

Court: Red Hawk Casino receiving excessive amount of water

By Denny Walsh, Sacramento Bee

The El Dorado Irrigation District is supplying an unlawfully excessive amount of water to the Red Hawk Casino in El Dorado County, a state appeals court ruled Thursday.

The district based its 2008 agreement to supply 95 gallons of water per minute to the casino's owner, the Shingle Springs Band of Miwok Indians, on two legally flawed premises, a three-justice panel declared in a 36-page published opinion.

A residents' group, Voices for Rural Living, challenged the agreement.

Thursday's opinion affirms an earlier ruling by El Dorado Superior Court Judge Kenneth J. Melikian, except for the remedy. The judge exceeded his authority in directing the district to prepare an environmental impact report in compliance with the California Environmental Quality Act, the panel said.

"How an agency complies with CEQA is a matter first left to the agency's discretion," the justices said. "We thus will reverse (Melikian), but only on this point to allow (him) to set aside EID's decision and remand the matter to EID for further consideration."

The irrigation district claimed the memorandum of understanding between it and the tribe did not require an environmental review because it fell under a CEQA exemption for small construction projects.

The district and the tribe relied on the fact that the only

necessary physical adjustments were relocating a meter and installing pipeline linking it to a water main.

But the appellate panel found that selling that much water to the tribe carries environmental risks apparently not considered by EID officials.

The project's scope – providing an amount equal to 216 additional residences – “obviously is a fact that distinguishes (it) from the type of projects contemplated by the exemption,” the panel said.

“EID apparently did not give any consideration to (the) possibility of additional shortages of water during a drought due to climate change when it determined how much of its supply was unallocated and available for use. Its analysis was based simply on past historical use and supply. It thus ignored evidence in the record suggesting it already lacked sufficient water to meet its expected demand during a drought, even when it delivers the reduced levels of water it plans to deliver.”

The opinion was authored by Associate Justice George Nicholson, with Acting Presiding Justice Cole Blease and Associate Justice Elena J. Duarte concurring.

They were equally unforgiving about the irrigation district's conclusion that restrictions imposed in 1989 by the El Dorado County Local Agency Formation Commission on how much water could be sold to the tribe are unconstitutional.

The tribe and EID entered into an annexation agreement, subject to LAFCO approval, that brought the tribe's 160-acre parcel along Highway 50 between Shingle Springs and Placerville into the district's service area.

LAFCO authorized water only for residential and related uses, and only in an amount necessary to serve no more than 40 residential lots.

The appellate justices noted the Legislature has vested area LAFCOs “with the sole and exclusive authority to approve annexations of territory into special districts. This authority includes the power to impose conditions of approval on an annexation.”

California law makes these conditions enforceable and a public agency “has no discretion to disregard them,” the justices said.

They also included a reminder for EID: What is and is not constitutional are issues “to be resolved by the judiciary.”