in favor of excluding budgetary matters from the initiative power. Throughout, and particularly in the

latter stages of the budget process, including the adoption of final budget numbers, the statutes refer to the "board." "'Board' means the board of supervisors of the county. . . ." (§ 29001.) Thus, the board controls the author, timing, content, and distribution of the annual proposed budget. (§§ 29040-29063.) The board reviews, revises, and approves the proposed budget. (§§ 29062-29064.) The board is responsible for noticing the availability of the proposed budget and final hearings. (§ 29066.) The board conducts the final budget hearings and can examine witnesses in those hearings. (§§ 29080-29086.) The board adopts the budget by resolution. (§§ 29088-29089.) The board's budget discretion is not judicially reviewable, except for fraud. (*Otis v. Los Angeles County* (1937) 9 Cal.2d 366.)

The statutes also support an inference of exclusive delegation under the Supreme Court's second factor. The very specificity of the statutory budget procedures, and the uniformity among local agencies that they require, suggest that the Legislature views this a matter of statewide concern. So, too, does the State Controller's statutory duty to prescribe accounting rules "to secure standards of uniformity among the various counties," and the requirement that all final budgets be filed with the Controller. (§§ 29005, 29093.)

In addition, as suggested above, the facts that counties are legal subdivisions of the state and perform numerous state-mandated functions and services weigh in favor of the conclusion that budgeting is a matter of statewide concern. This last argument was raised, but not decided, in the *Rossi* case. (*Rossi, supra*, 9 Cal.4th at 707, fn. 12.)

Overall, it appears that a good argument can be made that local budgeting is an instance of "exclusive delegation" that precludes initiatives affecting this subject. Case law supports this view, because the courts have been particularly sensitive to initiatives and referenda that impinge upon government's fiscal responsibilities. It has been characterized as a "settled rule" that the initiative may not be used in a manner which interferes with a local legislative body's responsibility for fiscal management. (*Carlson v. Cory* (1983) 139 Cal.App.3d 724, 731.) The California Supreme Court has stated, "Past decisions invalidating initiative or referendum measures to repeal local tax levies have indicated a policy of resolving any doubts in the scope of the initiative or referendum in a manner that avoids interference with a local legislative body's responsibilities for fiscal management. [citations]" (*Birkenfeld, supra*, 17 Cal.3d 129, 143 [emphasis added].) In a case invalidating a statewide initiative that sought to limit the amount of monies the state Legislature could appropriate, the appellate court found that the initiative impermissibly placed legal limits upon the content of the legislation by which the Legislature is given the money to conduct its operations:

[I]t invades not only the content of the Governor's budget bill but displaces the process....It also affects any alternative means of appropriation by placing limits upon the content of any Legislative appropriations bill. By these means, [the initiative] "divest[s] [the Legislature] of the power to enact legislation within its competence".

..

(*People's Advocate, Inc. v. Superior Court* (1986) 181 Cal.App.3d 316, 329 and fn. 13.)

Accordingly, we believe that there is merit to a challenge to the validity of the proposed measure, on the grounds that it impermissibly seeks to legislate in an area exclusively delegated to the Board of Supervisors, even though this does not necessarily determine the outcome of a legal challenge.

C. The "Impairment of Essential Function" Issue.

The second legal theory upon which the proposed measure might be challenged is closely related to the administrative act and exclusive delegation theories - it is often cited as an alternative rationale in cases that involve the former theories. This final theory, "impairment of essential functions" in shorthand, dates at least to a 1915 appellate decision. In that case, the court invalidated a referendum that sought to overturn a city resolution setting forth a program of street improvements. The court found that the initiative and referendum power could not be exercised "if it be found that by so applying the inevitable effect would be greatly to impair or wholly destroy the efficacy of some other governmental power, the practical application of which is essential and, perhaps, . . . indispensable to the convenience, comfort, and well-being of the inhabitants." (*Chase v. Kalber* (1915) 28 Cal.App. 561, 569-570.)

The California Supreme Court endorsed this legal theory, and seemed to set a low standard for "impairment," in the *Simpson* case. (*Simpson, supra*, 36 Cal.2d at 134.) There, it overruled an initiative that would have overturned a county's choice for locating the courts in part because it would "inconvenience" and delay the Board of Supervisors in selecting a site and providing for the courts, causing "difficulty and delay" that would hinder the efficient functioning of the courts. (*Id.* at 134-135.)

Subsequent applications of this principle have, again, come primarily in cases involving local government's fiscal management. (See, e.g., *Geiger v. Board of Supervisors* (1957) 48 Cal.2d 832, 839; *Community Health Ass'n v. Board of Supervisors* (1983) 146 Cal.App.3d 990, 993-994; *Dare v. Lakeport City Council* (1970) 12 Cal.App.3d 864, 869.) Typically, these cases involve referenda on tax issues, but their holdings and the legal theory are not limited to referenda and revenues, and should apply with equal force to initiatives and expenditures.

Two California Supreme Court cases seem to further clarify the parameters of this legal theory. First, the Court has stated that "speculative consequences do not constitute a prohibited interference by the initiative power with the function of a legislative body." (*Birkenfeld, supra*, 17 Cal.3d at 143-144.) In that case, the supposed consequence of a rent control initiative was that it would impair the city's tax base in the long run. Second, the Court has suggested that if an initiative does not have an immediate impact on the local agency's budget and does not affect a current revenue source, this legal theory may not apply. (*Rossi, supra*, 9 Cal.4th at 710.) In the second case, the Court was also persuaded by the facts that the impact amounted to 0.625% of the city's budget, and there was no showing that replacement revenue was not available. (*Id.* at 713-714.) Here, the impact of the measure (approximately \$1.8 million annually) constitutes approximately 4% of the discretionary revenues available to the County.

Without a fully developed factual record regarding the economic impact of the measure, it is difficult to assess the strength of the argument that this initiative itself impacts other County functions. However, it appears that a legal challenge to this initiative on this theory could be meritorious. In this instance, the proposed measure addresses a governmental function that the courts have traditionally deemed to be essential - fiscal management. The initiative would have an immediate and concrete impact on funds the County is now receiving. Those funds have been earmarked for specific purposes. The fact of that impact is not speculative at all. Although the exact amount of the revenues affected are determined by certain variables, there are fairly precise estimates of the projected revenues. Projections for the earlier years, those most affected by this initiative, are presumed to be more accurate than those for later years. The projected revenues affected by the initiative for years 2 through 6 are approximately \$9,000,000, or \$1,800,000 per year. Estimated conservatively, this represents about 4% of the discretionary revenues available to the County annually, substantially more than was at stake in *Rossi*.

Moreover, regardless of the specific fiscal impact of this particular initiative, the fact that the County's ability to perform essential functions might be impaired by the cumulative impact of several measures which might be proposed to direct the expenditures of funds, while no single initiative might have that impact, could lead a court to conclude that such initiative measures are categorically improper, regardless of the impact of any particular measure. We are aware of no court case in which this question has been addressed. Clearly, it would be a case of first impression for any court. However, we believe that a strong argument can be made that the very act of budgeting by initiative is inherently antithetical to, and therefore impairs, the essential function of the fiscal management and budgeting.

The Third District Court of Appeal has described the budget process as follows:

“The budgetary process entails a complex balancing of public needs in many and varied areas with the finite financial resources available for distribution among those demands. It involves interdependent political, social and economic judgments which cannot be left to individual officers acting in isolation; rather, it is, and indeed must be, the responsibility of the legislative body to weigh those needs and set priorities for the utilization of the limited revenues available.”

(*County of Butte v. Superior Court* (1985) 176 Cal.App.3d 693, 699 [emphasis added].)

Fiscal management is an essential function of government. The core of the budgeting process is an interdependent evaluation of the competing needs of the public. The initiative process at work here focuses on the allocation of funds to a particular interest without regard to or consideration of competing needs, and therefore lacks the comprehensiveness and interdependence which is essential to the fiscal management of the County. While the outcome of any litigation is uncertain, it is our conclusion that these factors afford considerable weight to the arguments against the validity of the measure.

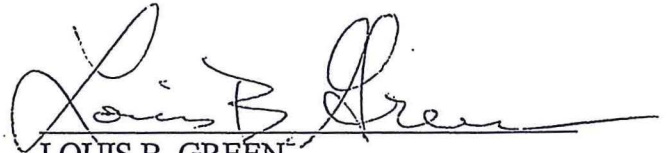
Board of Supervisors  
August 18, 2000  
Page 7

### III Conclusion

While the outcome of any litigation cannot be predicted with certainty, especially in light of the strong presumption of validity of any initiative measure, we conclude that there are at least two grounds upon which a viable challenge to the proposed initiative may be based. One is that the voter's initiative power on the subject matter has been preempted by the State Budget Act. The other is that this initiative, and others of this type, impermissibly impair the County's ability to perform essential functions of government.

We would be pleased to answer any questions the Board might have.

Respectfully submitted,



LOUIS B. GREEN  
County Counsel

LBG:dp  
S:\bd of supervisors-15\correspondence\use of revenues from tobacco lit settlement  
cc: Registrar of Voters



EL DORADO COUNTY  
PUBLIC HEALTH DEPARTMENT

*Healthy People Living in Healthy Communities in El Dorado County*

GAYLE ERBE-HAMLIN, M.P.A., DIRECTOR    STEPHEN DROGIN, M.D., HEALTH OFFICER

February 24, 2003

Board of Supervisors  
330 Fair Lane  
Placerville, CA 95667

Subject:        **Action Plan for Implementation of Strategic Recommendations Outlined in Health Alliance's Needs Assessment and Strategic Planning Report**

Dear Board Members:

**Recommendation:**

- 1)     Adopt three Action Plan Areas and their funding as outlined below and summarized in Table 1.
- 2)     Direct staff to begin implementation of the Action Plan.
- 3)     Direct staff to return quarterly to provide the Board with an update on the implementation process and once adopted, the Evaluation Plan.

**Reason for Recommendation:**

The Board of Supervisors has directed the Health Alliance to provide the Board with a plan for use of the Tobacco Master Settlement Agreement (MSA) funds consistent with the Board's adoption of the Health Alliance's Needs Assessment and Strategic Planning process.

In February 2001, the Board of Supervisors adopted the Health Initiative's language dedicating all MSA funds received by the County in years 00/01 thru 04/05 for health related purposes and at least 10% thereafter. Initially, the Board designated approximately \$3,770,000 of the funds to support community health clinics, juvenile hall medical facilities, and a strategic planning process to identify the priority health needs in the County. A planning group, the Health Alliance, was convened to conduct the strategic planning process, to develop recommendations, and to identify the specific projects that would best achieve the goals identified in the plan. Additionally, the local Tobacco Coalition has been designated as the planning body for that portion (15%) of the MSA which is required to be spent on Tobacco Use Prevention and Control activities. A chart showing the actual revenues and expenses to date and proposed collections and expenditures through 04/05 is attached (Table 2).

Administration • Animal Control • Clinic, Laboratory, Nursing • EMS Agency • Information Services • Health Promotions

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The strategic planning document "Making a Difference: Opportunities for Improving Health in El Dorado County" was presented to the Board in October 2002. In November 2002, the Board completed the public review process of the strategic plan and adopted the Health Alliance's recommendations relative to the plan. The recommendations suggested strategies be developed in three specific areas: Enrollment and Availability of Insurance, Capacity Expansion and Access, and Consumer Education. Since November, the Health Alliance has been reviewing the strategic plan and discussing the best way to approach each of these areas within the framework of the five key guiding principles adopted by the Board at the beginning of this process. Those principles are: one, that broad and diverse community input be gathered; two, that strategies take advantage of existing funding sources whenever possible; three, that maximum impact be achieved; four, that efforts lead to a more integrated system; and five, that long-term benefit result. Additionally, the Health Alliance focused on the three priority populations identified in the strategic plan: low-income families; children and youth; seniors.

The Action Plan which follows represents a once in a lifetime opportunity for El Dorado County to speak in one voice about how we want to strengthen the safety net of services which addresses the healthcare needs of the underserved. The recommended actions address each of the three strategic areas adopted by the Board of Supervisors, plus an evaluation component.

**Table 1: Proposed Expenditures to Implement MSA Action Plan**

<b>Action Area 1: Safety Net Provider Network Creation and Enhancement</b>		<b>Term of Expenditure</b>
Safety Net Provider Network	\$ 32,500	FY 02-03
Mental Health Case Mgmt/UR	\$ 150,000	FY 02-03 thru 04-05
Mental Health Geriatric Services	\$ 240,000	FY 02-03 thru 04-05
Safety Net Recruitment/Retention	\$ 100,000	FY 02-03 thru 04-05
Dental Van Conversion	\$ 55,000	FY 03-04
Healthy Families Enrollment/Retention	\$ 160,000	FY 03-04 thru 04-05
Children's Health Care	\$ 425,000	FY 03-04 thru 04-05
Small Business Employee Health	\$ 65,000	FY 03-04 thru 04-05
<b>Subtotal:</b>	<b>\$ 1,227,500</b>	
<b>Action Area 2: Quality Accessible Health &amp; Health Service Information</b>		
Linkage of Community Health Library	\$ 19,000	FY 02-03
On Line Community Services Directory	\$ 50,000	FY 03-04
Health Fairs	\$ 6,000	FY 03-04 thru 04-05
<b>Subtotal:</b>	<b>\$ 75,000</b>	
<b>Action Area 3: Investment in Safety Net Facilities</b>		
One Stop Safety Net Facilities	\$ 1,650,000	FY 03-04 thru 05-06
<b>Subtotal:</b>	<b>\$ 1,650,000</b>	
<b>Evaluation of All Action Areas</b>	<b>\$ 25,000</b>	<b>FY 03-04 thru 05-06</b>
<b>TOTAL COST:</b>	<b>\$ 2,977,500</b>	

**TABLE 2:**

<b>EI Dorado County Tobacco Settlement Projected Revenues/Expenses (For Health Related Services)</b>						
	<b>Year 2 Actual</b>	<b>Year 3 Actual</b>	<b>Year 4 Proposed</b>	<b>Year 5 Proposed</b>	<b>Year 6 Proposed</b>	
	<b>FY 00-01</b>	<b>FY 01-02</b>	<b>FY 02-03</b>	<b>FY 03-04</b>	<b>FY 04-05</b>	<b>Total</b>
<b>Revenues</b>						
<b>Annual</b>	1,418,049	1,888,677	1,600,000	1,550,000	1,500,000	7,956,726
<b>Total Revenues Available</b>	1,418,049	1,888,677	1,600,000	1,550,000	1,500,000	
<b>Expenses/Commitments</b>						
<b>WS Comm Hlth Cntr</b>	38,000	133,510	1,600,000	228,490		2,000,000
<b>Tobacco Prevention (15%)</b>	212,707	283,302	240,000	232,500	225,000	1,193,509
<b>Juv Hall/Medical</b>	478,860					478,860
<b>Barton Comm Clinic</b>		590,000	600,000			1,190,000
<b>Strategic Planning</b>		50,830	19,170			70,000
<b>Mobile Medical</b>		24,196	6,060			30,256
<b>Total Expenses</b>	729,567	1,081,837	2,465,230	460,990	225,000	4,962,625
<b>FY Net Balance</b>	688,482	806,840	(865,230)	1,089,010	1,275,000	2,994,101
<b>Rolling Total Net Balance</b>		1,495,321	630,091	1,719,101	2,994,101	

**ACTION AREA 1: Safety Net Provider Network**

**Strategic Areas Addressed:** Capacity Expansion and Access/Enrollment and Availability of Insurance

**Target Population:** Low-income families; children and youth; seniors

**Need:** Lack of access to basic health services especially mental health and dental services. Lack of coordinated care for low-income patients including families, children and seniors. Limited ability for providers to collaboratively maximize their resources and take advantage of opportunities. Difficulty in recruiting and retaining qualified staff in key professional areas. Insufficient enrollment and retention in existing federally funded insurance program.

**Opportunities:** Newly created Community Health Center and federal designation as Health Professional Shortage Area (HPSA); existing funding that can be leveraged; collaboration among providers

**Goal:** Strengthen the Safety Net for the Underserved by Building an Organized System of Care

**Action:** Establish a Safety Net Provider Network and supplement with additional shared services and resources.

**Guiding Principles Met:** Takes advantage of existing funding sources; maximizes impact; leads to a more integrated system; long term benefit would result

**Outcomes:** Improved use of existing services; increased integration of existing services and new services; improved patient outcome; maximized leveraging of existing funding and increased potential to attract additional funding

**Cost: \$1,227,500**

The core of this strategy is the creation of a Safety Net Provider Network. The goal of the Network is to better coordinate the health resources and services delivered to the County's underserved populations. The membership of this Network are the county agencies (Mental Health, Community Services and Public Health), hospitals, community clinics and community-based organizations (public and private) that are the significant providers of health care services to low-income families, children, and seniors; patients who have limited or no resources to meet their basic health care needs. The Network also includes the Social Services Department as a critical partner in that they provide a financial safety net and establish eligibility for certain safety net health services.

The strategic plan identifies a multitude of issues experienced by low income families, children and youth, and seniors when accessing or attempting to access health services and resources. The Network would be charged to address these issues systemically in an integrated and coordinated manner. For example: improved accessibility to specialty care and services, improved coordination in use of transportation options and alternatives, strengthening of health care system's cultural competency; and improved recruitment and retention of professional staff, increased efficiency and effectiveness in purchasing of services and supplies including pharmaceuticals. The Network would also be asked to maximize the benefit of the County's federal health professional shortage designations for improved reimbursement, and service expansion, particularly in mental health and dental. From a care perspective, they would be accountable for better coordination of care for the target population through case management and referral; the efficient deployment of resources that are not well distributed geographically and/or are of high cost, i.e., dental and mental health; providing low cost health services and ensuring that safety net patients receive comprehensive coordinated care.

**The Network would be enhanced with a number of resources and held accountable for specific outcomes as detailed below:**

- Strengthen the capacity of safety net providers to provide mental health treatment for less severe impairments by providing case management, utilization review, quality assurance functions and psychological testing. (\$75,000 annually for two years). Maximize ability to leverage federal funding once population status is better understood.
- Acquire mental health HPSA designation in order to expand availability of mental health treatment services offered through the Community Health Center's FQHC. (To be addressed within first year implementation plan of Safety Net Provider Network)
- Enhance ability of safety net providers to serve seniors with mental health needs by hiring two Mental Health Geriatric specialists, one on the WS and one in SLT to provide consultation and treatment, assessments and referrals (\$120,000 annually for two years). Maximize ability to leverage federal funding once population status is better understood.
- Strengthen safety net provider's ability to recruit and retain critical professional positions by establishing a fund to be used by Safety Net Provider Network for hiring recruitment firms; creating advertising materials such as videos and brochures; providing tuition reimbursement, covering recruitment travel expenses, and offering sign-on bonuses. (\$100,000 one time only)
- Expand dental services through rotating on-site dental screening and treatment at safety net provider facilities by converting Sierra Mobile Clinic into a mobile Dental Van. (\$35,000 one time only cost plus \$10,000 annual maintenance for first two years.)

- Acquire dental HPSA designation in order to provide and be reimbursed for dental screening and treatment services under Community Health Center's FQHC. (To be addressed within first year implementation plan of Safety Net Provider Network)
- Evaluate needs and create an action plan to address crisis sheltering and support needs particularly for seniors and children. (To be addressed within first year implementation plan of Safety Net Provider Network)
- Develop local pharmacy program that would provide low cost pharmaceuticals to safety net providers and their patients by tapping into federal and State purchasing programs. (To be addressed within first year implementation plan of Safety Net Provider Network)
- Maximize the value of Healthy Families Insurance by enrolling and retaining coverage for eligible low-income children by placing assistors on the WS and in SLT to work in cooperation with safety net providers. (\$80,000 annually)
- Establish fund to offset costs of care as coordinated through Safety Net Provider Network for uninsured (not eligible for Medi-Cal, Healthy Families or private insurance) children (5 to 18 yrs). Program to be conducted in collaboration with Prop 10 covering birth to 5 years of age. (\$450,000 could possibly leverage \$200,000 from Prop 10)
- Enhance business' participation in providing employee health services by establishing a program where small businesses can purchase health care services, including mental health, through the Safety Net Provider Network for their employees at reasonable rates. (\$35,000 one time set up with \$15,000 annual administration, in addition to the contributions businesses would be making on behalf of their employees). (Planning partially covered within first year implementation plan of Safety Net Provider Network)
- Establish Safety Net Provider Network by providing facilitation, staff support, training and funding to implement their first year plan. (\$32,500)

## **ACTION AREA 2: Quality Accessible Health and Health Service Information**

**Strategic Areas Addressed:** Consumer Education; Access

**Target Population:** Families; children and youth; seniors; service providers; school personnel

**Need:** Lack of real time information on services and service availability for consumers and providers; Limited access to health information within County; Limited opportunity for providers to develop referral relationships with other providers.

**Opportunities:** Community Health Library; First 5 Community Service Directory; Community Planning Council's development of a regional web portal

**Goal:** Empower consumers to better meet their own health care needs by understanding how to access the health care system and information. Empower providers to better utilize the health care system's available resources through improved relations with each other and real time interactive access to community service directory information

**Action:** Create opportunities for consumers and providers to access timely quality healthcare information and for providers to at least annually interact with each other.

<b>Guiding Principles Met:</b>	<b>Takes advantage of existing funding sources; maximizes impact; leads to a more integrated system; long term benefit would result</b>
<b>Outcomes:</b>	<b>Improved use of existing services; increased integration of existing services and new services; improved health outcomes; maximized leveraging of existing funding and increased potential to attract additional funding</b>
<b>Cost:</b>	<b>\$75,000</b>

As identified in the strategic plan, knowing what services are available and how to access them is a critical need for both consumers and providers. There are three opportunities for improving the community's access to health information and their knowledge of services: one, by providing expanded access to the Community Health Library collection of materials; two, by placing the community service directory developed by First 5 (Prop 10 Commission) on line so that it can be updated on a real time basis and be more widely accessible; and three, by holding an annual Health and Human Services Fair for providers to meet each other, develop relationships, and gather information on each others services.

- Expand the availability of quality up-to-date health information throughout the County by establishing the Community Health Library as a branch of the Public Library system. (\$17,000 one time only cost for software and staff time to create bibliographic record and \$1,000 annual fee).
  - The County has a wonderful resource in Marshall Medical's Community Health Library. However, the information contained in the Library is only available to those that call or drop into the Library in Placerville. The Library has limited staffing to meet all the requests being made of it. By linking the holdings of the Community Health Library into the Public Library system these resources would now be able to be accessed at all the Public Library branches throughout the County. Collaboration between the Community Health Library and the Public Library would also result in the Public Library resource staff becoming more familiar with accessing and referring Public Library users to appropriate health information and resources. The Community Health Library will also develop a working relationship with Barton Hospital's newly created Health Resource Center.
- Improve quality of and accessibility to information about community health resources and services by collaborating with First 5 (Prop 10) to place the recently created Community Services Directory on-line. (\$40,000 one time plus \$5,000 annual fee)
  - First 5 has published a comprehensive service directory for El Dorado County which lists all health and human service programs and services. The goal is to transfer that hard copy directory into an online directory that can be updated easily and where the data base can be queried to meet the user's exact needs. The Community Planning Council in Sacramento who produced First 5's directory will be establishing a regional web portal that would enable users to access each county's specific information as well as all the other resources in the area. Additionally, the site would have valuable topical information for parents, families, seniors and providers.

- Increase the opportunity for providers of health and human services to at least annually convene and share with each other their services and programs, receive topical information regarding local health issues; and provide reflection on the state of the health service delivery system.
  - The Safety Net Provider Network will host annual Health and Human Services Provider Fairs where local health and human service providers can set up booths and tables, distribute literature, share time with each other, listen to speakers and panels on health issues and concerns. Additional sponsors and underwriters of the Fair will be sought. (\$6,000 to hold at least three fairs).

**ACTION AREA 3: Investment in Safety Net Facilities**

**Strategic Areas Addressed:** Capacity Expansion and Access  
**Target Population:** Families; children and youth; seniors; service providers  
**Need:** Lack of suitable facilities to house safety net providers; limited ability to co-locate essential services and achieve economies of scale; limited ability to develop integrated services due to physical distances between program sites; lack of investment in physical infrastructure for safety net services resulting in program dollars being drained off in lease expenses  
**Opportunities:** Available developers willing to build-to-own; low cost interest rates; County undergoing long range facility planning; ability to access matching grant funding  
**Goal:** Establish a permanent physical focus for the delivery of co-located safety net services that is accessible, efficient and functions as a community center.  
**Action:** Invest in two service center facilities, one on the Western Slope and one in South Lake Tahoe, from which to provide co-located safety net services to the underserved of the county.  
**Guiding Principles Met:** Takes advantage of existing funding sources; maximizes impact; leads to a more integrated system; long term benefit would result  
**Outcomes:** Improved access to services; increased integration of services; improved collaboration among safety net providers; maximized leveraging of existing funding and increased potential to attract additional funding; improved ownership and control of critical physical infrastructure; reduction in escalating lease costs.  
**Cost:** \$1,650,000

People seeking to access safety net services in El Dorado County experience a physically dispersed service system that is difficult to access and for which transportation is often a problem. Providers of safety net services find themselves in less than ideal physical settings that are often dislocated from other like services. More and more frequently safety net providers are needing to locate in leased space that draws precious funding from service provision and for which there is no return on investment. Additionally, the quality of the service is often compromised by the facility's shortcomings (ex: lack of confidentiality, limiting service expansion due to lack of availability of space for staff, no community meeting rooms). There is no one place in the County for people to go to where they can access or get information on the

full range of safety net services similar to the one stop service centers developed by JOB One. That model has shown how valuable co-located services can be to achieving a successful outcome when the issues are as complex as those faced by the underserved seeking access to and information regarding health services. By investing in two service centers, one on the Western Slope and one in South Lake Tahoe, the County would create a permanent locus to locate those most critical and beneficial safety net services being provided by a number of County, non-profit and other associated agencies.

- Improve the physical infrastructure for the delivery of safety net services by setting aside \$1,650,000 to fund at least two one stop service centers, one in South Lake Tahoe and one on the Western Slope. Investment should be consistent with County's facility assessment process scheduled to be discussed with the Board during the month of March. At that time the Board can determine how best to utilize this funding to improve the delivery of safety net health services.

### **Evaluation**

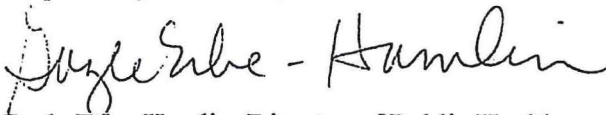
Each element that is being recommended should be addressed in an evaluation plan.

- Within 6 months of Board approval of the Action Plan staff will return to the Board with an evaluation plan that will be the basis for future reporting to the Board and community. (It is estimated that \$25,000 is needed to cover staff costs associated with developing and implementing the evaluation plan over a three-year period.

**Fiscal Impact and Net County Cost:** Total cost to implement all three Action Areas as described above is \$2,992,500 from FY 02-03 through FY 05-06. The funds would all come from the County's Tobacco Master Settlement Agreement receipts.

**Action to be taken Following Approval:** Health Alliance to monitor implementation by the Public Health Department of Action Areas 1 & 2. Board to consider Action Area 3 in conjunction with County facility review process.

Respectfully submitted,



Gayle Erbe-Hamlin, Director of Public Health.  
El Dorado County Public Health

cc: James M. Bourey, Chief Administrative Officer  
Bruce Peet, Principal Admin Analyst  
Health Alliance members