

AGENDA
NOTICED MEETING OF LEGAL AND LEGISLATION STANDING COMMITTEE
EL DORADO IRRIGATION DISTRICT
District Board Room, 2890 Mosquito Road, Placerville, California
April 28, 2008 ~ 10:30 a.m.

Standing Committee

John P. Fraser, Division II
Chair

George W. Osborne, Division I
Co-Chair

Committee Members

Bill George, Division III
Member

George A. Wheeldon, Division IV
Member

Harry J. Norris, Division V
Member

**General Manager and
Committee Staff**

David Witter
Interim General Manager
Environmental Compliance and
Water Policy

Tom Cumpston
General Counsel

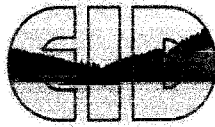
Jennifer Aldridge
Acting Clerk to the Board

Deanne Kloepfer, Department Head
Strategic Management and
Communications

Elizabeth Mansfield, Acting
Department Head, Environmental
Compliance and Water Policy

PUBLIC COMMENT: Anyone wishing to comment about items not on the Agenda may do so during Public Comment. Public comments are limited to five minutes. Those wishing to comment about items on the Agenda may do so when that item is heard and when the Board calls for public comment.

1. Call to order
2. Roll call
3. Adopt Agenda
4. Public comment on items not on the Agenda
5. Approve Minutes of November 27, 2006
6. Discussion Items
 - A. 1) A legal opinion by the United States Department of Interior, Solicitor General's Office as to the invalidity of the LAFCO conditions limiting water service to the Shingle Springs Rancheria; and 2) Service level and water supply implications of service to the Rancheria absent the LAFCO conditions.
7. Adjournment



**MINUTES
NOTICED MEETING OF LEGAL AND LEGISLATION
STANDING COMMITTEE
EL DORADO IRRIGATION DISTRICT
District Board Room, 2890 Mosquito Road, Placerville, California
November 27, 2006, following Board Meeting**

Committee Co-Chairs

John P. Fraser, Division II
Chair

George W. Osborne, Division I
Co-Chair

Committee Members

William (Bill) L. George, Division III
Member

George A. Wheeldon, Division IV
Member

Harry J. Norris, Division V
Member

**General Manager and
Committee Staff**

Ane D. Deister
General Manager

Tom Cumpston
General Counsel

Peg Campbell
Clerk to the Board

David Witter, Environmental
Compliance and Water Policy

PUBLIC COMMENT: Anyone wishing to comment about items not on the agenda may do so during Public Comment. Public comments are limited to five minutes. Those wishing to comment about items on the agenda may do so when that item is heard and when the board calls for public comment.

OPEN SESSION

Chair John P. Fraser called the meeting to order at 3:31 p.m. Directors Osborne, Fraser, George, Wheeldon, and Norris present. General Manager Deister, General Counsel Cumpston, and Clerk to the Board Campbell present.

ADOPT AGENDA

Agenda adopted.

GWOFN

APPROVE MINUTES

Approved November 13, 2006 Minutes.

GWOFN

PUBLIC COMMENT

None

DIRECTOR'S COMMUNICATIONS / COMMENTS

None

GENERAL MANAGER'S COMMUNICATIONS / COMMENTS

None

DISCUSSION ITEMS

A. Status of El Dorado Hills Water Treatment Plant Design Contract

Elizabeth Mansfield gave a PowerPoint presentation on the November 15, 2006 Integrated Regional Water Management Plan (IRWMP) for the Cosumnes, American, Bear, and Yuba (CABY) watersheds in California

ADJOURNMENT

Chair John P. Fraser adjourned the meeting at 4:02 p.m.

John P. Fraser, Chair
Legal and Legislation Standing Committee
EL DORADO IRRIGATION DISTRICT

ATTEST:

Peg Campbell,
Clerk to the Board

LEGAL AND LEGISLATION STANDING COMMITTEE

SUBJECTS: Solicitor's opinion re: LAFCO restrictions on Rancheria water service
Water supply and service level implications of service absent LAFCO restrictions

Previous District Action:

September 3, 2002 – Board President stated in correspondence to the El Dorado County Local Agency Formation Commission (LAFCO) that generally, the District considered LAFCO-imposed restrictions on the District's water service to the Shingle Springs Rancheria to be valid and binding.

November 6, 2002 – The District's Director of Facilities Management stated in correspondence to the Rancheria that LAFCO restrictions were valid and enforceable, and that therefore the Board was compelled to abide by them.

December 16, 2002 – The Board reaffirmed the November 6, 2002 statements as the District's official position.

May 13, 2004 – The District, its Board members, and its General Manager entered into a tolling agreement with the Shingle Springs Band of Miwok Indians (Tribe) to forestall a planned lawsuit by the Tribe. The agreement has remained continuously in effect since then.

Board Policies and Administrative Regulations:

Relevant Board Policies and Administrative Regulations include the following:

- BP 9020 – The District provides drinking water, recycled water, and wastewater services to residential, municipal, commercial, industrial, and agricultural customers within the District's service area. These services are subject to the provisions of all Board Policies and applicable Administrative Regulations and to the payment of appropriate rates, fees, deposits, and charges.
- AR 9021 – New drinking water service will be provided subject to conditions that include the following:
 - Payment of all applicable connection charges.
 - A District water main of adequate capacity and pressure exists in a right-of-way abutting a principal boundary of the land to be served, or adequate mains, pumps, and storage facilities (as solely determined by the District) must be constructed in accordance with the District's Board Policies and Administrative Regulations.

- A private fire service is required for commercial customers who request water for fire suppression other than from public fire hydrants. The District does not guarantee any range of pressure or rates of flow for private fire service.
- BP 5010 – The District will not issue any new water meters if the annual *Water Resources and Service Reliability Report* indicates that there is insufficient water supply.
- AR 5012.2 – The District’s water supply system shall be under the exclusive control and management of duly appointed District personnel, and no one shall have any right to operate, maintain or replace any of the District’s water facilities, or interfere with the District system in any manner.

Summary of Issues:

New Legal Opinion re: LAFCO Restrictions

The Shingle Springs Rancheria was annexed to the District for water service in 1989. Before approving the annexation, the El Dorado County Local Agency Formation Commission (LAFCO) imposed certain restrictions on the District’s provision of water service to the Rancheria. The validity of those restrictions has been a matter of considerable controversy and debate over the past decade. Up to now, the District’s position has been that the LAFCO restrictions are valid and binding on the District. However, the District has recently received new legal analysis that bears directly on the validity of the LAFCO restrictions. Your General Counsel believes that this new analysis warrants the Board’s reconsideration of the District’s legal position. This discussion will be the first workshop topic.

Service Level and Water Supply Implications

Absent the LAFCO restrictions, the District would treat a request for water service to the Rancheria’s casino development identically to all other requests for service within its boundaries. Generally speaking, it is both District policy and our legal duty to serve water to customers within our service area, on reasonable terms and conditions.

Under applicable Board Policies and Administrative Regulations, the District will add a new water customer if it has sufficient firm water supplies available to do so, and if sufficient infrastructure exists (or can be built) to enable the District to provide adequate levels of service both to the new customer and to all existing customers. The customer must also pay all connection fees and other charges, and often must build needed infrastructure at its own expense.

The Tribe has furnished information on its prospective water demands and the drinking water infrastructure currently under construction at the Rancheria. The District’s engineers have analyzed that data to determine whether and under what conditions the District could furnish service in conformance with Board Policies and Administrative Regulations. They have concluded that if the LAFCO restrictions did not bind the District, the District could meet the

Rancheria's water demands from existing available supplies and without any adverse effects to existing customers. As the second workshop topic, District engineers will review their analyses.

Staff Analysis/Evaluation:

Annexation History

The Tribe first sought annexation of the Rancheria to the District for water service in 1987, because wells on the Rancheria were failing. The parties entered into an Annexation Agreement on October 14, 1987. Subject to the specific terms and conditions of that agreement, the District agreed to provide water service "on the same terms as it provides service to any other resident within the District." The Annexation Agreement did not include the restrictions later imposed by LAFCO. It required the Tribe to apply to the District and to LAFCO for annexation, and it required the District to annex the Rancheria if LAFCO approved the application. The agreement was certified and approved by the federal Bureau of Indian Affairs.

LAFCO first heard the annexation petition on April 7, 1988. According to the minutes of that hearing, LAFCO Commissioner Jack Sweeney asked County Counsel "what controls El Dorado County had over the property as far as subdivision regulations are concerned since it is Indian property." Commissioner Sweeney explained that he "wanted to ensure some regulation over its development policies." Specifically, "he would want a development agreement or methodology." The LAFCO Chair agreed with Commissioner Sweeney's concerns and related a situation at Lake Tahoe "where the Indian tribes filed lawsuits claiming that if the land is owned by the Indians it becomes part of their sovereign nation which is exempt from local controls." At the end of the hearing, LAFCO unanimously passed Commissioner Sweeney's motion "to continue this project for one month until County Counsel researches the ability of local government agencies to control development on this property."

LAFCO later adopted Resolution No. 88-05 on July 7, 1988. This resolution imposed certain restrictions, approved the petition, and authorized the District to hold a public hearing, as the "conducting authority" under state annexation law, to approve the annexation. The LAFCO restrictions are at the heart of this matter. They stated that the District "shall make water available for residential use only. . . and for tribal use," and that service capability "shall be limited to that necessary to serve a community of forty residential lots." In all other respects, LAFCO said that the annexed lands were "subject to all [District] rules, regulations, and policies." However, LAFCO also reserved jurisdiction to amend or eliminate each of the above conditions.

The District held its hearing on October 26, 1988 and adopted a resolution declaring its intention to annex the lands, subject to the consent of the Secretary of Interior.¹ That consent was obtained on November 2, 1988, and the District subsequently adopted District Resolution 89-24 on February 8, 1989. Both resolutions incorporated the foregoing LAFCO restrictions as conditions of the annexation.

¹ The Secretary's consent was required of all annexations to the District under Water Code section 23202 and the terms of the District's then-current water service contract with the United States Bureau of Reclamation.

It should be noted that the Tribe sought and received annexation approval for water service only. Then and now, the District has no sewer infrastructure in the immediate area; the nearest sewer main is the Mother Lode Force Main, which generally runs along Mother Lode Drive, south of U.S. Highway 50.

On March 9, 1989, LAFCO recorded the Certificate of Completion that completed the annexation process and made the annexation effective under state law. The Certificate also incorporated the LAFCO restrictions as conditions of the annexation.

Debate over Validity of the LAFCO Restrictions; District Position

The validity of the LAFCO restrictions has become a matter of considerable controversy over the past decade. The Legislative Counsel for the California legislature issued two public legal opinions on the subject in 2002. That same year, LAFCO itself commissioned a confidential legal opinion that it has never made public.

Then-Assemblyman Tim Leslie requested the first Legislative Counsel's opinion, which was issued on July 30, 2002. Mr. Leslie specifically asked whether the LAFCO restrictions were lawful under state law. The legislative counsel opined that they were, based solely upon an analysis of LAFCO's governing law. Eight weeks later, the Legislative Counsel issued another opinion at the request of legislator Marco Firebaugh. The second Legislative Counsel opinion concluded more generically that LAFCOs were not authorized to make land-use decisions with respect to sovereign tribal lands. The basis for this conclusion was an analysis of LAFCO law and tribal sovereignty principles.

At the end of 2002, in response to separate inquiries by LAFCO and the Tribe, the District re-affirmed its position that the LAFCO restrictions were valid and binding on the District. It did so in reliance upon the first Legislative Counsel opinion. At a December 16, 2002 Board meeting, General Counsel advised the Board that the second Legislative Counsel's opinion was not applicable to the issue at hand, and that the first opinion, being more specific, should be controlling.

There has been no change in the District's stance since 2002. Despite all of the litigation surrounding the Rancheria's casino project, no court has ever decided the validity of the LAFCO restrictions. Although the District has met and negotiated with tribal representatives periodically since 2004, the District has neither altered its legal position nor made any commitment to provide water service to the Rancheria that would be inconsistent with the LAFCO restrictions.

New Legal Analysis Regarding LAFCO Restrictions

On March 21, 2008, the District received new legal analysis that bears directly upon the validity of the LAFCO restrictions. The new analysis consists of 1) a March 5, 2008 memorandum from the United States Department of the Interior, Office of the Solicitor (Pacific Southwest Region), and 2) a legal analysis prepared by counsel for the Tribe, to which the Solicitor's memorandum was responding. The Solicitor's memorandum states:

In general, we agree with the legal principles espoused by Tribal Counsel concerning federal preemption of state laws pursuant to the Property Clause and Supremacy Clause of the United States Constitution. More specifically, with regard to local regulation of the Tribe's Rancheria, to the extent the regulations conflict with the federally prescribed use of the land, we agree they may be preempted by federal law.

These new analyses are significant for two reasons. First, neither of the two Legislative Counsel opinions incorporated the Property and Supremacy Clauses into their analyses.² Second, as attorney to the Department of the Interior, which manages 500 million acres of federal lands (one-fifth of the entire United States), the Solicitor is a leading authority in this area of the law.

After independent review of the Solicitor's memorandum and the Tribe's legal analysis to which it responds, your General Counsel believes that these new analyses warrant a reconsideration of the District's position regarding the validity of the LAFCO restrictions.

General Counsel's Analysis

The Property Clause is Article IV, section 3, clause 2, and the Supremacy Clause is Article VI, clause 2 of the United States Constitution. The Property Clause states, "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." The Supremacy Clause states, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The Property and Supremacy clauses work together, so that when Congress enacts legislation regarding federal lands, that legislation overrides – in legal terms, "preempts" – any conflicting state or local laws. Numerous court decisions have applied these constitutional provisions to invalidate local regulations that conflict with or hinder the achievement of congressionally approved uses of federal lands. (See, e.g., *Kleppe v. New Mexico*, 426 U.S. 529, 539-540 (1976) [citing "the raft of cases" giving the Property Clause broad construction].)

For example, in *Ventura County v. Gulf Oil Corp.*, 601 F.2d 1080 (9th Cir. 1979), Gulf Oil obtained an oil lease and drilling permits from the United States to explore for oil on federal lands. Ventura County attempted to impose additional requirements on the drilling operations, based upon its local zoning ordinance. Because the federal lease and permits were regulated under the Mineral Leasing Act and other federal regulations, the local land-use regulations did not apply. As the court stated, "The Federal Government has authorized a specific use of federal lands, and Ventura cannot prohibit that use, either temporarily or permanently, in an attempt to substitute its judgment for that of Congress." (*Id.* at 1084.) Many other cases in accord with that principle are cited and discussed in the Tribe's and Solicitor's memoranda and need no elaboration here.

² The second Legislative Counsel's opinion addresses the related, narrower issue of tribal sovereignty.

Federal preemption of state law under the Property and Supremacy Clauses can occur in either of two ways. First, Congress may evince its intent to fully occupy a given field of law. This intent can be manifested by an express statement, by pervasive federal regulation, by legislating in a field where the federal interest is so dominant as to preclude state control, or when the objectives and obligations of the federal law demonstrate that intent. (*Pacific Gas & Electric Co. v. State Energy Resources Conservation and Development Commission*, 461 U.S. 190, 203-204 (1983).) Second, federal preemption may exist only as to a limited area, where federal and state law actually conflict and it is not possible to comply with both, or where state law stands as an obstacle to Congress' full purposes and objectives. (*California Coastal Commission v. Granite Rock Co.*, 480 U.S. 572, 581 (1987).) It is not always easy to determine which form of preemption applies to a given situation.

In this situation, there are two independent sources of federal preemption. The first is the Indian Gaming Regulatory Act (IGRA). The second is the federal government's longstanding policy of promoting tribal self-determination on tribal lands.

IGRA is a textbook example of limited federal preemption – it authorizes and regulates tribe-controlled gambling on tribal lands, which are owned by the United States. Congress expressly declared the policy purposes of IGRA to include “provid[ing] a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments” and “protect[ing] such gaming as a means of generating tribal revenue.” (25 U.S.C. § 2702(1), (3).) IGRA explicitly recognized tribes' “exclusive right to regulate gaming activity on Indian lands.” (25 U.S.C. § 2701(5).) IGRA was enacted and became effective on October 17, 1988.

In short, IGRA established a clear federal interest in authorizing a specific use of tribal lands – as sites for legalized gambling – and it is an exercise of Congress' Property Clause powers. Therefore, the Supremacy Clause would invalidate any state or local action that was taken subsequent to October 17, 1988 and that conflicted with or hindered that authorized use on the Rancheria.

Both the Tribe's and the Solicitor's analyses reached this legal conclusion. The Solicitor's opinion was careful, however, to avoid making assumptions or drawing conclusions about how this statement of the law might apply to the LAFCO restrictions. The Solicitor states:

[A]n issue of fact might be whether the conditions were intended to regulate use of the Rancheria, or whether the conditions were serving an objective that is not preempted by federal law prescribing how the federal land is to be used. . . . In the event the record reflects that the conditions imposed by LAFCO regulate land use rather than water delivery, we agree a court is likely to find the LAFCO conditions are preempted by federal law because they conflict with the federally prescribed use of the land.

A review of the facts set forth above, however, leaves little doubt about the intention motivating the LAFCO conditions on the Rancheria annexation. As the LAFCO minutes indicate, the LAFCO commissioners “wanted to ensure some regulation over its development policies.” They wanted “a development agreement or methodology.” They unanimously passed a motion to

continue their hearing “until County Counsel researches the ability of local government agencies to control development on this property,” and then subsequently imposed the restrictions at issue.

The Solicitor’s opinion itself points out other suggestive facts, stating, “There appears to be some evidence the LAFCO conditions were imposed even though water was available for delivery to the Rancheria, which suggests the conditions may have been imposed, at least in part, to regulate use of the land. Moreover, the conditions limit use of the land to ‘residential use’ for ‘a community of forty residential lots.’”

The annexation of the Rancheria to the District for water service – and the LAFCO restrictions on that annexation – became effective on March 9, 1989 when LAFCO recorded the Certificate of Completion. This action post-dates IGRA. It is likely, therefore, that a reviewing court would find the LAFCO restrictions preempted by federal law because they were intended to, and do, hinder or interfere with the Tribe’s federally prescribed use of the Rancheria for gambling.³

The second likely basis for federal preemption is what Congress has called “a principal goal of federal Indian policy [] to promote tribal economic development, tribal self-sufficiency, and strong tribal government.” (25 U.S.C. § 2701(4).) Congress has regulated so pervasively in support of that goal, which the principal of tribal sovereignty makes a predominantly federal interest, that its actions may invoke broad “occupy the field” preemption. Even if only limited preemption is at play, however, state or local regulations that conflict with or hinder the achievement of this federal goal are invalid.

Unquestionably, state and local regulation of tribal lands is quite limited. As the Tribe’s analysis points out, “The policy of leaving Indians free from State jurisdiction is deeply rooted in our Nation’s history. In determining the extent of State jurisdiction over Indians, State laws are not applicable to tribal Indians on an Indian reservation except where Congress has expressly intended that State laws shall apply.” (*Gobin v. The Tulalip Tribes of Washington*, 304 F.3d 909, 918-919 (9th Cir. 2002).) Here, the act of annexing the Rancheria to the District would not be preempted because making public water service available to the Rancheria was an enhancement that furthered tribal self-determination. In contrast, the additional act of imposing the LAFCO restrictions on the amount and type of water service that can be provided hindered tribal self-determination by attempting to influence or control the use of the Rancheria lands.

In summary, the Tribe and Solicitor have brought a new legal analysis to bear on the question of the whether the LAFCO restrictions are valid. The legal theory is that of federal preemption. The analysis is that IGRA and innumerable acts of Congress to further tribal self-determination have each created a zone of federal preemption under the Property and Supremacy Clauses of the United States Constitution. Those zones of preemption invalidate all state or local actions that conflict with or hinder the fulfillment of the federal purposes. Annexation of the Rancheria to

³ It could be argued that the LAFCO restrictions are unreviewable by courts at this late date. Generally, any challenge to a LAFCO action must be brought as a validation action under Code of Civil Procedure section 860. Validation actions must be brought within 60 days, and it has been nearly 20 years since the LAFCO restrictions went into effect. However, a federally created right – the Property and Supremacy Clauses – is the source of the invalidity, and the United States is not bound by state statutes of limitations when asserting such rights. *Novato Fire v. United States of America*, 181 F.3d 1135, 1140-1141. Therefore, the Bureau of Indian Affairs or other United States agency could still bring suit to invalidate the LAFCO restrictions.

provide public water service does not fall within those zones, because the availability of public water service was an enhancement. In contrast, LAFCO restrictions – directly or indirectly – sought to give LAFCO regulatory authority over land uses on the Rancheria, hindering the specifically authorized use of gambling and more generally infringing upon tribal self-determination. The LAFCO restrictions therefore fall within the zones of preemption.

After independently reviewing the law and relevant facts, your General Counsel is persuaded that this legal theory has merit, and that the LAFCO restrictions are almost certainly invalid and unenforceable. Therefore, the District should reconsider its previous, contrary position.

Water Supply and Service Level Implications

As stated above, if the LAFCO restrictions did not constrain the District, the District would treat a request for water service for the Rancheria's casino project no differently than any other customer's request. The first step would be ascertain the quantity and characteristics of the customer's demands, to see whether the District has adequate firm water supplies available.

The Tribe's projected demand is a total of 135,000 gallons per day (gpd), to be delivered at a constant flow. Of the total, 120,000 gpd is for the casino development, and 15,000 gpd would serve existing demand on the Rancheria. Delivery of 135,000 gpd every day of the year equals 151.23 acre-feet per year. The Rancheria is located in the Western/Eastern supply area of the District's overall service area. According to the District's 2007 Water Resources and Service Reliability Report, the demand per equivalent dwelling unit (EDU) in this portion of the District is 0.58 acre-feet. Thus, 151.23 acre-feet at 0.58 acre-feet per EDU equals 260.74 EDU of demand. As explained below, the Tribe has a separate plan to assume responsibility for serving existing on-Rancheria demands, which by current count are 22 residential services (22 EDUs) and a three-inch meter (23 EDUs). Thus, the net increase in demand would be 215.74 EDUs.

Are firm yield water supplies in the Western/Eastern portion of the District's service area sufficient to accommodate 216 EDU of additional demand? Yes. According to the 2007 Water Resources and Service Reliability Report, 2,426 EDUs of water were available for sale in the Western/Eastern supply area. According to the records of the District's Customer and Development Services Division, from January 1, 2007 through March 31, 2008, the District sold 279.75 EDUs in the Western/Eastern supply area, leaving 2,146.25 EDUs available for sale. The Rancheria's potential demand would reduce that number by about one-tenth.

The next question, then, is whether the District can supply this projected demand to the Rancheria and also maintain existing District service levels. The answer is yes, which will be explained.

As stated above, the Rancheria is currently served by 22 standard 3/4-inch meters and one 3-inch meter. The maximum capacity of a 3/4-inch meter is 30 gallons per minute and the District has physically restricted the maximum capacity of the Rancheria's 3-inch meter to 250 gallons per minute. The District's water mains inside the Rancheria also provide fire protection.

Independent of the issue of water supply to the casino, the District has been working with the Tribe to change the existing water service to the Rancheria to a single point of delivery while

continuing to limit the total possible flow. A Tribal Utility District will assume responsibility for all individual services within the Rancheria. Also, as part of this change in service, the District will no longer be responsible for providing fire flows to the Rancheria.

The District's main objective in cooperating with these changes was to maintain existing service levels now and in the future, for all District customers near the Rancheria.

These significant changes in service to the Rancheria required the Tribe to construct a 500,000 gallon drinking water storage tank and pump station, to supply peak demands. The Tribe also constructed a new private water distribution system to replace the existing District system. To provide fire protection to the private homes, community buildings, and casino the Tribe constructed a 3,000,000-gallon recycled water storage tank and distribution system with fire hydrants. The recycled water will be generated from the Rancheria's new wastewater treatment plant.

The Tribe was also required to replace the existing 6-inch District water lines inside and adjacent to the Rancheria with a new 12-inch water line that has been constructed inside the Rancheria. The main purpose of the new 12-inch water line is to maintain existing levels of service to the District customers on Artesia Road, while providing the limited flow of 250 gallons per minute to the Rancheria.

These improvements will enable the District to supply the Rancheria through a single point of delivery, at a constant flow. A constant flow of 95 gallons per minute would be sufficient to deliver 135,000 gpd. District engineers used that flow rate in the analysis described below.

As is typical in the industry, the District uses a computer based hydraulic modeling program (H2O Net) to assist in developing water system master plans and evaluating requests for service from future residential and commercial developments. The purpose of the model is to predict the effects of system changes or new demands on system performance. The District has used H2O Net for the last ten years.

The District used the same hydraulic model to evaluate previous requests for service for the Rancheria. The District recently ran several flow conditions to simulate periods of high demand and fire flows in the water system adjacent to the Rancheria. The hydraulic model shows the system pressure at key locations, during different flow scenarios. Worst case scenarios were inputted into the hydraulic model and the results showed no decrease in levels of service to District customers.

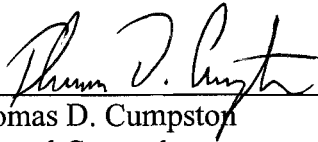
Therefore, District staff's analysis demonstrates that if the District determined that it was legally able to provide water service as requested by the Rancheria, it could do so consistently with Board Policies and Administrative Regulations, within existing available water supplies, and without adversely affecting levels of service to any existing customers.

Board Decisions/Options:

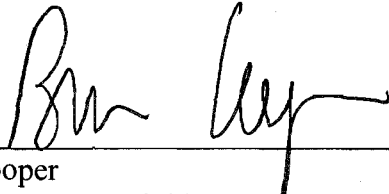
None. This is a workshop item. No action will be taken.

Support Documents Attached:

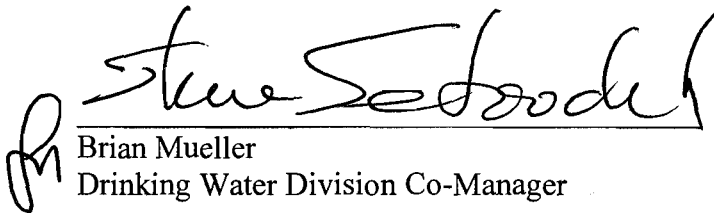
- October 14, 1987 Annexation Agreement
- Excerpt from April 7, 1988 LAFCO Minutes
- LAFCO Resolution 88-05
- EID Resolution 89-24
- LAFCO Certificate of Completion
- September 3, 2002 letter from President Osborne to LAFCO Chair Salazar
- November 6, 2002 letter from David Powell, Director of Facilities Management, to Catherine Fonseca, Shingle Springs Rancheria Tribal Utility District
- December 5, 2007 memorandum from Paula Yost, Esq. to Amy Dutschke and Carmen Fazio, Bureau of Indian Affairs
- March 5, 2008 memorandum from the United States Department of the Interior, Office of the Solicitor (Pacific Southwest Region)
- Map of existing water facilities
- Map of future water facilities
- Hydraulic study results table



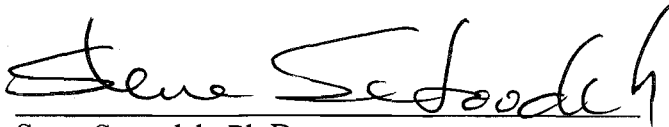
Thomas D. Cumpston
General Counsel



Brian Cooper
Senior Engineer, Drinking Water Division



Brian Mueller
Drinking Water Division Co-Manager



Steve Setoodeh, Ph.D.
Facilities Management Department Head



David Witter
Interim General Manager

copy for file

*Received from
Lew Archibette ©
EID - 4-21-88
H.A.*

ANNEXATION AGREEMENT
EL DORADO IRRIGATION DISTRICT

THIS AGREEMENT made and entered into this 14th day of October, 19 87, by and between El Dorado Irrigation District (hereafter, "District") and the Shingle Springs Rancheria (hereafter "Owner").

WHEREAS, District is an Irrigation District organized and existing under and in conformity with the laws of the State of California; and

WHEREAS, Owner is a federally recognized Indian Rancheria owned by the United States of America in trust for the Indians of the Shingle Springs Rancheria; and

WHEREAS, said lands of the Rancheria are located in El Dorado County and are more specifically described and depicted in Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, said lands are currently located outside the District's boundaries and the Owner wishes to annex into the District and to receive separately metered and billed water service for its members from District; and

WHEREAS, Owner has installed a water distribution system on the Rancheria that was constructed in accordance with District standards and has been inspected and approved by District personnel; and

WHEREAS, Owner is willing to disconnect its system from the well and to convey to District the components, fixtures and appurtenances comprising its water distribution system together with necessary easements and rights of way if it is annexed into the District;

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE-RECITED FACTS, District and Owner agree as follows.

Agreement

1. Owner agrees to submit application to District and to the Local Agency Formation Commission ("LAFCO") to annex the Rancheria into District in accordance with all applicable state and county laws, rules and regulations. District agrees to support the annexation and to annex the Rancheria if said annexation is approved by LAFCO.

2. Owner shall pay all fees normally charged by District and LAFCO for processing and approving annexation applications, except the "inclusion fee" imposed by District. In lieu of the inclusion fee, Owner agrees to make payment to District of an amount equal to the inclusion fee the District would charge an annexation applicant based on the formula in effect at the time the application is submitted to District.

3. On the terms and conditions stated in this Agreement District agrees to provide water service to Rancheria residents on the same terms as it provides service to any other resident within the District.

4. Owner agrees to disconnect the water system from their well and to convey legal title to District of the water distribution system more particularly described and depicted on the attached Exhibit B, which is incorporated herein by reference as though set forth in full; together with any necessary easements or rights of way necessary for District to maintain, repair and service the system. District agrees to accept title to the distribution system and necessary easements or rights of way, when documents evidencing title are delivered in properly executed form to District, and to maintain the distribution system in good repair and working order.

5. Owner agrees to apply to District for line extensions to connect the distribution system to District's service mains at the points indicated on the attached Exhibit "C", which is incorporated herein by reference, and to pay the deposit and all costs associated with the line extension customarily charged by District to line extension applicants as calculated under District rules in effect at the time of such application.

6. Owner irrevocably grants District and its authorized agents and employees the right to enter upon Rancheria for the purpose of servicing, repairing, maintaining or replacing any or all of the distribution system and to effect or enforce any of District's generally applicable rules and regulations, including, but not limited to, those respecting the timely payment of charges for water service. Owner agrees that District shall have the right to terminate water service to any customer on the Rancheria for nonpayment of bills for water service or other violation of District rules and regulations; provided that such termination of service complies with all laws governing such termination of service generally applicable to any customer within the District. Owner shall provide District with an annual update of Tribal Officials.

7. Compliance with the terms of this Agreement shall be a condition of District's approval of the annexation.

8. Upon annexation, Owner and every customer on the Rancheria shall have the same rights as all other Owners and customers within the District, and shall be charged the same fees and charges for water service as other owners and customers within the District which currently include the Meter Installation Fee, Diamond Springs Main (DSM) Surcharge and the Water Facilities Capacity Charge (FCC). In addition, each Rancheria resident shall pay a fee of \$1.00 per month for each acre of land or portion thereof that resident occupies on the Rancheria. This fee to be reviewed and adjusted by the District from time to time.

9. This Agreement constitutes the entire Agreement between the parties regarding its subject matter and supersedes all proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties related to the subject matter of this Agreement.

10. This Agreement shall not be effective unless and until Owner has delivered to District an opinion of California Indian Legal Services in substance satisfactory to District, stating that this Agreement (i) has been duly authorized by Owner, (ii) has been duly executed and delivered by Owner, and (iii) constitutes a legal, valid and binding obligation of Owner enforceable in accordance with its terms.

11. This Agreement shall not be effective until the Shingle Springs Tribal Council has: 1) duly passed a resolution approving this Agreement and authorizing a designated tribal official to sign the Agreement on behalf of the Rancheria, 2) consented to suit to the extent necessary to allow District to bring a legal action against the Owner to specifically enforce the terms of this Agreement, and 3) had this Agreement approved by the Bureau of Indian Affairs.

ATTEST:

Clerk of District

By: *[Signature]*

APPROVED AS TO FORM:

[Signature]
Attorney for El Dorado
Irrigation District

[Signature]
California Indian Legal Services

[Signature]
Chairman
Board of Directors
El Dorado Irrigation District

Owner: *[Signature]*
Shingle Springs
Rancheria/Tribal Official

By: _____

CERTIFIED AND APPROVED

[Signature] 9/11/87
Bureau of Indian Affairs
(A Federal Agency)

" EXHIBIT A

The northwest quarter of section 29, Township 10 North,
Range 10 East, Mount Diablo Meridian, El Dorado County,
California, containing 160.00 acres, more or less.

EXHIBIT B

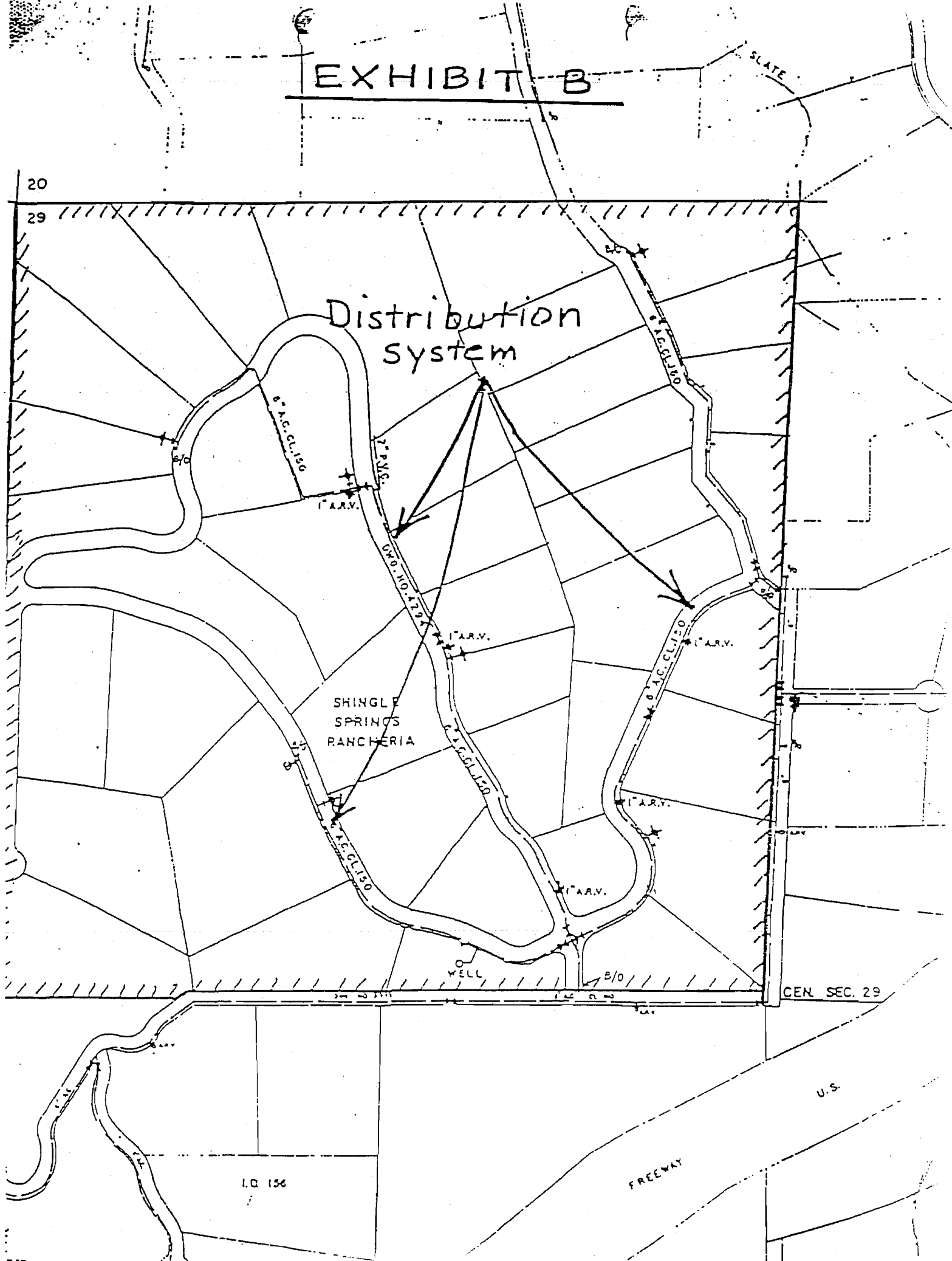
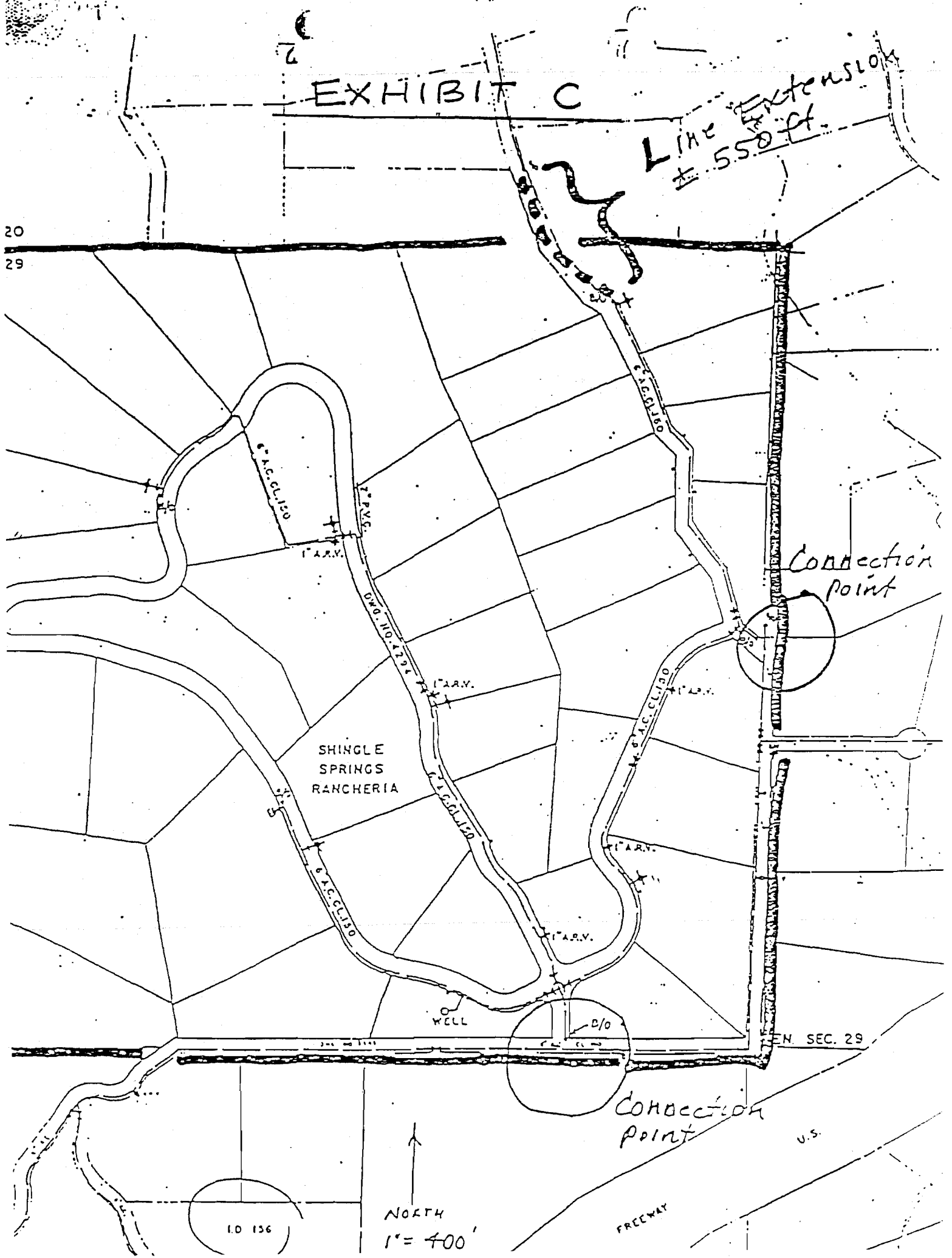


EXHIBIT C

Line Extension
± 550 ft.

20
29



SHINGLE
SPRINGS
RANCHERIA

WELL

SEC. 29

Connection
Point

NORTH
1" = 400'

10 156

FREWAY

U.S.

DIVIDER PAGE

This page intentionally left blank

5. ANNEXATIONS (Public Hearing) (continued)

A. El Dorado Irrigation District (continued)

1. Project No. 87-07 (Burnham) (continued)

MOTION:

It was moved and seconded by Commissioners Dorr and Tuttle and passed, to accept the Negative Declaration as filed and certify that the Environmental Document has been completed in compliance with the California Environmental Quality Act and local ordinances implementing same and that Resolution Number L88-04 be adopted approving Annexation Number 87-07, petitioned by William and Mary Burnham to annex Assessor's Parcel No. 86-18-16 into the El Dorado Irrigation District for water services, with the finding that the proposal meets the LAFCO adopted Criteria and that the factors required to be considered in Government Code Section 56841 as set forth in the Officer's Comments, have been considered; that the El Dorado Irrigation District be designated as Conducting Authority to complete the annexation process in compliance with the Cortese/Knox Local Government Reorganization Act; subject to the terms and conditions set forth in the petition, subject to the District filing with LAFCO two certified copies of its Board of Directors' resolution evidencing its action, along with two copies of the approved map and legal description.

AYES: Dorr, Sweeney, Tuttle, Walker, & Roberts
NOES: NONE ABSTAIN: NONE ABSENT: Bennett

2. Project No. 87-15, petitioned by Shingle Springs Rancheria, Greenstone Area (Environmental Document filed).

Mrs. Box presented this item.

Commissioner Sweeney asked who owned the subject property, and Gaby stated the property is a non-assessed parcel of land owned by Indian Health Services.

Commissioner Sweeney then asked County Counsel what controls El Dorado County had over the property as far subdivision regulations are concerned since it is Indian property.

Mr. Bill Wright, County Counsel, stated that there are controls on the local regulations of Indian lands.

5. ANNEXATIONS (Public Hearing) (continued)

A. El Dorado Irrigation District (continued)

2. Project No. 87-15 Shingle Springs Rancheria
(continued)

Before Indian Health Services is allowed the use of public facilities, Commissioner Sweeney wanted to ensure some regulation over its development policies.

Mr. Wright requested that he be allowed time to research the subject. There are State laws that exempt certain agencies (i.e., schools, churches) from certain requirements. However, he was unaware of any that exempt the Indian agencies.

Commissioner Sweeney stated that before he would approve the subject annexation for the use of public facilities, he would want a development agreement or methodology.

Chairperson Roberts agreed with Commissioner Sweeney's concerns. She stated that there was a similar incidence in Tahoe where the Indian tribes filed lawsuits claiming that if the land is owned by the Indians it becomes part of their sovereign nation which is exempt from local controls.

Commissioner Walker asked if there were any annexation fees. Mrs. Box replied in the affirmative.

Commissioner Walker stated that this particular piece of property has been before the Board of Supervisors several times and it was his understanding that local government has no authority over this piece of property. He suggested that this item be postponed for one month until County Counsel has had time to research it further.

MOTION:

Commissioner Sweeney moved to continue this project for one month until County Counsel researches the ability of local government agencies to control development on this property. The motioned was seconded by Dub Walker, and unanimously passed.

AYES: Dorr, Sweeney, Tuttle, Walker, & Roberts
NOES: NONE ABSTAIN: NONE ABSENT: Bennett

DIVIDER PAGE

This page intentionally left blank



El Dorado County
Local Agency Formation Commission
Resolution Number L-88-05

PROJECT NUMBER 87-15
LAFCO RES. NO. L88-05

WHEREAS, a petition for the proposed annexation of certain territory to the El Dorado Irrigation District in the County of El Dorado was heretofore filed with the Executive Officer of this Local Agency Formation Commission, and said Executive Officer has examined said petition and executed his certificate determining and certifying that said petition is sufficient; and

WHEREAS, at the times and in the form and manner provided by law, said Executive Officer has given notice of hearing by this Commission upon said petition; and

WHEREAS, a Negative Declaration has been prepared and filed for public response to this Commission's findings that this project will have no significant effect on the environment and the time for public response has passed; and

WHEREAS, said Executive Officer has reviewed said petition and prepared a report, including his recommendations thereon and said petition and report having been presented to and considered by this Commission; and

WHEREAS, the hearing by this Commission was held upon the date, time and place specified in said notice of hearing and in any order or orders continuing such hearing; and

WHEREAS, at such hearing this Commission heard and received all oral and written protests, objections and evidence, which were made, presented or filed, received evidence on and considered the matter, and all persons present were given an opportunity to hear and to be heard in respect to any matter relating to said petition and report;

NOW, THEREFORE, BE IT RESOLVED, that the Local Agency Formation Commission of the County of El Dorado does determine and order as follows:

Section 1. The petition is hereby approved.

Section 2. The boundary proposed to be annexed is set forth in the attached Exhibit A, said territory is found to be uninhabited and said territory is assigned the following short form designation:

PROJECT NUMBER 87-15, petitioned by Shingle Springs Rancheria

Section 3. Any resolution ordering such annexation may provide that such annexation shall be made subject to any taxes and annexation fees of the El Dorado Irrigation District.

Section 4. Any resolution ordering such annexation may provide that such annexation may be accomplished without notice and hearing and without an election pursuant to Government Code 56837.

Section 5. The El Dorado Irrigation District is hereby designated as the conducting district and the Board of Directors of said District is hereby directed to initiate annexation proceedings in compliance with this resolution.

Section 6. The El Dorado Irrigation District shall make water available for residential use only, including accessory uses and for tribal use limited to community facilities, school playgrounds, recreational facilities, a residential home for tribal elders, and community grazing or garden projects.

Section 7. The service capability shall be limited to that necessary to serve a community of forty residential lots including the uses listed in Section 6 above.

Section 8. The annexation is subject to all rules, regulations, and policies of the El Dorado Irrigation District.

Section 9. LAFCO shall retain jurisdiction and authority to amend or eliminate Sections 6, 7, and 8 above.

Section 9. The conducting district is further directed, upon adoption of a resolution ordering the change of organization herein approved, to make the filing and transmittals required by the Government Code.

Section 10. The Commission having determined that this annexation will have no significant effect on the environment and having approved this annexation, the Executive Officer is hereby directed to file a Notice of Determination as prescribed by Section 15033, Title 14, California Administrative Code.

Section 11. The Executive Officer is hereby authorized and directed to mail certified copies of this Resolution in the manner and as provided in Section 56853 of the Government Code.

PASSED AND ADOPTED by the El Dorado County Local Agency Formation Commission at a regular meeting of said Commission, held on the 7th day of JULY, 1988, by the following vote of said Commission:

AYES: Bennett, Dorr, Sweeney, Roberts

NOES: NONE

ATTEST:

ABSENT: Walker

Amie M. Paquette
Secretary to Commission

Neva Roberts
Chairman

NAME: Shingle Kings Rancheria

PROJECT NUMBER: 87-15

ACREAGE: 159.25

PROPERTY DESCRIPTION

All that real property situated in the County of El Dorado, State of California, described as follows:

All that portion of Section 29, Township 10 North, Range 10 East, M.D.M., more particularly described as follows:

The Northwest one-quarter of Section 29, Township 10 North, Range 10 East, M.D.M.

APPROVED BY
LOCAL AGENCY FORMATION
COMMISSION

El Dorado County, Ca. 95667

Date 7-7-88

Attest Lester R. Boyer

Lester R. Boyer
Executive Officer

END OF DESCRIPTION

The above description is for annexation purposes only.

LF-112

1/86

DIVIDER PAGE

This page intentionally left blank

1 RESOLUTION OF THE BOARD OF DIRECTORS OF 89-24
2 EL DORADO IRRIGATION DISTRICT
3 INCLUDING LANDS
4 ANNEXATION NO. 88-08 (LAFCO #87-15)
5 SHINGLE SPRINGS RANCHERIA - PARCEL NO. 319-100-37

6 WHEREAS, SHINGLE SPRINGS RANCHERIA, as owner of certain real property
7 filed a petition for annexation to the EL DORADO IRRIGATION DISTRICT pursuant
8 to the provisions of Section 56000 et seq. of the Government Code of the
9 State of California, for the annexation of certain real property described in
10 ATTACHMENT A attached hereto and made a part hereof; and

11 WHEREAS, the EL DORADO COUNTY LOCAL AGENCY FORMATION COMMISSION by its
12 order dated July 7, 1988 pursuant to Section 56375 and 56377 of the
13 Government Code of the State of California conditionally authorized the
14 annexation of lands to the EL DORADO IRRIGATION DISTRICT of that certain real
15 property described in ATTACHMENT A attached hereto, subject to holding the
16 necessary noticed public hearing; and

17 WHEREAS, there exists between the EL DORADO IRRIGATION DISTRICT and the
18 UNITED STATES OF AMERICA a service contract, or so called 9E contract, and
19 pursuant to the terms of said contract and under provisions of Section 23202
20 of the Water Code of the State of California, the consent of the Secretary of
21 the Interior to the real property sought to be included is necessary and
22 required; and

23 WHEREAS, the Board of Directors of the EL DORADO IRRIGATION DISTRICT at
24 its regular meeting on October 26, 1988 duly and regularly adopted a
25 resolution of intention to include said lands within boundaries of the EL
26 DORADO IRRIGATION DISTRICT subject to the consent of the Secretary of the
27 Interior and said consent has been secured by an instrument in writing dated
28 November 2, 1988 on file with the District; and

29 WHEREAS, pursuant to Section 56323 of the Government Code of the State of
30 California, the lands described in ATTACHMENT A will be included subject to
31 the following conditions:

32 (1) The EL DORADO IRRIGATION DISTRICT shall make water available for
residential use only, including accessory uses and for tribal use limited
to community facilities, school playgrounds, recreation facilities, a
residential home for tribal elders, and community grazing or garden
projects.

(2) The service capability shall be limited to that necessary to serve a
community of forty residential lots including the uses listed in (1)
above.

(3) Compliance with all rules, regulations and policies of the EL DORADO
IRRIGATION DISTRICT.

(4) Compliance with all terms and provisions of attached Annexation
Agreement between EL DORADO IRRIGATION DISTRICT and owner entered into on
October 14, 1987 labeled ATTACHMENT B.

(5) The EL DORADO COUNTY LOCAL AGENCY FORMATION COMMISSION shall retain
jurisdiction and authority to amend or eliminate conditions 1, 2 & 3
listed above.

2 WHEREAS, pursuant to Section 56322 of the Government Code of the State of
3 California and the above mentioned orders of the EL DORADO COUNTY LOCAL
4 AGENCY FORMATION COMMISSION the heretofore described lands may be annexed to
5 the EL DORADO IRRIGATION DISTRICT without notice and hereing by the Board of
6 Directors and without an election.

7 WHEREAS, pursuant to Section 56320 of the Government Code of the State of
8 California, the Board of Directors of EL DORADO IRRIGATION DISTRICT finds
9 that the lands described in EXHIBIT A are uninhabited.

10 NOW, THEREFORE, BE IT AND IT IS HEREBY ORDERED by the Board of Directors
11 of EL DORADO IRRIGATION DISTRICT that said real property, particularly
12 described in EXHIBIT A attached hereto and made a part hereof, situate in the
13 County of El Dorado, State of California, be, and the same is hereby annexed
14 to the EL DORADO IRRIGATION DISTRICT.

15 IT IS FURTHER ORDERED that the said lands herein annexed to the EL DORADO
16 IRRIGATION DISTRICT, be and the same are hereby added to Division No. 4.

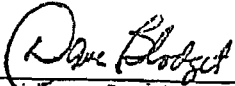
17 The foregoing resolution was introduced at a regular meeting of the Board
18 of Directors of EL DORADO IRRIGATION DISTRICT held on the 8th day of
19 February, 1989 by Director Conwell, who moved its adoption. The motion was
20 seconded by Director Knecht, and a poll vote taken which stood as follows:

21 AYES: Directors Larsen, Knecht, Gribkoff, Blodget, Hough, Conwell

22 NOES: None

23 ABSENT: Director Nielsen

24 The motion having a majority of votes "Aye", the resolution was declared
25 to have been adopted, and it was so ordered.

26
27
28 
29 _____
30 President, Board of Directors of
31 EL DORADO IRRIGATION DISTRICT
32

2 ATTEST:

3
4 *Arnold Esquivel*
Secretary

5 (SEAL)

6
7 I, the undersigned, Secretary of the EL DORADO IRRIGATION DISTRICT hereby
8 certify that the foregoing resolution is a full, true and correct copy of a
9 resolution of the Board of Directors of the EL DORADO IRRIGATION DISTRICT
entered into and adopted at a regular meeting of the Board of Directors held
on the 8th day of February, 1989.

10
11 *Arnold Esquivel*
Secretary, EL DORADO IRRIGATION DISTRICT

12 (SEAL)

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

DIVIDER PAGE

This page intentionally left blank

0 1 : 2 0 3 6

mail to LAFCO

OFFICIAL RECORDS
EL DORADO COUNTY-CALIF.
RECORD REQUESTED BY:

LAFCO

MAR 9 3 35 PM '89

DEBORAH CARR
COUNTY RECORDER

CERTIFICATE OF COMPLETION

No Fee

Pursuant to Government Code Section 57200, this Certificate is issued by the Executive Officer of the Local Agency Formation Commission of El Dorado County, California.

1. The short-form designation, as determined by LAFCO, is 87-15 Shingle Springs Rancheria.
2. The name of each district or city involved in this change of organization or reorganization and the kind or type of change of organization ordered for each city or district are as follows:

<u>City or District</u>	<u>Type of Change of Organization</u>
El Dorado Irrigation District	Annexation

3. The above listed cities and/or districts are located within the following county(ies): EL DORADO
4. A description of the boundaries of the above cited change or organization or reorganization is shown on the attached legal description, marked Exhibit A and by reference incorporated herein.
5. The territory involved in this change of organization or reorganization is, inhabited/uninhabited. (underline one)
6. Territory will be taxed for existing bonded indebtedness.
Yes No X
7. AB 8 Negotiations completed. Yes X No
8. This change of organization or reorganization has been approved subject to the following terms and conditions: (1) The El Dorado Irrigation District shall make water available for residential use only, including accessory uses and for tribal use limited to community facilities, school playgrounds, recreation facilities, a residential home for tribal elders, and community grazing or garden projects.
(2) The service capability shall be limited to that necessary to serve a community of forty residential lots including the uses listed in (1) above.
(3) Compliance with all rules, regulations and policies of the El Dorado Irrigation District.
(4) Compliance with all terms and provisions of attached Annexation Agreement between El Dorado Irrigation District and owner entered into on October 14, 1987, labeled ATTACHMENT B.
(5) The El Dorado County Local Agency Formation Commission shall retain jurisdiction and authority to amend or eliminate conditions 1, 2, & 3 listed above.

Page #2
Certificate of Completion
87-15, Shingle Springs Rancheria

9. The resolution ordering this change of organization or reorganization without election, ~~or confirming an order for this change after confirmation by the voters,~~ was adopted on February 8, 1989, by the District Board of Directors.

I hereby certify that I have examined the above cited resolution, including any terms and conditions, and the map and legal description and have found these documents to be in compliance with LAFCO Resolution No. L88-05, adopted on July 7, 1988.

Dated: March 9, 1989

Margaret W. Wilkins
Deputy Executive Officer

LF-201
4/88

Exhibit A

NAME: Shingle Springs Rancheria

PROJECT NUMBER: 87-15

ACREAGE: 159.25

PROPERTY DESCRIPTION *JRS*

All that real property situated in the County of El Dorado, State of California, described as follows:

All that portion of Section 29, Township 10 North, Range 10 East, M.D.M., more particularly described as follows:

The Northwest one-quarter of Section 29, Township 10 North, Range 10 East, M.D.M.

END OF DESCRIPTION

The above description is for annexation purposes only.

LF-112

1/86

DIVIDER PAGE

This page intentionally left blank



El Dorado Irrigation District

In reply refer to: M0902-131

September 3, 2002

Robert Salazar, Chairman
Local Agency Formation Commission
El Dorado County
2850 Fair Lane Court
Placerville, California 95667

Re: Response to August 16, 2002 Correspondence

Dear Chairman Salazar:

Thank you for your recent correspondence concerning the above referenced matter. In your letter you also ask several questions.

The District's responses to your inquiries are as follows:

1. Does EID consider that the annexation of the Rancheria into EID's service area in 1988 to be complete and valid? Yes.
2. Does EID consider that the conditions to the annexation (sic) to be valid and binding on EID? Generally, yes. Although the attorneys for the Rancheria have raised questions as to the legal enforceability of several of the conditions, the Board is aware of the Legislative Counsel's opinion that the conditions are lawful.

What steps have been taken to insure that the conditions to the annexation are not violated? It is not clear what exactly is being asked here, but the District has made no changes in the services except as provided for under the LAFCO conditions.

3. Does EID consider the Annexation Agreement of October 14, 1987 to be presently in force and binding on the parties? Yes, see response to No. 2 above. No changes have been made to the agreement.
4. Have all the provisions of the Annexation Agreement been fully executed? No, there is some question as to whether the facilities have been formally conveyed as provided for under the agreement.

Robert Salazar, Chairman
Local Agency Formation Commission
September 3, 2002
Page Two

5. What quantities of water have been delivered to the Rancheria annually since the annexation? These amounts have varied over time. The District is conducting an analysis of usage and will forward reportable information in these regards under separate cover.

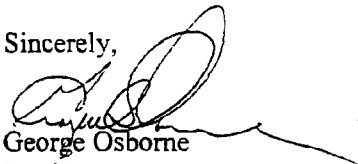
What proposals have the tribe made to EID for additional water? Various proposals have been made and discussed, and district staff has met with tribal representatives and consultants as they would with any customer and/or potential customer of the District.

District staff has also indicated to the Rancheria representatives that a full and complete Facility Plan Report is necessary for additional water service to the proposed casino and hotel facility, but has not received a completed FPR as of yet. The Board has not modified the annexation agreement.

I hope that these responses are sufficiently responsive to your inquiry.

We are still awaiting a response as to whether LAFCo will provide the Best, Best & Kreiger report and legal analysis that we earlier requested but have not yet received a response.

Sincerely,



George Osborne
President
El Dorado Irrigation District

GO/hl

DIVIDER PAGE

This page intentionally left blank



El Dorado Irrigation District

In Reply Refer To: E1102-287

November 6, 2002

Catherine Fonseca
Shingle Springs Rancheria Tribal Utility District
P.O. Box 1340
Shingle Springs, CA 95683

Subject: Facility Plan Report dated October 2002

Dear Ms. Fonseca:

Thank you for your submittal entitled "Facility Plan Report for The Shingle Springs Rancheria and Surrounding Area", received by the District on October 9, 2002. The purpose of the report is to outline the water supply requirements for the Rancheria including the proposed hotel/casino project. The report proposes that the Rancheria water system become independent and isolated from the EID system, and that all water, wastewater, and recycled systems within the Rancheria be under the jurisdiction of the Shingle Springs Rancheria Tribal Utility District (SSRTUD).

The report determines that the average day demand for the Rancheria plus the proposed casino/hotel complex is 110 gpm to be served from the District system at a constant rate. This demand is made up of 77 residential Equivalent Dwelling Units (EDUs), 4.23 acres of Tribal Activity area, plus 55 gpm of average day demand for the casino hotel complex. The SSRTUD on-site system would provide storage, pumping, and pressure systems to supply maximum day demands, emergency storage, and fire flow storage. The District notes that if taken on a constant basis as proposed, this water demand (110 gpm) would equal 177 acre-feet on an annual basis, or the equivalent of 328 EDUs.

As you may be aware, the District has received a legal opinion from the Legislative Counsel of California stating that the original annexation agreement (Resolution No. L88-08) is valid and enforceable. The District Board of Directors is therefore compelled to abide by the provisions of the original resolution.

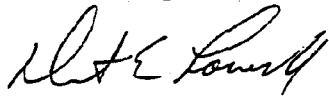
The project outlined by the report is inconsistent with Resolution No. L88-08 and is therefore unacceptable. The Resolution limits water service to 40 residential lots, including accessory uses and for tribal use limited to community facilities, school playgrounds, recreational facilities, a residential home for tribal elders, and community grazing or garden projects.

Letter No. E1102-287
November 6, 2002
Page 2 of 2

The present service within the Rancheria is 27 residential single family EDUs plus a 3-inch meter representing 23 EDUs for a total of 50 EDUs. The quantity of water required to support this use is approximately 27 acre-feet per year. This quantity of water is consistent with the requirements of Resolution L88-08 and should be sufficient to supply the water needs envisioned in the annexation agreement. The District will make no more than this approximate amount of water available to the Tribe on an annual basis for use within the Rancheria, thereby fulfilling the requirements consistent with the Resolution.

Please call Brian Cooper at (530) 642-4019 if you have any questions.

Sincerely,
El Dorado Irrigation District



David Powell
Director of Facilities Management

DP:map

c: EID Board of Directors
Ane D. Deister, General Manager
Tom Cumpston, District Council
Roseanne Chamberlain, LAFCO, 2850 Fairlane Court, Placerville, CA 95667

DIVIDER PAGE

This page intentionally left blank

**Privileged And Confidential Memorandum In Anticipation
Of Potential Litigation Involving Shingle Springs Band of Miwok Indians And The
Bureau of Indian Affairs**

To: Amy Dutschke
Carmen Fazio

From: Paula Yost

RE: Water Supply Issues

Date: December 5, 2007

I. Introduction

As you know, the Shingle Springs Band of Miwok Indians ("Tribe") is presently unable to secure all of the water that it needs for residential and commercial purposes because of restrictions the Local Agency Formation Commission ("LAFCO") purported to impose when approving the annexation of the Shingle Springs Rancheria into the water district serviced by El Dorado Irrigation District ("District"). The Tribe needs the water, in part, to service a gaming facility that has received all necessary federal approvals and that is presently under construction. The Tribe has been working to resolve this dispute for the past several years. We have developed an analysis that we believe has never before been presented to the District and that could convince the District the LAFCO restrictions have no legal effect, without the parties having to resort to litigation. If there is litigation, we anticipate this agency could be drawn into it.

II. Legal Discussion.

The annexation conditions in question purport to limit the water supplied by the District to the Rancheria to residential uses. These restrictions, but not the annexation itself, violate the Property Clause of the United States Constitution. That Clause provides that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . ." (U.S. Const., Art. IV, § 3, cl. 2.) This means that, when Congress enacts legislation respecting federal lands, "federal legislation necessarily overrides conflicting state laws under the Supremacy Clause." *Kleppe v. New Mexico*, 426 U.S. 529, 543 (1976); *Utah Power & Light Co. v. United States*, 243 U.S. 389, 405 (1917) ("inclusion within a State of lands of the United States does not take from Congress the power to control their occupancy and use"). Case law interpreting the Property Clause confirms that states and their political subdivisions have no right to apply local regulations conflicting with achievement of a congressionally approved use of federal lands. *Ventura County v. Gulf Oil Corporation*, 601 F.2d 1080, 1086 (9th Cir. 1979) (county could not impose permit conditions upon oil exploration by lessee pursuant to federal lease). The test is whether

the regulations pose a “significant threat to any identifiable federal policy or interest.” *Wallis v. Pan American Petroleum Corp.*, 384 U.S. 63, 68 (1966).

Ventura County concerned a company engaging in oil exploration and extraction on federal lands pursuant to a lease and drilling permits acquired from the United States. 60 F.2d at 1082. The county sought a declaration requiring the company to meet certain “mandatory conditions” pursuant to a county zoning ordinance in order to continue activities on federal lands within the county. *Id.* The Ninth Circuit recognized that the company’s lease was regulated under the Mineral Leasing Act and subject to various other federal regulations. *Id.* at 1084. The court made clear that the county could not place conditions on federally authorized activities on federal land: “The federal Government has authorized a specific use of federal lands, and Ventura cannot prohibit that use, either temporarily or permanently, in an attempt to substitute its judgment for that of Congress.”¹ *Id.*

It is a fundamental tenet of Indian law that the federal government has a very strong interest in preserving tribal self-determination on tribal lands against interference from local government. In the recent case of *Gobin v. The Tulalip Tribes of Washington*, 304 F.3d 909 (9th Cir. 2002), the Ninth Circuit emphasized the limited jurisdiction of states and local governments over tribal lands: “The policy of leaving Indians free from State jurisdiction is deeply rooted in our Nation’s history. In determining the extent of State jurisdiction over Indians, State laws are not applicable to tribal Indians on an Indian reservation except where Congress has expressly intended that State laws shall apply.” *Id.* at 918-919; *see also Williams v. Lee*, 358 U.S. 217, 220 (1959) (“Congress has also acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation” and when Congress has wished for the States to have authority over reservation activities it has “expressly granted” such jurisdiction); 18 U.S.C §§ 1160, 1162 (transferring to six states limited civil jurisdiction and criminal jurisdiction over Indian country). “The protection of Indian trust land through federal legislation has been one of the principal means by which the federal government has

¹ Numerous courts are in accord with *Ventura County*. *See, e.g., Boundary Backpackers v. Boundary County*, 913 P.2d 1141 (Idaho 1996) (county ordinance, which provided that federal and state agencies had to consult and coordinate with county commission on land use management decisions and had to comply with county's land use plan, was preempted under Supremacy Clause); *see also California Coastal Commission v. Granite Rock Co.*, 480 U.S. 572, 581 (1987) (“If Congress has not entirely displaced state regulation over the matter in question, state law is still pre-empted to the extent it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law.”); *Kirkpatrick Oil & Gas Company v. United States*, 675 F.2d 1122, 1125-1126 (10th Cir. 1982); *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1055 (9th Cir. 1985) (local law applies only to the extent it does not conflict with the federally designated land use); *Fallini v. Hodel*, 725 F.Supp. 1113, 1121 (D. Nev. 1989); *South Dakota Mining Association v. Lawrence County*, 977 F.Supp. 1396 (D.S.D. 1997) (collecting cases).

sought to secure the economic well being and tribal autonomy of native Americans.” *Boisclair v. Superior Court*, 51 Cal.3d 1140, 1149 (1990).

One reason that Congress has legislatively set aside land for Indian tribes is to provide a homeland for Indians. *Colville Confederated Tribes v. Walton*, 647 F.2d 42, 47 (9th Cir. 1981). Moreover, “[t]he general purpose, to provide a home for the Indians, is a broad one and must be liberally construed.” *Id.* The LAFCO conditions place an inflexible numerical limit on the number of residential lots that may be used on the reservation. These conditions constitute a limit that impairs use of the reservation as a homeland for Tribal members that the Congress has not authorized. The impairment of Congress’s intended use of the reservation as the Tribe’s homeland gains force from the existence of Tribal members who wish to move to the reservation but are prevented from doing so because of the LAFCO conditions.

In addition, Congress has also made clear its intent to permit Indian tribes to use reservation lands for a commercial purpose, specifically, for operation of a federally regulated gaming facility. The Indian Gaming Regulatory Act of 1988 (“IGRA”), 25 U.S.C. § 2701, et seq., sets forth a detailed federal regulatory scheme by which Indian tribes may operate gaming facilities on Indian lands. Under IGRA, “Indian tribes have the exclusive right to regulate gaming activity on Indian lands.” 25 U.S.C. § 2701(5); see *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046 (9th Cir. 2006) *cert denied* (2007) 127 S. Ct. 1307 (gaming on Indian lands is “permitted only under the auspices of the Tribe” as authorized through a tribal ordinance (citing 25 U.S.C. § 2710(d)(1)). As such, state entities are “powerless to regulate or prohibit such gaming.” *Wyandotte Nation v. Sebelius*, 337 F.Supp.2d 1253, 1257 (D. Kan. 2004). The LAFCO land-use conditions permit water service for “residential use only,” not for commercial ventures, such as a Tribal casino. By prohibiting the District from providing water service to a Tribal casino, the LAFCO conditions significantly impair this congressionally approved use of federal land.

The chronology of the events following the annexation agreement demonstrates that the LAFCO conditions, but not the annexation agreement itself, are *ultra vires* and unenforceable under federal law. The Tribe entered an annexation agreement with the District on October 14, 1987, which was had been signed by a representative of the Bureau of Indian Affairs on September 11, 1987. This agreement did not feature the LAFCO land-use conditions.² On July 7, 1988, LAFCO adopted Resolution 88-05, conditioning approval of annexation on limiting water to “residential use only” for “a community of forty residential lots.” IGRA was enacted on, and became effective, October 17, 1988. Indian Gaming Regulatory Act, Pub. L. No. 100-497, 102 Stat. 2467 (1988); see *City of Roseville v. Norton*, 348 F.3d 1020, 1024 (D.C. Cir. 2003).

On October 26, 1988, the District’s board adopted Resolution 88-190, indicating its intention to approve the annexation. Resolution 88-190 required, as a precondition of

² The April 26, 2002 letter from Dale Risling to LAFCO suggests, however, that BIA approved the LAFCO Resolution.

approval, that the Secretary of the Interior “giv[e] his consent to the inclusion of said lands.” Resolution 88-190 states that the inclusion will be subject to the LAFCO conditions, as well as to District taxes and assessments and the payment of an inclusion fee. The District did not require that the Secretary consent to the specified terms and conditions for inclusion. Rather, it appears that the Secretary’s approval was required because the District has a contract with the U.S. Bureau of Reclamation for water supplies out of Folsom Reservoir. *See* Cal. Water Code § 23202 (requiring federal approval of any boundary change where certain contracts have been entered between the United States and a district). A letter of consent from the Secretary was a formality required for every change of District boundaries. On February 8, 1989, by Resolution 89-24, the District approved the annexation. Resolution 89-24 recited that the Secretary of the Interior gave its consent “by an instrument in writing dated November 2, 1988.”³ On March 9, 1989, a Certificate of Completion signed by the Deputy Executive Officer of LAFCO was recorded reflecting the annexation.

After IGRA’s effective date of October 17, 1988, state and local agencies had no power to impose regulations that would hinder the congressionally authorized casino on the Tribe’s land. The conditions violate the Supremacy Clause because they interfere with a congressionally approved use of federal lands by conditioning annexation on the EID’s refusal to provide water for a federally authorized casino. It does not appear that the Secretary, in approving the boundary change, consented to the LAFCO conditions. Even if the Secretary had approved the conditions, they would still be unenforceable if contrary to federal law because the United States cannot “be bound by the illegal actions of its officers.” *Novato Fire v. United States of America*, 181 F.3d 1135, 1139 (9th Cir. 1999) *cert denied* (2000) 529 US 1129 (representatives of the United States could not waive the government’s objection that payments a local fire district violated the Supremacy Clause).

The annexation agreement itself, which predated IGRA and was approved by the BIA absent the LAFCO conditions, is completely permissible under federal law. *See* 25 U.S.C. § 81 (requiring approval of agreement or contract that “encumbers Indian lands”). Moreover, following annexation, the United States can be charged reasonable fees related to the cost of services provided, such as payment for metered water usage. *See Novato Fire*, 181 F.3d at 1139. However, once services have been extended to federal lands by annexation, cessation of services for an improper reason can run afoul of Constitutional limitations. *Id.* at 1139. In *Novato Fire*, a local fire protection district sought to detach federal lands from its service area and the county LAFCO approved the detachment, which passed in an election by district residents inside and outside the area to be detached. *Id.* at 1137. Following detachment, the district sought to levy a fee for its services in an amount equivalent to revenue the district would receive were the United States to pay property tax on the lands at issue. *Id.* at 1139. The Ninth Circuit held that

³ Though Resolution 89-24 states that this instrument documenting the Secretary’s consent is “on file with the District,” it does not appear that, to date, anyone has located the document.

this fee constituted an impermissible taxation of United States by a state entity. *Id.* Accordingly, the district and LAFCO's detachment violated the Supremacy Clause. *Id.*

Here, the Rancheria has been annexed by the District and is part of its service area. Consequently, the District may not deny water services to the Tribe based on conditions that violate federal law. Because the LAFCO conditions interfere with congressionally approved uses of the Rancheria as a homeland for the Tribe and as a location for its gaming operation, they are invalid under the Property Clause and therefore under the Supremacy Clause. *See Ventura County*, 601 F.2d at 1086. "The federal Government has authorized a specific use of federal lands, and [LAFCO] cannot prohibit that use, either temporarily or permanently, in an attempt to substitute its judgment for that of Congress." *Id.* at 1084. As such, denying services to the Tribe on the basis of these invalid conditions itself violates the Supremacy Clause. *See Novato Fire*, 181 F.3d at 1137.

III. Conclusion

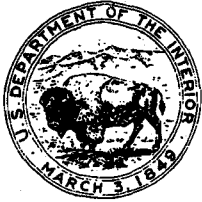
Our conclusion based on the foregoing authorities is that under federal law the District may charge the Tribe reasonable fees related to the cost of the service for metered water usage but may place no other restriction on the use that might undermine tribal self-determination. In other words, the annexation conditions are invalid though the annexation itself is not.

DIVIDER PAGE

This page intentionally left blank

DIVIDER PAGE

This page intentionally left blank



United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Southwest Region

2800 Cottage Way

Room E-1712

Sacramento, California 95825-1890

March 5, 2008

IN REPLY
REFER TO:

Reg Dir (A)
 Dep Dir T
 Reg Adm Off
 Route RPM/NR
 Response Required No
 Due Date _____
 Memo _____
 Tele _____

MEMORANDUM

To: Acting Regional Director, Bureau of Indian Affairs, Pacific Region

From: Regional Solicitor, Pacific Southwest Region

Subject: Request for legal analysis – Shingle Springs Rancheria water use

This responds to your memorandum dated December 12, 2007, requesting our concurrence with an analysis prepared by legal Counsel for Shingle Springs Band of Miwok Indians (the "Tribe"). The Tribe's Counsel prepared the analysis in connection with a dispute concerning restrictions imposed by the El Dorado Irrigation District (EID) on the supply of water available to the Tribe's Rancheria. In general, we agree with the legal principles espoused by Tribal Counsel concerning federal preemption of state laws pursuant to the Property Clause and Supremacy Clause of the United States Constitution. More specifically, with regard to local regulation of the Tribe's Rancheria, to the extent the regulations conflict with the federally prescribed use of the land, we agree they may be preempted by federal law.

Background

On October 14, 1987, the Tribe and EID executed an "Annexation Agreement" which provided the Tribe could receive metered and billed water service from the EID, and which was approved by the Secretary of the Interior. Pursuant to State law, the Local Agency Formation Commission (LAFCO) was required to approve the annexation. California Government Code § 56325 *et seq.* The LAFCO may impose conditions on local agencies in view of objectives that include the facilitation of orderly growth and development while balancing competing needs for housing, economic opportunities, and preservation of natural resources. LAFCO also may fix the establishment of priorities of use, or right of use, of water, or capacity rights in any public improvements or facilities or of any other property real or personal. CGC § 56844. However, LAFCO may not impose conditions that would directly regulate land use density or intensity or property development. CGC § 56375(a). On July 7, 1988, LAFCO approved the annexation of the Rancheria into the EID pursuant to Resolution 88-05, which conditioned the approval by requiring that EID "shall make water available for residential use only" and mandating that "[t]he service capability shall be limited to that necessary to serve a community of forty residential lots".

Issue

The conditions imposed by the LAFCO have prevented water delivery to residences on the Reservation, and prevent delivery for any commercial uses on the Reservation, including a casino approved by the federal government. The Tribe's Counsel has opined that these conditions may be preempted by federal law because they interfere with Congressionally approved uses of the Rancheria.

Analysis

As Counsel for the Tribe observes, federal legislation overrides restrictions arising from conflicting state law. Pursuant to the Supremacy Clause of the Constitution, Art. VI, cl. 2, state or local laws that conflict with, interfere with, or are contrary to federal law are preempted. The Supremacy Clause is counterbalanced by the Tenth Amendment, which reserves to the states those powers not specifically assigned to the federal government. Consequently, States may exercise police powers that address health and safety issues relating to federal property, so long as the exercise of those powers do not conflict with, or are not preempted by, federal law. Where federal property is concerned, the Property Clause, Art. IV, § 3, cl. 2, provides that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." Thus, the Property Clause allows the United States to take land into trust for the Tribe, and to specify uses for that land. If State law conflicts with the land use specified by the United States, it may be preempted by federal law pursuant to the Supremacy Clause.

In the case of *California Coastal Commission v. Granite Rock Co.*, 480 U.S. 572 (1987), the Supreme Court established a preemption analysis providing that state law may be preempted in either of two general ways. If Congress evidences an intent to occupy a given field, any state law falling within that field is preempted, or, if Congress has not entirely displaced state regulation over the matter in question, state law is still preempted to the extent it actually conflicts with federal law and it is impossible to comply with both state and federal law. In *Granite Rock*, the Court concluded that a State Coastal Commission permit requirement was not preempted by federal law respecting mining claims in national forests because the permit was not intended to regulate the use of the land but was instead designed to impose environmental regulation, and the federal land use objectives could still be achieved.

Conclusion

Here, where LAFCO conditions respecting water delivery to the Tribe's Rancheria are concerned, an issue of fact might be whether the conditions were intended to regulate use of the Rancheria, or whether the conditions were serving an objective that is not preempted by federal law prescribing how the federal land is to be used. There appears to be some evidence the LAFCO conditions were imposed even though water was available for delivery to the Rancheria, which suggests the conditions may have been imposed, at least in part, to regulate use of the land. Moreover, the conditions limit use

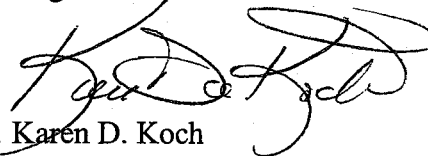
of the land to "residential use" for "a community of forty residential lots". In the event the record reflects that the conditions imposed by LAFCO regulate land use rather than water delivery, we agree a court is likely to find the LAFCO conditions are preempted by federal law because they conflict with the federally prescribed use of the land.

This Memorandum may be shared with other parties and counsel outside the federal government. If you have additional questions or comments, please feel free to call 916-978-6131.

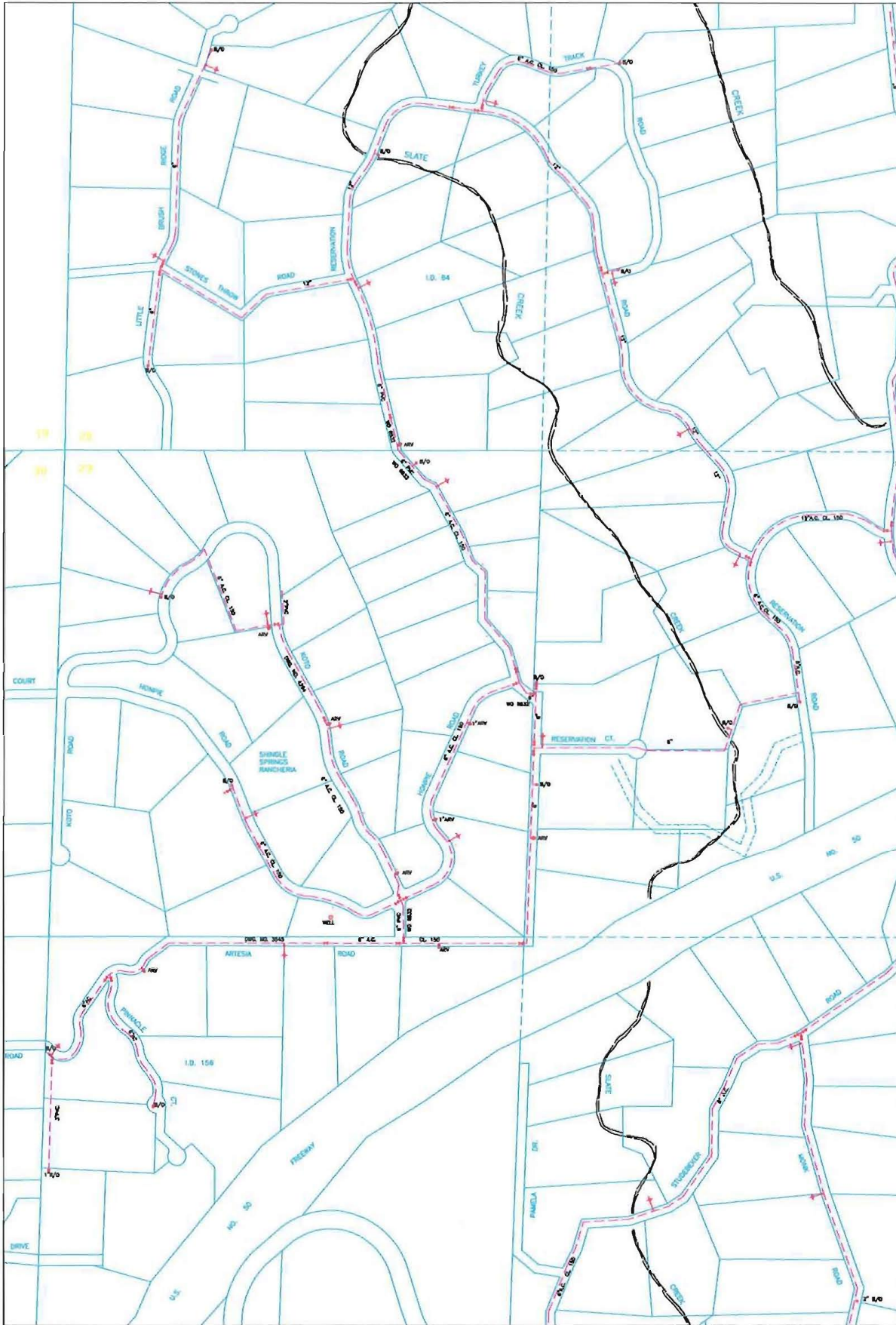
Sincerely,

Daniel G. Shillito
Regional Solicitor

By:



Karen D. Koch
Assistant Regional Solicitor



20050930.114013



Scale: 1" = 500'

El Dorado Irrigation District
System Map

WARNING: For schematic purposes only.
Exact pipe location must be
field verified.

-  WATERLINE
-  SEWERLINE

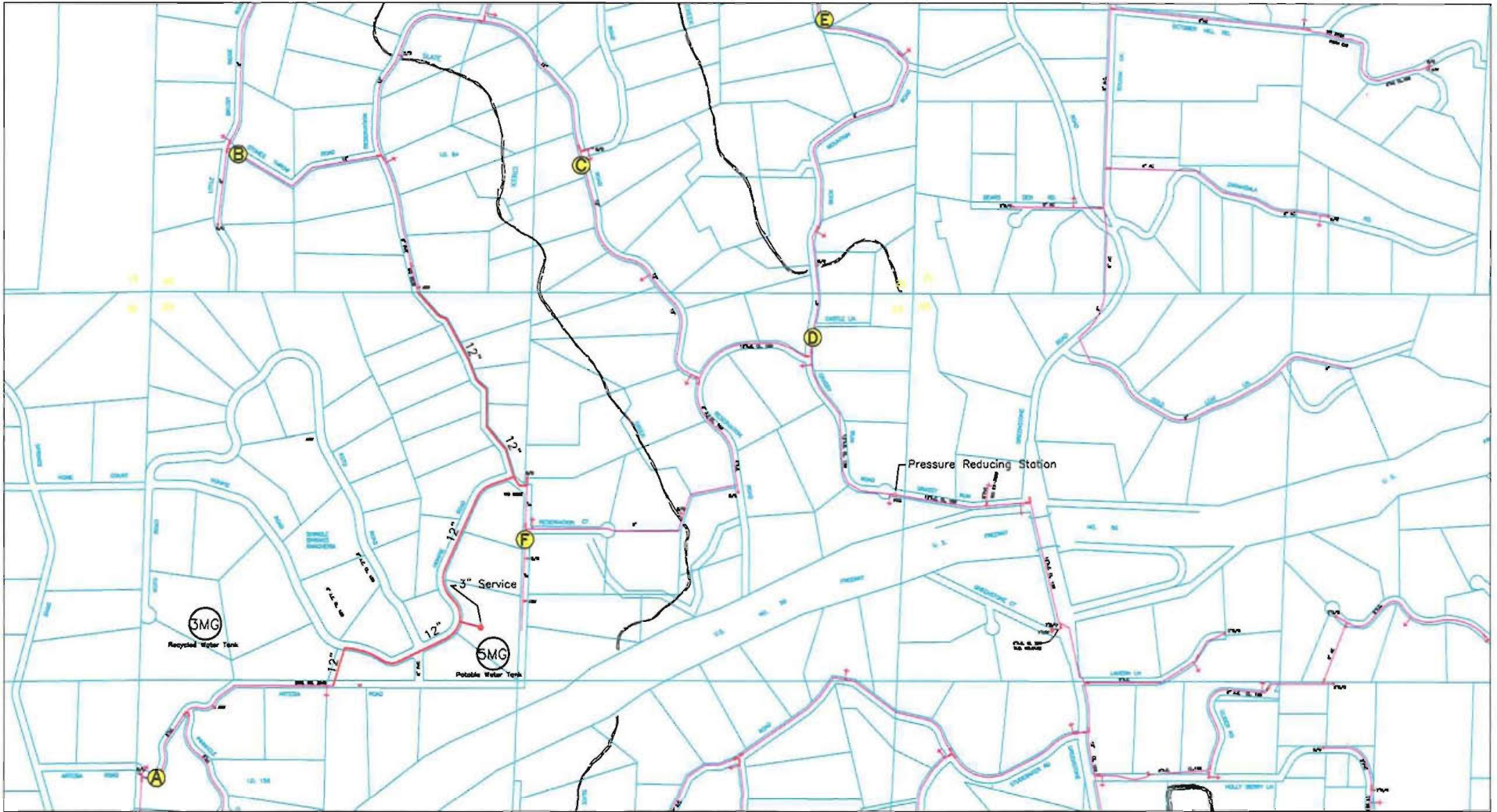
DATE: April 23, 2008

Shingle Springs Rancheria—Existing System

SYS. No.: 64,84

DIVIDER PAGE

This page intentionally left blank



El Dorado Irrigation District
System Map

WARNING: For schematic purposes only.
Exact pipe location must be
field verified.

-  WATERLINE
-  SEWERLINE

DATE: April 23, 2008

Shingle Springs Rancheria—Hydraulic Study
New System

SYS. No.: 64,84



Scale: 1" = 650'

DIVIDER PAGE

This page intentionally left blank

Node

SCENARIO

A

B

C

D

E

F

	A	B	C	D	E	F
Maximum Day Demands	109 PSI	179 PSI	149 PSI	162 PSI	84 PSI	105 PSI
Maximum Day Demands + 250 GPM Flow to Rancheria	100 PSI	179 PSI	149 PSI	162 PSI	84 PSI	96 PSI
Maximum Day Demands + 250 GPM Flow to Rancheria + 500 GPM Fire flow at A (Artesia Road)	20 PSI	177 PSI	146 PSI	160 PSI	82 PSI	38 PSI
Maximum Day Demands + 250 GPM Flow to Rancheria + 1000 GPM Fire Flow at B	95 PSI	164 PSI	140 PSI	158 PSI	80 PSI	91 PSI