



## Legislation Details (With Text)

**File #:** 18-0922 **Version:** 1

**Type:** Agenda Item **Status:** Approved

**File created:** 5/31/2018 **In control:** Board of Supervisors

**On agenda:** 6/12/2018 **Final action:** 6/12/2018

**Title:** HEARING - County Counsel presenting the following items for the Board's consideration:  
1) Adopt and authorize the Chair to sign, contingent upon execution of a defense and indemnity agreement by the El Dorado Hills County Water District ("District"), Resolution 125-2018 amending Resolution 072-2016, which approved a negotiated transfer of County general fund base property tax revenue to District pursuant to Section 99.02 of the California Revenue and Taxation Code, to clarify that the transfer shall commence with Fiscal Year 2018-19; and  
2) Approve and authorize the Chair to execute a defense and indemnity agreement with the District. (Est. Time: 10 Min.)

**FUNDING:** General Fund.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. A - Amendment to Resolution 072-2016, 2. B - Resolution 072-2016, 3. C - District's Resolution 2018-07, 4. D - Defense & Indemnity Agreement, 5. Executed Defense, Indemnity, and Hold Harmless Agreement, 6. Executed Resolution 125-2018

Date	Ver.	Action By	Action	Result
6/12/2018	1	Board of Supervisors	Approved	Pass

HEARING - County Counsel presenting the following items for the Board's consideration:

1) Adopt and authorize the Chair to sign, contingent upon execution of a defense and indemnity agreement by the El Dorado Hills County Water District ("District"), Resolution **125-2018** amending Resolution 072-2016, which approved a negotiated transfer of County general fund base property tax revenue to District pursuant to Section 99.02 of the California Revenue and Taxation Code, to clarify that the transfer shall commence with Fiscal Year 2018-19; and  
2) Approve and authorize the Chair to execute a defense and indemnity agreement with the District. (Est. Time: 10 Min.)

**FUNDING:** General Fund.

### DEPARTMENT RECOMMENDATION

Conduct the public hearing and consider adoption of the resolution.

### DISCUSSION / BACKGROUND

On June 10, 2014, the Board of Supervisors of the County of El Dorado adopted Resolution No. 064-2014, which supported the dissolution of the Latrobe Fire Protection District (LAFCO Project Number 2014-03) and the annexation of the Latrobe Fire Protection District's dissolved territory and sphere of influence territory by the El Dorado Hills County Water District (LAFCO Project Number 2014-04) and redistributed property tax base and annual property tax increment as a result of negotiations related

to the dissolution and annexation.

In addition to the transfer of the property tax base from Latrobe and the increase of the annual increment to 17% for the consolidated district, the Board, in a separate action, also resolved to transfer a portion base property tax revenues from the County General Fund, the County Accumulative Capital Outlay Fund, the County Road District Tax Fund, and County Service Area #7 to the District. It was later determined that the action in Resolution 064-2014 to transfer of the base property tax revenue did not meet the requirements of Revenue and Taxation Code 99.02(e) and was therefore not authorized. As to the County's transfer of a portion of its base property tax revenue, the 2014 resolution did not expressly state whether the liability for Educational Revenue Augmentation Fund (ERAF) payments on those amounts transferred would remain with the County or would be the responsibility of the District. Ordinarily, the transfer of base property tax revenue from a non-school taxing jurisdiction also transfers the related ERAF liability/encumbrance to ensure that ERAF remains whole as required by Revenue and Taxation Code Section 99.02(f).

On December 15, 2015, the Board authorized the use of General Fund contingency to make a payment to the District in the amount of \$513,302 and directed staff to return with a resolution to effect the base property tax transfer as intended by Resolution 064-2014. The payment amount was meant to be equivalent to the amounts that would have been transferred to the District in Fiscal Years 2014-15 and 2015-16, and was not reduced by the ERAF obligation of approximately \$72,000 per year.

On April 19, 2016, the Board of Supervisors adopted Resolution 072-2016 to approve the base property tax transfer in compliance with Revenue and Taxation Code 99.02. This resolution provided for the transfer of \$256,651 of the County's pre-ERAF base property tax revenue; however, in order to effectuate the transfer, the District must also adopt a resolution concurring with the transfer. The District did not adopt a resolution in time to effectuate the transfer effective for FY 2016-17, as contemplated in the County's resolution, citing disagreement about whether the transferred amount should be pre or post ERAF. Pending final resolution, in December, 2017, the Board authorized payment to the District in the amount of \$500,000 to approximate the amounts that would have been transferred in Fiscal Years 2016-18 and 2017-18.

Based on the Board's intent as expressed in Resolutions 064-2014 and 072-2016 to effectuate the base property tax transfer, staff has continued to work with the District to find a legal avenue for effectuating the transfer. The District and the County had several meetings to determine the agencies' obligations regarding the ERAF amount due on the base property tax transfer. Counsel has determined that the most prudent way to effectuate the transfer is to amend the County's resolution to clarify the effective date of the transfer to commence with Fiscal Year 2018-19, rather than FY 2016-17, as stated in the original Resolution 072-2018. This does not change the ERAF obligation, or any other conditions of the transfer. The transfer amount will continue to be pre-ERAF, which means that the \$256,651 gross transfer amount will be reduced by all required payments to the ERAF, so that revenues to school entities will not be affected by the transfer. It is estimated that the net post-ERAF transfer from the County to the District will be \$256,651 less the ERAF encumbrance of approximately \$73,000 so the District will receive net revenues of approximately \$183,651 in FY

2018-19. The ERAF encumbrance will grow commensurate with the District's annual tax increment. The proposed resolution includes direction to County staff to bring an item to the Board of Supervisors annually during the budget process for consideration of an additional transfer to the District in an amount equivalent to the ERAF encumbrance. The Auditor-Controller will calculate this amount annually for inclusion in the budget. The District adopted its concurring resolution on May 29, 2018.

As a precautionary measure, Counsel does recommend that the Board approve and authorize the Chair to sign an agreement that provides for the District to "defend, indemnify and hold the County, its officers and employees, harmless against and from any and all claims, proceedings, suits, losses, damages, and liability for damages, including attorneys' fees and costs incurred, which are claimed to or in any way arise out of or connected with the County's transfer to the District of the base property tax revenues as set forth in Exhibit A." Exhibit A to the agreement will be the County's fully-executed resolution.

### **ALTERNATIVES**

The Board could consider an annual General Fund contribution rather than a permanent transfer of base property tax revenues. The Board could refuse to adopt the resolution and transfer any monies to the District although this would be contrary to the intent expressed by the Board in 2014 and again in 2016.

### **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

El Dorado Hills County Water District, Auditor-Controller

### **CAO RECOMMENDATION**

Approve, based on the Board's intent to transfer the base property tax revenues as stated in resolutions 064-2014 and 072-2016, and as demonstrated through the payment to the District of amounts equivalent to four years of revenue.

### **FINANCIAL IMPACT**

With Board approval of this item, Fiscal Year 2018-19 General Fund base property tax revenues will be reduced by \$256,651. In future years, the County General Fund will not receive the base revenue or any growth on the base revenue.

### **CLERK OF THE BOARD FOLLOW UP ACTIONS**

Provide the Chair three (3) copies of the Resolution and Defense and Indemnity Agreement for signature. Provide the fully executed Defense and Indemnity agreement to County Counsel for distribution.

### **STRATEGIC PLAN COMPONENT**

Good Governance/Public Safety

### **CONTACT**

Michael Ciccozzi, County Counsel