

SETTLEMENT AGREEMENT/MEMORANDUM OF UNDERSTANDING

THIS SETTLEMENT AGREEMENT/MEMORANDUM OF UNDERSTANDING ("MOU") is made this 29th day of May, 2008 between the Shingle Springs Band of Miwok Indians, a federally-recognized Indian tribe ("Tribe"), and El Dorado Irrigation District ("EID"), an Irrigation District formed pursuant to the relevant provisions of California's Water Code, by and through EID's Board of Directors (respectively "Party" or collectively "Parties").

RECITALS

This MOU is intended to provide for the full resolution of all disputes between the Tribe and EID having to do with the rights of the Tribe to purchase water for all purposes from EID. These disputes arose as a result of denial by EID of extended service requests by the Tribe, based on restrictions unilaterally imposed by El Dorado Local Agency Formation Commission ("LAFCO") when it approved the annexation of the Tribe's Rancheria. These disputes resulted in notice to EID of the Tribe's imminent plans to bring suit in 2004. The Parties thereafter have engaged in continuous settlement negotiations under the protection of successive Tolling and Confidentiality Agreements. The Parties fully intend that this MOU shall be a complete and final resolution of all existing claims and disputes between them relating to EID's provision of water service to the Rancheria and the Tribe, including but not limited to claims and disputes against former and present Board members and officers of EID in their individual capacities.

AGREEMENT

1. Nature of Relationship. The Parties agree that this and all service agreement(s) between EID and the Tribe will be on a government-to-government basis.
2. Water Service to the Tribe. EID is willing and able to provide the Tribe the water it needs for its Rancheria property (APN 319-100-37), irrespective of how such water is used as determined by the Tribe in its sovereign authority, under the terms and conditions stated herein.
 - a. Rate. The Parties agree that the rate appropriate for the provision of water service to the Tribe will be the Retail Rate (gravity) or any successor, as it may be amended from time to time.
 - b. Quantity. Subject to Section 2(d) below, the Parties agree that EID shall provide water service to the Rancheria at a maximum rate of 95 gallons per minute, with a total average volume of 135,000 gallons per day. At no time pursuant to this MOU shall EID be required to deliver water in excess of the rate of 95 gallons per minute or in excess of an average of 135,000 gallons per day. However, the Tribe is entitled to apply for more water in the future, and EID is obligated to treat that application the same as it would the application of any other customer within the District's service area, selling the requested water service and

delivering the water if it is available under EID's then-current and generally applicable Board Policies, Administrative Regulations, procedures and practices governing the provision of water services and the delivery of water.

c. Method. EID shall deliver water to the Rancheria at a single point, through a three-inch meter modified to physically restrict the maximum flow to 95 gallons per minute. The 95-gallon-per-minute physical restriction shall be verified by EID through laboratory testing prior to installation and periodically thereafter as EID reasonably deems necessary. The Tribe may receive water at any rates and quantities, subject to the maximum limitations set forth in Paragraph 2.b., and shall be charged only for the actual, metered quantities delivered to it.

d. Facility Capacity Charge. The District shall charge, and the Tribe shall pay, a Facility Connection Charge (FCC) for water service. The FCC shall be the then-current Water-General District FCC, plus surcharges, applicable to the net sale of 215.75 Equivalent Dwelling Units (EDUs) to the Rancheria. Presently, the FCC is a total of \$3,709,605.50 (Three Million, Seven Hundred Nine Thousand, Six Hundred Five Dollars and Fifty Cents), representing 215.75 EDUs times \$17,194. The FCC reflects full credit (45 EDUs) for 22 existing ¾-inch meters (1 EDU each) already returned to the District and one existing three-inch meter (23 EDUs) that will remain in service.

i. Method and Timing of FCC Payment; Condition Precedent. Full payment of \$3,709,605.50 shall be a condition precedent to the delivery of water by EID to the Tribe pursuant to this MOU.

e. Water Required for Rancheria. The Parties agree, pursuant to this MOU, that EID has reviewed the Facilities Plan Report presented by the Tribe in October 2002 and has reviewed and approved the improvement plans signed and submitted by the Tribe's Registered Engineer on September 21, 2007, as amended and approved by the Parties thereafter. EID has confirmed its ability to provide the Tribe an average daily volume of 135,000 gallons per day for the Rancheria through a 3-inch meter at maximum flow of 95 gpm, subject only to EID's requirements to meet off-Rancheria fire flow events. The Parties agree that this MOU serves as a service agreement entitling the Tribe to purchase the amount of EDUs and to receive continuous service as identified herein, representing the total gallons per day described in this paragraph 2.e. The Parties further agree that the Tribe is entitled to seek additional water in the future, and that EID will provide it if available, all in accordance with EID's then current and generally applicable Board Policies, Administrative Regulations, procedures and practices governing the provision of water service to any customer within EID's service area. The Parties further agree and understand that the Tribe's need for an average daily volume of 135,000 gallons per day for the Rancheria is dependent upon the use of Title 22 treated recycled water for toilet flushing in the Tribe's gaming facility and hotel, and for irrigation purposes.

f. Jurisdiction over Water System. The Parties intend that jurisdiction over the water system on the Rancheria will be as follows: all service to the Rancheria will be provided through the three (3) inch meter functioning as the single point of delivery. That meter shall be located in a locked vault, with access solely controlled by EID. The Tribe will construct internal infrastructure as it sees fit but consistent with the improvement plans approved by EID, including a series of lines and storage tank(s), on the Rancheria which will provide the necessary water supply for all purposes, including fire protection, to serve the entire Rancheria. The Tribe will own and maintain all facilities downstream of the three (3) inch meter.

g. Cross-Connection Control. To protect public health and safety, including the health and safety of residents, guests and business invitees on the Rancheria, the Tribe may elect to install and maintain an air-gap separation between its internal system and EID's infrastructure that meets the requirements of California Code of Regulations, title 17, section 7602(a) or its successors. The air-gap separation shall be located at the point of delivery from the three (3) inch meter, and EID shall have sufficient access at all times to confirm that such air-gap separation exists. Unless such an air-gap separation exists, the Tribe shall implement and maintain a cross-connection control program for its internal system, including both point-of-use protection and a master backflow prevention device at the three (3) inch meter, that complies with the Uniform Plumbing Code, California Code of Regulations, title 17, section 7583 et seq., and their successors. To confirm the Tribe's ongoing compliance with the foregoing requirements, the Parties agree to the following: i) EID and Tribal representatives shall conduct a joint initial inspection of the Tribe's initial cross-connection control system installations; ii) At least annually thereafter, the Tribe shall transmit to EID for review an inspection report, prepared by a certified cross-connection control specialist, that identifies any changes in the system during the reporting period, discloses any suspected or actual failures during the reporting period, and affirms the system's ongoing compliance with the then-current Uniform Plumbing Code and Title 17 requirements; iii) If any report identifies any deficiency in the Tribe's cross-connection control system, or if any suspected or actual failure of any portion of the system is reported or occurs, EID representatives may, upon reasonable written notice, conduct a supplemental joint inspection of the relevant portions of the system; iv) At all times, EID representatives shall have authority and sufficient access to inspect and prescribe corrective action to ensure the master backflow prevention device at the three (3) inch meter meets all manufacturers' specifications.

h. Property Interests. As a further condition precedent to service under this MOU, the Tribe will request from the Bureau of Indian Affairs ("BIA"), and provide to EID, easements sufficient to preserve EID's ability to own, operate, service and maintain the three-inch meter and vault and all EID transmission lines which traverse the Rancheria as depicted in the attached Exhibit A, after verification of the exact location of the transmission lines via survey by a licensed land surveyor, conducted at the Tribe's expense and approved by EID. The Tribe,

with the cooperation of EID, will disconnect all other on-Rancheria services attached directly to the EID lines traversing the Rancheria. The Tribe hereby ratifies and incorporates by reference into this MOU that certain Extension of Facilities Agreement – Water dated September 21, 2007 and executed by Tribal Chairman Nicholas Fonseca.

i. Other Fees and Charges. Concurrent with EID's provision of water service under this MOU, the Tribe shall pay all outstanding charges on District project accounts numbers 65094 and 87530, to which the EID charges costs authorized by EID Administrative Regulation 9028.3.

j. EID Policies and Regulations; Drought. Provision of water service to the Tribe under this MOU shall be subject to all then-current EID Board Policies, Administrative Regulations, procedures and practices generally applicable to all water customers, including but not limited to EID's 2008 Drought Preparedness Plan or any successor plans. The Parties agree and understand that the Plan (including any generally applicable successor plans) authorizes EID to restrict water to any customer, including the Tribe, in the event of non-compliance with mandatory water restrictions during drought conditions.

3. CEQA Compliance. EID acknowledges that it has determined that neither the method nor the quantity of water to be delivered to the Tribe under this MOU will result in any significant adverse impact, as determined under California Environmental Quality Act and implementing regulations (collectively, "CEQA"), to the physical environment or to levels of service to any existing EID water customers, including but not limited to customers in the vicinity of the Rancheria. Accordingly, EID shall complete and process a Notice of Exemption in compliance with CEQA in conjunction with the execution of this MOU.

4. Wastewater Service. The Tribe agrees to use its best efforts to procure wastewater service from EID, subject to the concurrence of the Bureau of Indian Affairs and/or the National Indian Gaming Commission. The Tribe agrees to conduct all environmental analyses required by state and/or federal environmental law for the provision of wastewater service to the Rancheria, and further agrees to mitigate the significant environmental impacts that could reasonably result from such service to the Rancheria. The Parties acknowledge that the Rancheria is presently included within EID's service area for the limited purpose of water supply, and that the provision of wastewater service by EID is not currently authorized. Within two years of this MOU's execution, the Tribe agrees to initiate an application with LAFCO, and to diligently pursue to completion the application for the annexation of the Rancheria into the EID service area to authorize connection to, and delivery of, wastewater disposal and treatment service to the Rancheria by EID. The Tribe shall be deemed to have met its obligation of diligence if LAFCO renders a decision on the annexation application within eighteen months of its filing; provided, however, that the Parties agree and understand that the Tribe cannot control LAFCO, and delays may result from litigation or administrative actions initiated by third parties. The Parties further agree and understand

that the Tribe cannot be deemed responsible or in breach of this provision by virtue of delays caused by litigation or the administrative action of third parties, and/or by LAFCO's refusal or failure to act.

a. Conditions Precedent. The Parties agree and understand that annexation by LAFCO for wastewater service would authorize but not require the Tribe to seek wastewater service from EID and would authorize but not require EID to provide such service if requested, and that such annexation also may be contingent upon approval by the BIA. The Parties further agree and understand that any approval of such requested annexation will require the completion of legally-required environmental analyses evaluating the impacts, if any, associated with such wastewater service. The Parties further agree that additional conditions precedent exist for the provision of wastewater service to the Tribe, including EID's determination of its ability to serve, the payment of fees and charges to EID and LAFCO, the mitigation of environmental impacts, and the sale of additional needed water to the Tribe, as detailed below in subdivisions b-f.

b. EID Fees and Charges. The Parties agree and understand that EID charges to all annexation applicants EID's administrative costs incurred in processing an annexation application and that prior to the completion of an annexation, EID charges all applicants an annexation impact fee as set forth in EID Administrative Regulation 9032 or its successor, and the Tribe agrees to pay for such fee and costs as they are incurred. The Parties agree and understand that EID's standard methodology for calculating the annexation impact fee incorporates the El Dorado County Assessor's valuation of the subject property for property tax purposes, and that no such assessment is performed for the Rancheria in deference to its status as tax-exempt sovereign lands. Therefore, the Parties agree that at such time, if any, as an annexation impact fee becomes due under Administrative Regulation 9032, they shall meet and confer in good faith to determine a mutually agreed-upon substitute methodology for calculating the annexation impact fee that meets the intent of Administrative Regulation 9032 and the District's otherwise-applicable methodology, which otherwise respects the sovereign interests of the Tribe regarding the impact of such appraisal methodology on federal lands. If the Parties reach impasse in this process, the Parties agree to submit their dispute to a single retired judge with knowledge of federal Indian law or experience in Tribal matters, chosen jointly by the Parties pursuant to JAMS procedures, and if the Parties cannot agree, a judge will be selected pursuant to JAMS procedures. The Parties agree that they will voluntarily submit to mediation of their disputes, first, and only if mediation fails will they jointly retain a separate JAMS retired judge with knowledge of federal Indian law or experience in Tribal matters to arbitrate the dispute. Such arbitration will then be conducted according to the rules and procedures of JAMS then in effect at the time the request for arbitration is filed, and will be binding, subject to the review procedures then in effect by JAMS.

c. Mitigation of Impacts. The Tribe agrees to pay the costs of feasible measures identified in EID's environmental analyses to mitigate

potentially significant adverse impacts directly associated with EID's provision of wastewater service to the Rancheria. This MOU shall not be interpreted to mean the Tribe must pay for the mitigation of secondary or cumulative environmental impacts associated with the project, including growth inducement in areas south of Highway 50, or new EID lines or expansion-related issues to service persons south of Highway 50.

d. LAFCO Fees. The Parties agree and understand that LAFCO will charge annexation and processing fees for the application consistent with generally applicable policies, and the Tribe agrees to fund the cost of such LAFCO fees to the extent those fees are consistent with LAFCO policies generally applicable to all applicants.

e. Eminent Domain. In the event that any use of eminent domain power is necessary to provide wastewater, EID shall not be obliged to exercise that power; rather, the Tribe shall request the BIA to exercise that power on its behalf. However, EID recognizes that the Tribe cannot require BIA to take this action, and the Tribe shall have no liability in this respect in the event BIA refuses to take such action on behalf of the Tribe.

f. Water Requirements Associated with Wastewater Service. EID understands the Tribe's wastewater treatment facility enables the Tribe to use recycled water for its casino and hotel. EID further understands that the Tribe's water requirements will increase if it closes its treatment facility and secures wastewater service from EID. Therefore, the Parties agree that any obligation of the Tribe to secure wastewater service from EID would be contingent upon EID's sale to the Tribe of the additional water that it would need for its operations on the Rancheria as a result of curtailing its use of recycled water.

g. Provision of Wastewater Service. Any provision of wastewater service by EID to the Rancheria following any annexation of the Rancheria to the District for wastewater service purposes shall be made in accordance with EID's then-current Board Policies, Administrative Regulations, procedures and practices generally applicable to all wastewater customers.

5. Authority. The undersigned warrant and certify that the signatories to this MOU are each fully authorized to execute this MOU on behalf of and bind EID and its officers, directors, and employees, and the Tribe, its Tribal Council, and Tribal members respectively, and each entity will affix its authorizing resolutions thereto.

6. Limited Waiver of Tribal Sovereign Immunity. The Tribe hereby agrees to waive its sovereign immunity (and any requirement of exhaustion of tribal remedies) in connection with any dispute vis-à-vis EID that may arise under this Agreement, and consent to the jurisdiction of certain mediators, arbiters or courts solely for purposes of enforcing the terms of this Agreement. To that end, and for purposes of addressing disputes not resolved pursuant to the provisions of Section 4.b., the Tribe consents only to the jurisdiction of the U.S. District Court in the Eastern District of California (and all

relevant courts of appeal), or alternatively, to the jurisdiction of the Sacramento County Superior Court of California (and all relevant courts of appeal), for judicial resolution of disputes with EID over this Agreement. Notwithstanding the foregoing, and with the exception of Section 4.b. involving mediation and arbitration, EID and the Tribe agree that jurisdiction and venue for any such dispute shall be in (and the Tribe's waiver of sovereign immunity shall extend to) any superior court other than El Dorado County Superior Court unless it is determined by another superior court, *sua sponte* and without motion or suggestion of any party, that the action must be heard in El Dorado County Superior Court. EID agrees to jurisdiction and venue in Sacramento County Superior Court and will not assert that jurisdiction and venue lie in El Dorado County Superior Court unless there is no other superior court that will accept jurisdiction and venue for the matter. The waiver is also limited to amounts due under the terms of this Agreement, and in no instance shall the waiver be read to extend to allow judicial enforcement of any kind against any assets of the Tribe, other than the Revenue Stream of its casino. ("Revenue Stream" is defined as net profits due and owing to the Tribe that are derived from the operation of the casino after all costs of operation, repayment of debt service, payments to the State under any Compact, and payments to the Tribe for any necessary governmental functions associated with the operation of the casino have been made.) The Tribe also does not agree to waive any aspect of its sovereign immunity with respect to actions by parties other than EID.

7. Indemnification/Defense. To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782), the Tribe shall defend (with legal counsel reasonably acceptable to EID), indemnify and hold harmless EID and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, administrative actions, lawsuits, loss, cost, damage, injury (including, without limitation, injury to the Tribe or any member, employee, or agent thereof), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court or administrative agency costs, attorneys' fees, litigation expenses and fees of expert consultants and/or expert witnesses incurred in connection therewith and costs of investigation) that arise from or relate to, directly or indirectly, in whole or in part, this MOU or the Parties' performance thereof (collectively, "Liabilities"), save and except a claim by the Tribe against EID, its employees, agents, and/or officials for breach of contract with respect to, or violation of rights provided by, the MOU. Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of any Indemnitee. The Tribe's obligation to provide a defense to EID shall extend to the retention of outside legal counsel and payment of costs necessary to the defense of EID but it shall not include time spent by EID's employees, agents or officials in defense of such litigation. EID's consent with respect to the selection of such counsel may not be unreasonably withheld.

8. Forum Selection. In the event of a breach or violation of this MOU, or third party interference with performance by any Party to this MOU, the Parties hereby agree that any Party to this MOU is entitled to seek relief in a United States District Court to enforce the terms of this MOU, or seek any other appropriate relief. The Parties

EID/MOU

hereby consent to the jurisdiction of the U.S. District Court in such an action, and only in the event the District Court determines it cannot exercise subject matter jurisdiction over such a claim, may the Parties then seek relief in the appropriate California state court consistent with the terms set forth above in Section 6.

9. Damages and Costs of Enforcement. If suit is brought to enforce or interpret any part of this MOU, or the rights or obligations of either Party to this MOU, including, without limitation, an action to recover damages for the breach of this MOU or to secure specific enforcement of this MOU, the prevailing Party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable attorneys' fees and expenses and court costs. This right shall exist in connection with both the Parties' respective right to seek specific performance of this MOU, as well as the Parties' respective right to seek compensatory damages for any breach of this MOU.

10. No Third Party Beneficiaries. With the exception of the individual members of the Tribe, this Agreement is not intended to, and will not be construed to, confer a benefit or create any right for a third party. The Parties agree no third party, with the exception of the individual members of the Tribe, possesses the right or power to bring an action to enforce any of the terms of this Agreement. The Tribal Council's approval, duly recorded in a Tribal Council resolution or approved minutes of that body's proceedings, constitutes a prerequisite to suit by any member(s) of the Tribe against EID in connection with this MOU, and in the absence of such approval, any suit by any member(s) of the Tribe in connection with this MOU may not proceed.

11. Notices. Any notices required or permitted hereunder shall be in writing and may be personally delivered, or delivered via the U.S. Postal Service, first class postage prepaid, or by a reputable overnight delivery service (such as U.S. Express Mail, Priority Mail, Federal Express, UPS, or DHL), addressed as follows or to such other place as each Party may designate by subsequent written notice to each other:

For the Tribe:
Chairperson
Shingle Springs Rancheria Band of Indians
5281 Honpie Road
Placerville, CA 95667

For EID:
General Manager
El Dorado Irrigation District
2890 Mosquito Road
Placerville, CA 95667


12. Rule of Construction. No provision of this MOU shall be interpreted or construed against any Party because such Party or its counsel was the sole or principal drafter thereof. When the context requires, the plural shall include the singular, and the singular the plural.

13. Counterparts. This MOU may be executed in any number of counterparts, and is effective vis-à-vis each Party on the date of its execution by each Party. Additional parties may be added by mutual consent of the Parties.

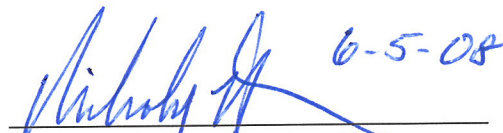
14. Entire Agreement. This MOU represents the entire agreement between the Parties respecting the subject matter therein and supersedes any prior written and prior or contemporaneous oral understandings or agreements. This MOU cannot be amended except in a writing signed by authorized representatives of both Parties. The limited waiver of tribal sovereign immunity provided in Section 6, above, shall extend to any amendment of this MOU.

SHINGLE SPRINGS BAND OF MIWOK
INDIANS

Dated: May , 2008

6-5-08 

By:

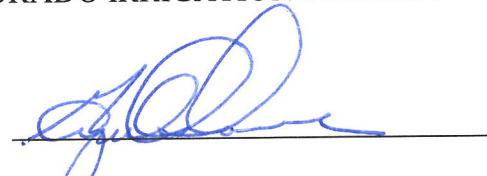
 6-5-08

Nicholas H. Fonseca, Its Chairman

EL DORADO IRRIGATION DISTRICT

Dated: May 29, 2008

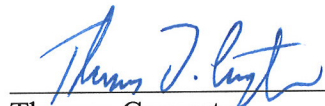
By:



Its: **Board President**

APPROVED AS TO FORM:

General Counsel for El Dorado Irrigation District

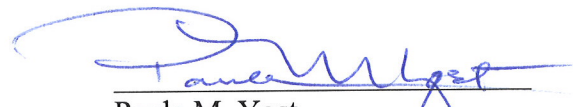


Thomas Cumpston
General Counsel, El Dorado Irrigation District

5/29/08

Date

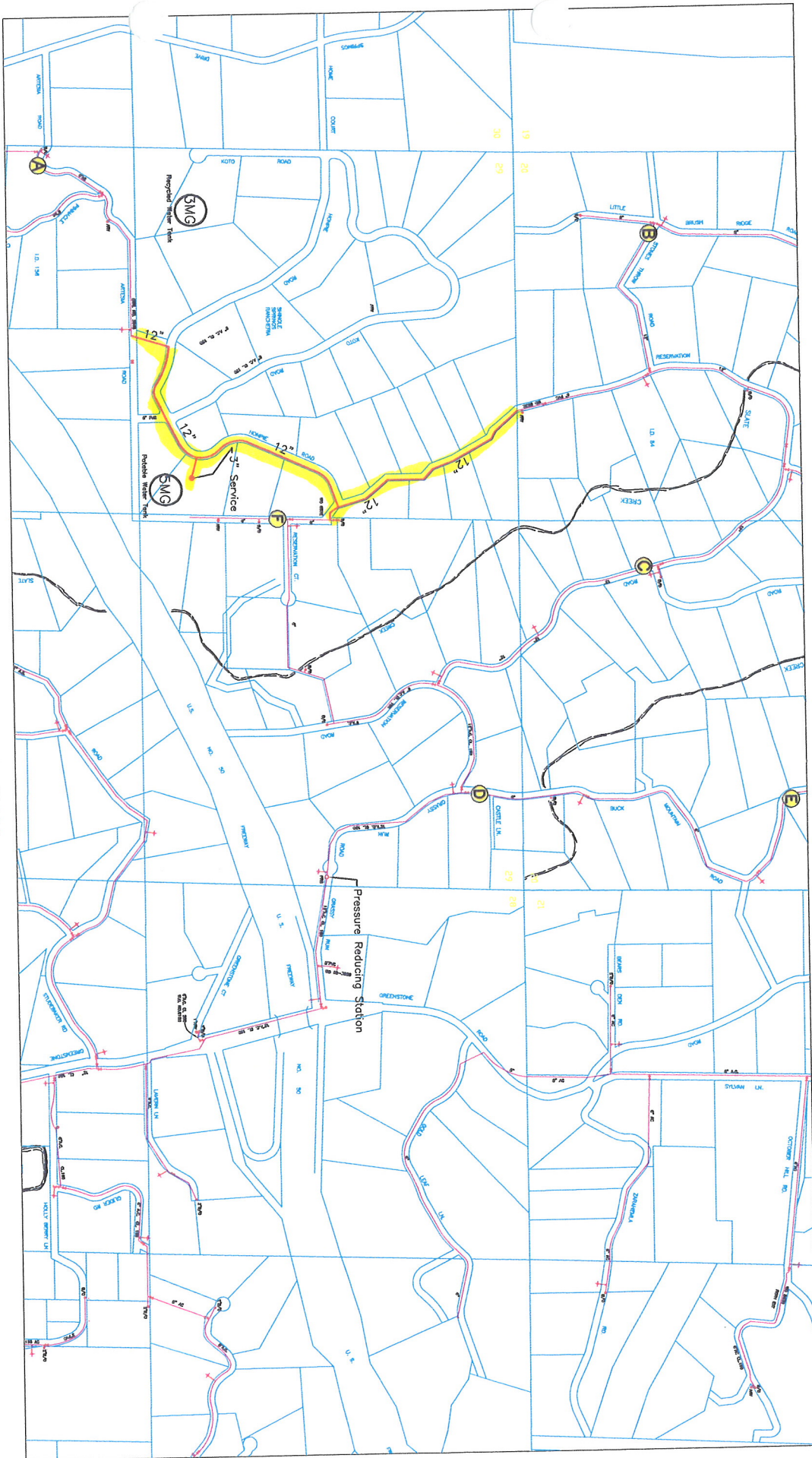
Sonnenschein Nath & Rosenthal LLP



Paula M. Yost
Counsel for Shingle Springs
Band of Miwok Indians

5/30/08

Date



Scale: 1" = 650'

E1 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

Exhibit A