

Red Hawk Casino settles water dispute

By Cathy Locke, Sacramento Bee

After more than a decade of lawsuits and threats of lawsuits, a dispute over water service for the Shingle Springs Rancheria and Red Hawk Casino appears to have been resolved.

The El Dorado Local Agency Formation Commission, which rules on government reorganizations, earlier this month effectively rescinded the 1988 annexation of the rancheria to the El Dorado Irrigation District and approved a re-annexation with conditions necessary to meet current water service needs.

The irrigation district has been supplying water for the casino since it opened four years ago. The re-annexation is intended to clear up legal issues and satisfy recent court rulings, officials said.

"I'm just glad that this time all the parties managed to work together to see this through," said Jose Henriquez, LAFCO executive director.

Nicholas Fonseca, chairman of the Shingle Springs Band of Miwok Indians, said in a written statement that the tribe was pleased with LAFCO's action.

"We have worked for many years to simply be treated like any other water customer, and remove what are obviously unfair and we believe illegal restrictions on the tribe," he said.

The 1988 annexation, which Henriquez described as seriously flawed, limited water service to 40 residences, a community building and garden plots. As the tribe sought to build a casino on the rancheria off Highway 50, opponents cited the water restrictions in an effort to block the project.

In June 2008, with the casino's opening date just months away, tribal leaders vowed to truck in water if necessary, raising the specter of up to 25 trucks a day hauling water via Highway 50.

The irrigation district board subsequently approved an agreement to supply the Shingle Springs Band of Miwok Indians up to 135,000 gallons of water a day. The tribe agreed to purchase water at the commercial rate to serve the 270,000-square-foot casino, as well as the existing homes and other facilities on the rancheria.

In approving the agreement, the district board cited an opinion by the U.S. Department of the Interior Solicitor General's Office that questioned the validity of LAFCO's restrictions in the 1988 annexation. The opinion indicated that if LAFCO's intent was to regulate use of the tribe's land, a court likely would find that the restrictions would be pre-empted by federal law.

In 2008, the irrigation district and the tribe rejected Henriquez's proposal that the tribe apply for detachment and concurrent annexation to the district, allowing LAFCO to remove the restrictions.

In July 2008, the citizens group Voices for Rural Living filed suit in El Dorado Superior Court seeking to nullify the agreement to serve the casino. In December 2009, the court ruled that there was a fair argument that the irrigation district did not comply with the California Environmental Quality Act when it approved the agreement and that it did not have the authority to unilaterally invalidate the LAFCO conditions. The tribe appealed the ruling, but the trial court decision was largely upheld earlier this year by a state appeals court.

The ruling affirmed LAFCO's authority in such matters. Although the tribe is not subject to LAFCO unless it willingly

waives its sovereign immunity, a public agency is subject to state law and contracting with a tribe does not extend immunity to the public agency, Henriquez said.

Tom Cumpston, the El Dorado Irrigation District's general counsel, said, "We had a legitimate difference of opinion of what was the best approach. Once we had the trial court's decision, it was clear that we needed to go through some sort of LAFCO process."

The district filed the application for detachment and re-annexation.

Under the 2008 agreement, the tribe indemnified the district against any legal challenge, and it has borne the cost of the litigation, as well as an environmental impact report and the LAFCO proceedings, Cumpston said.

Any requests for additional water for the rancheria will not require LAFCO approval. The district will be able to negotiate with the tribe as it would any other water customer, Cumpston said.

He said the district will seek a trial court ruling that it has complied with the court's order. Since the lawsuit was filed in 2008, he said, much of the public controversy over the casino has abated.

"The casino has been operating four years, and it is obvious that EID can serve them with water," he said.