

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF DECEMBER 5, 2012

REGULAR MEETING

TO: Ron Briggs, Chair, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

PREPARED BY: Erica Sanchez, Policy Analyst

AGENDA ITEM #8: Shingle Springs Rancheria Reorganization to the El Dorado
Irrigation District

LAFCO Project No. 2012-04

PROPONENT: El Dorado Irrigation District

DESCRIPTION OF PROJECT

The El Dorado Irrigation District (EID) is requesting the detachment and concurrent re-annexation of APN 319-100-37 (159.25 acres), commonly known as the Shingle Springs Rancheria. A map of the reorganization area is included as 'Attachment A' at the end of this report.

LOCATION

The subject property, known as the Shingle Springs Rancheria, is located in the Shingle Springs area, on the north side of U.S. Highway 50, approximately 1,000 feet north of the Red Hawk Parkway exit along U.S. Highway 50.

PURPOSE

EID is requesting reorganization of the Shingle Springs Rancheria to provide services to the affected territory reflecting current land use and development conditions, consistent with the 2008 MOU between EID and the Shingle Springs Band of Miwok Indians (Attachment C).

RECOMMENDATIONS

Staff recommends that the Commission take the following actions:

1. Accept the Environmental Impact Report prepared and certified by EID (Attachment E) as the appropriate environmental document for the proposal and direct staff to file the Notice of Determination with the County Clerk-Recorder in compliance with CEQA and local ordinances implementing the same.
2. Adopt LAFCO Resolution L-2012-12 (Attachment H), detaching the affected territory with a concurrent re-annexation for the provision of water service, adding any additional conditions the Commission finds appropriate and approve the Shingle Springs Rancheria Reorganization to the El Dorado Irrigation District.
3. Waive the Conducting Authority proceedings subject to Government Code §56663 and local policies for this proposal.
4. Direct the Executive Officer to complete the necessary filings and transmittals as required by law.
5. Determine the effective date of the approval of this agreement to be five (5) working days after recordation by the County Recorder of the Executive Officer's Certificate of Completion once the imposed conditions are met.

REASON FOR RECOMMENDATION

This proposal was initiated by EID to comply with a court order to address the conditions in the 1988 annexation of the Rancheria into EID. As explained below, the 1988 annexation is deeply flawed, leading to contentious hearings, lawsuits and other legal clouds hanging over all affected parties. As submitted, the proposal closely follows LAFCO staff's five-year-old recommended process of detaching the Rancheria to undo the 1988 annexation with concurrent re-annexation so that services can be provided at the requested levels. Staff has analyzed the reorganization with consideration of the 28 factors listed in Government Code §56668 (see below) and LAFCO Policies, and concluded that the proposal complies with all requirements under the Cortese-Knox-Hertzberg Act and provides all parties with the proper framework to move forward.

BACKGROUND

The Shingle Springs Rancheria consists of approximately 40 homes, a library, church, tribal center, community center, a residential fire department and Red Hawk Casino. The 278,000 square foot casino facility has 2,000 slot machines, 75 table games, six restaurants, four bars, and 3,000 lighted and covered parking spaces.

Prior to 1987, the Shingle Springs Band of Miwok Indians (Tribe), at the time operating under the name of the Sacramento Verona Band of Homeless Indians, acquired water for the Rancheria residents from EID at out-of-district rates. In 1987, the Tribe and EID entered into an Annexation Agreement to bring the Rancheria into EID's service area. Under the Agreement, EID would "provide water service to Rancheria residents on the same terms as it provides service to any other resident within the District." The Agreement was subject to approval by LAFCO and it did not contain references to the amount of water being sought by the Tribe.

The 1988 LAFCO annexation petition was initiated by the Tribe. After two hearings, in which the matter was continued, LAFCO approved the annexation on July 1988 (the process was finalized in 1989), but it conditioned its approval by restricting the amount of water EID could provide to the Rancheria. LAFCO authorized EID to supply water to the Rancheria for residential and accessory uses only, and limited the amount to what was necessary to serve a community of no more than 40 residential lots.

A Flawed Annexation

Please refer to Attachment C for a summary of events that led to this proposal. This application is necessary because working within the confines of the 1988 annexation is problematic. For reasons discussed below, the 1988 annexation itself was deeply flawed. While everyone focuses on the LAFCO conditions that restrict water service, and, therefore, appear to regulate land use, there are three distinct legal issues that cast doubt on the validity of the 1988 annexation. These reasons were outlined in the public workshop held on June 25, 2008 soon after EID entered into a then-new Memorandum of Understanding with the Tribe:

1. Because Native American tribes are considered to have sovereign rights with respect to tribal land, Federal statutory and case law have established that state and local entities have no jurisdiction over tribal lands unless there is a specific waiver of tribal sovereignty. Prior to the LAFCO application, the Tribe and the Bureau of Indian Affairs (BIA) consented to such waiver under the 1987 Annexation Agreement between the Tribe and EID. However, there is no record that the Tribe waived its sovereign immunity with respect to LAFCO or the annexation process, before or during the LAFCO proceedings. Consequently, there is the question whether LAFCO had the proper jurisdiction clearances at the time this agency approved the 1988 annexation.
2. At the July 7, 1988 meeting, the minutes state that LAFCO, the County and the Tribe reached “an agreement” and that the following motion “*represented a good faith agreement between the parties*” (emphasis added). The record states, “This application is unique in that the owners are the United States of America and Sacramento Verona Band of Homeless Indians. The ownership of this parcel presents questions of whether or not this Commission has jurisdiction over a sovereign Indian nation and whether or not the county ordinances apply to the development of property.... [A]lthough LAFCO cannot regulate land use, we do have the right and obligation to protect our public facilities and promote orderly growth.” The motion approved the annexation with the following conditions:
 - “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.”

Recall that the hearing of the 1988 annexation was continued twice before the July 7, 1988 meeting. The record strongly indicates LAFCO would not have approved of the annexation absent the agreement that led to these conditions. While as early as July 20, 1988, the Tribe’s attorney disputed that the parties had reached such an agreement, neither the Tribe nor EID exercised their right to request that the Commission reconsider its decision as allowed under LAFCO law. In other words, the administrative remedy available to the parties was not exhausted even if the restrictions to service contained in the conditions were in dispute.

3. Under Federal law, any agreement entered into by a Native American tribe is subject to review and approval by BIA. The LAFCO approval with its conditions constituted a new agreement, beyond the already-approved 1987 Annexation Agreement the Tribe had with EID. BIA review and approval of the annexation was, therefore, essential after LAFCO action for the annexation to be valid. No record of BIA review and approval of the LAFCO annexation has been found.

Why Not Use the Jurisdiction and Authority Retention Stated in Section 9?

Although the Commission asserted that it retained jurisdiction and authority to amend or eliminate the conditions of approval in Section 9 above, staff has not found any reference either under Cortese-Knox-Hertzberg Act or the Cortese-Knox Act, as LAFCO law was known in the 1980s, that gives LAFCO permanent jurisdiction. Unlike cities and counties that have “implied powers,” case law is clear that LAFCO is limited to those powers specified in law:

"A local agency formation commission, commonly referred to as LAFCO, is a creature of the Legislature and has only those express (or necessarily implied) powers which are specifically granted to it by statute. In short, LAFCO is a public entity created by legislative fiat, and like similarly constituted public entities is a body of special and limited jurisdiction." (*Ceres v. Modesto* (1969) 274 Cal.App.2d 545, 550.)

"A LAFCO 'has only those express (or necessarily implied) powers which are specifically granted to it by statute." (*Community Water Coalition v. Santa Cruz County LAFCO* (2011) 200 Cal.App.4th 1317, 1324 [quoting *Ceres v. Modesto*].)

Consequently, staff does not believe that the power to permanently reserve jurisdiction over a completed annexation is a "necessarily implied" power of LAFCO. In addition, Cortese-Knox-Hertzberg has a process defined for every type of petition that falls under the Commission’s jurisdiction. Because there is no “necessarily implied” power for LAFCO to revisit already-adopted conditions, there is no mechanism under Cortese-Knox-Hertzberg that outlines how such a request should be processed in instances where a Certificate of Completion has been filed. If EID had submitted a request consistent with Section 9, LAFCO staff would not have known what to do with it since LAFCO law is silent on the matter.

Summary of Proposal

For these reasons, a reset button must be pressed. It is necessary for the Commission to act first to detach the Rancheria from the EID service area in order to undo the 1988 annexation, which for the reasons outlined above is deeply flawed. Should the Commission accept staff's recommendation, every aspect of the 1988 Rancheria annexation is revoked so that no piece carries over.

The application also includes a request for a concurrent and simultaneous re-annexation of the Rancheria to bring it into the EID service area. This will ensure that water is supplied in harmony with a memorandum of understanding between the District and the Tribe and based on the Tribe's current need.

The submitted application is consistent with the outline LAFCO staff presented to EID and the Tribe in 2007. As structured, this proposal removes all known legal issues with the 1988 annexation:

- The detachment reverses the 1988 annexation and all subsequent issues described above, providing a clean slate for all parties.
- The concurrent and simultaneous re-annexation allows for water service to be provided to the Rancheria at the levels required for the current land use and without interruption. This annexation includes an analysis of impacts to the District under the current and likely service demands as they are known and understood.
- EID is the applicant, as allowed under Government Code §56650 et seq. and as directed by the El Dorado Superior Court, which removes questions about sovereign immunity and any post-LAFCO action BIA review.
- The application has been processed under the provisions specified in the Cortese-Knox-Hertzberg Act just like any other petition that comes to the Commission. There is no reliance on the idea that LAFCO has or can retain permanent jurisdiction to oversee a completed annexation, an idea that is of uncertain legality.
- Should the Commission reject this proposal, the 1988 annexation with all of its legal uncertainties remains in effect. Because the restrictions would still be in place, and assuming EID or any other party does not ask for reconsideration, the likely result would be litigation, initiated by either the Tribe or EID, seeking judicial relief from the 1988 conditions. The rulings from El Dorado Superior Court and the Third District Appellate Court essentially state that EID or the Tribe can seek this course of action should the Commission reject the petition.

The Long Road

As noted above and in the Summary, the proposal was first presented to EID and the Tribe in 2007. EID and the Tribe declined at the time to seek a concurrent detachment and annexation, preferring to proceed under a Memorandum of Understanding adopted in 2008.

An organization called Voices for Rural Living sued EID over the MOU and as part of its 2009 decision on the matter the El Dorado Superior Court ruled that EID does not have the authority to render a LAFCO decision invalid. This ruling was recently upheld in 2012 by the Third District Court of Appeal. After the December 2009 court decision,

EID and representatives from the Tribe met with LAFCO staff to resume negotiations in March 2010. The culmination of those negotiations, carried across 27 months, resulted in this application.

CEQA

El Dorado Irrigation District, as the Lead Agency for the project, prepared and certified an Environmental Impact Report (EIR) for the project on May 29, 2012. The environmental impacts of the reorganization were addressed within the scope of this environmental document. The EIR includes mitigation measures as necessary to lessen the potential significant effect that the project could have on the surrounding area. EID’s EIR can be reviewed in its entirety as Attachment E. LAFCO staff analysis of these issues can be found within the corresponding 28 factors to be considered.

SUMMARY OF STATUTORY AND POLICY CONSIDERATIONS

Government Code §56668 and LAFCO Policies require that the review of a proposal shall consider the following 28 factors:

FACTOR TO CONSIDER	POLICY / STATUTE CONSISTENCY	COMMENT
Need for organized services, probable future needs	1 – Consistent	The reorganization will reverse the 1988 annexation, while still allowing for uninterrupted water service to the Rancheria, consistent with the 2008 MOU between the Tribe and EID.
Ability to serve, level and range of service, time frames, conditions to receive service	2 – Consistent	EID has the necessary water and capacity to continue to provide water service to the Rancheria. Upon approval of the reorganization, EID will continue to provide uninterrupted water service to the Rancheria.
Timely availability of adequate water supply	3 – Consistent	An estimated total of 260.75 EDUs are required to serve the Rancheria. According to the 2012 WRSRR and the analysis in the 2011 WSA, EID has sufficient water available to continue serve the Rancheria.

Alternatives to service, other agency boundaries, and local gov't structure	4 – Consistent	EID is the only public water service provider for the subject area and has provided residential water to the Rancheria since 1988 and water for Red Hawk Casino since 2008.
Significant negative service Impacts	5 – Consistent	There do not appear to be any negative service impacts to other existing EID customers as a result of providing water service to the Rancheria.
Coordination of applications	6 – Inconsistent	In 2010, LAFCO staff recommended that ECF request a concurrent sphere amendment and annexation or an out-of-agency service agreement, but ECF declined. No other services appear to be necessary for the Rancheria. Nevertheless, staff does not recommend that action be taken on the fire services issue concurrent with this proposal.
Present cost/adequacy of governmental services, including public facilities	7 – Consistent	EID does not appear to have any current service deficiencies from providing water service to the Rancheria; there is no reason to believe that reorganization would result in any negative cost or service impacts to present customers.
Effect of proposal on cost & adequacy of service in area and adjacent areas	8 – Consistent	The Tribe has entered into a MOU for services with EID, which will presumably cover the cost of providing services to the Rancheria.

Effect of alternative courses of action on cost & adequacy of service in area and adjacent areas	9 – Consistent	Since water service has been provided to the Rancheria at current levels for several years without detriment to other customers or to the surrounding area, staff does not believe that continuing service to the Rancheria would have an adverse effect on other existing customers.
Sufficiency of revenues, per capital assessed valuation	10 – N/A	The parcel is non-taxable tribal land with an assessed value of \$0. There will be no monetary change to any of the affected agencies.
Revenue producing territory	11 – N/A	This section is not applicable to this reorganization application.
56668.3 “best interest”	12 – Consistent	Detachment and concurrent re-annexation into EID is the best option to reverse the flawed 1988 annexation while still allowing for uninterrupted water service to the Rancheria, consistent with the 2008 MOU between the Tribe and EID.
Boundaries: logical, contiguous, not difficult to serve, definite and certain	13 – Consistent	The proposed detachment and concurrent annexation will not have a real effect on the EID service boundary.
Topography, natural boundaries, drainage basins, land area	14 – Consistent	There are no topographical features that will hinder service to this area.
Creation of islands, corridors, irregular boundaries	15 – Consistent	The reorganization will result in an identical service boundary for EID as what currently exists.

Conformance to lines of assessment, ownership	16 – Consistent	The boundaries of the proposed reorganization conform to the existing lines of assessment and ownership. The proposal maps have been reviewed by the County Surveyor and have been found to be definite and certain.
Spheres of Influence	17 – Consistent	The boundaries of the parcel proposed for detachment and concurrent re-annexation are fully contained within the EID sphere of influence.
Effect on adjacent areas, communities of interest	18 – Consistent	The adjacent gated Grassy Run community, which is fully within EID's service area, is not expected to be affected by the proposed reorganization.
Information or comments from landowners or owners	19 – Consistent	The Bureau of Indian Affairs (BIA) has provided written consent to LAFCO in support of the reorganization.
Effect on other community services, schools	20 – N/A	There are no negative impacts expected for the other public service providers to the Rancheria property.
Other agency comments, objections	21 – Consistent	There were no comments received regarding the proposed reorganization from other agencies or members of the public.
Fair share of regional housing needs	22 – N/A	The reorganization is not expected to contribute to, nor hinder, the County in achieving its fair share of regional housing needs.

Land use, information relating to existing land use designations	23 – N/A	As a tribal reservation, the Rancheria is not subject to local land use designations and is not required to conform to surrounding land uses or to the County's General Plan. Current land use within the Rancheria is consistent with the Indian Gaming Regulatory Act.
Population, density, growth, likelihood of growth in, and in adjacent areas, over 10 years	24 – N/A	Reorganization of the Rancheria within the EID service boundary will not directly or indirectly induce growth.
Proximity to other populated areas	25 – Consistent	The Rancheria parcel is substantially surrounded by low density residential 5-acre parcels that are mostly built-out; the gated Grassy Run neighborhood borders the Rancheria to the north and east. The reorganization of the Rancheria parcel will have no effect on service provision to the surrounding areas.
Consistency with General Plans, specific plans, zoning	26 – N/A	The reorganization area is owned by the Shingle Springs Band of Miwok Indians, a federally-recognized Indian Tribe, which is a sovereign entity that is not subject to the El Dorado County General Plan.
Physical and economic integrity of agriculture lands and open space	27 – N/A	The reorganization will have no impact on agriculture or open space.
Optional factor: regional growth goals and policies	28 – N/A	The reorganization proposal does not include any type of new housing or other development; therefore, it will not assist the County in achieving its RHNA goals.

DETERMINATIONS

The Commission should review the factors summarized above and discussed below, then make its own determinations regarding the project. Staff recommends the following determinations based on project research, state law and local policies:

1. The subject territory is “uninhabited” per Government Code §54046. Application for this reorganization is made subject to Government Code §56650 et seq. by District resolution.
2. The territory proposed for reorganization is currently within the El Dorado Irrigation District boundary.
3. The Environmental Impact Report prepared and certified by the El Dorado Irrigation District on May 29, 2012 satisfies the requirements of the California Environmental Quality Act (CEQA).
4. The reorganization will not result in negative impacts to the cost and adequacy of service otherwise provided in the area, and is in the best interests of the affected area and the total organization of local government agencies.
5. The reorganization will not have an adverse effect on agriculture and open space lands.
6. The reorganization will result in a decrease in water supply available for the buildout of regional housing needs determined by the Sacramento Area Council of Governments. The reorganization will not, however, have a significant foreseeable effect on the ability of the County to adequately accommodate its fair share of those needs.

DISCUSSION

Government Code §56668 and LAFCO Policies require that the review of an annexation proposal shall consider the following factors:

(Numbered items 1-6 relate to services)

1. ***NEED FOR ORGANIZED COMMUNITY SERVICES, PROBABLE FUTURE NEEDS:*** Applicants shall demonstrate the need and/or future need for governmental services and that the proposal is the best alternative to provide service (Policies 3.1.4(b), 6.1.7; §56668(b)).

RESPONSE: The proposed detachment of the Shingle Springs Rancheria will reverse the 1988 annexation, which limited EID’s water service to the Tribe to 45 EDUs of water, while the concurrent re-annexation will allow for water service to be provided to the Rancheria at the levels required for the current land use and without interruption, consistent with the 2008 MOU between the Tribe and EID.

2. ***ABILITY TO SERVE, LEVEL AND RANGE OF SERVICE, TIME FRAMES, CONDITIONS TO RECEIVE SERVICE:*** Prior to annexation the applicants and proposed service providers shall demonstrate that the annexing agency will be

capable of providing adequate services which are the subject of the application and shall submit a plan for providing services (Policy 3.3, §56668(j)).

RESPONSE: EID has the necessary water and capacity to continue to provide uninterrupted water service to the Rancheria, upon the approval of the proposed detachment and concurrent re-annexation. EID has provided residential water to the Rancheria since the 1988 annexation, and additional water to the casino since its construction in 2008, consistent with the MOU between EID and the Tribe.

Proposed facilities include the installation of a new 3-inch flow meter, 4,025 feet of 12-inch water pipeline, and associated accessories including a backflow prevention assembly structure on the Rancheria to connect with EID's existing water supply infrastructure. No new water supply infrastructure would be installed in the EID service area outside of the Rancheria. Per the language in the EID-Tribe MOU, the Rancheria is subject to water reductions in case of drought.

Since 2008, EID has been providing water to the Rancheria. There is no evidence that providing the increase in water deliveries to the Rancheria has had a negative effect on other customers or on surrounding land uses. The increase in EDUs going to the Rancheria will and has reduced the available water supply that would otherwise be available for new development, other uses specified in the county General Plan or to attain regional housing goals.

3. **TIMELY AVAILABILITY OF ADEQUATE WATER SUPPLY:** The Commission shall consider the timely availability of water supplies adequate for projected needs (§56668(k)).

RESPONSE: The 2008 MOU between EID and the Tribe stated that the District would provide the Rancheria with a net increase of 215.75 equivalent dwelling units (EDU) of water over the existing 45 EDUs of water service EID was already providing the Tribe. Therefore, the combined estimated number of EDUs to serve the Rancheria is 260.75.

The Rancheria is within EID's Western/Eastern Water Supply Region, which primarily receives water Jenkinson Lake and Project 184. According to EID's 2012 *Water Resources and Service Reliability Report* (August 2012), this service region has 2,000 EDUs of water available, 287 of which have been previously committed through contractual commitments, leaving a total of 1,713 EDUs, which is sufficient to meet the current service needs of the Rancheria.

In 2011, a Water Supply Assessment (WSA) was prepared to analyze EID's ability to provide an increase in annual water service to the Rancheria over pre-project conditions, consistent with the terms and conditions of the 2008 MOU between EID and Rancheria (Attachment F). The WSA evaluates water supplies that are or will be available during normal, single dry and multiple dry water years for 20 years in the future, to meet existing demands, expected demands of the Rancheria, and reasonably foreseeable planned future water demands served by EID. Based on analyses provided in this WSA, the projected EID water supplies available during normal, single dry and multiple dry years will meet the projected water demands for

existing and planned future uses, including those associated with the Rancheria, during the 20-year projection period, including during implementation of multiple-stage demand reduction plans, if necessary.

4. **ALTERNATIVES TO SERVICE, OTHER AGENCY BOUNDARIES, AND LOCAL GOVERNMENT STRUCTURE:** The Commission shall consider alternatives to the proposal, proximity of other agency boundaries and alternative courses of action. Where another agency objects to the proposal, LAFCO will determine the best alternative for service (Policies 3.3.2.2(g), 6.1.3).

RESPONSE: There are no other reasonable public or private alternatives for the provision of water service to the Rancheria. EID is the only public water service provider for the subject area and has provided residential water to the Rancheria since 1988 and water for Red Hawk Casino since 2008. The only other alternatives for water provision are infeasible and would introduce other externalities that would be less desirable from a public policy standpoint. A well would yield inadequate water supplies and trucking water in would result in road wear-and-tear as well as traffic congestion and increased air pollution.

5. **SIGNIFICANT NEGATIVE SERVICE IMPACTS:** Services provided to the territory will not result in a significant negative impact on the cost and adequacy of services otherwise provided (Policy 6.2.4, §56668.3(b)).

RESPONSE: There do not appear to be any negative service impacts to other existing EID customers as a result of providing water service to the Rancheria. LAFCO staff is not aware of any adverse service effects due to the provision of water for the Red Hawk Casino since 2008.

6. **COORDINATION OF APPLICATIONS:** If a project site can be anticipated to require additional changes of organization in order to provide complete services, the proposal shall be processed as a reorganization (Policy 3.1.10). Where related changes of organization are expected on adjacent properties, petitioners are encouraged to combine applications and LAFCO may modify boundaries, including the addition of adjacent parcels to encourage orderly boundaries (Policy 3.1.9).

RESPONSE: The Rancheria is within the Diamond Springs-El Dorado Fire Protection District (DSP); however, the El Dorado County Fire Protection District (ECF) provides fire protection services to the Rancheria through a compensated agreement with the Tribe. In 2010, DSP initiated a proposal to detach the Rancheria, but DSP later withdrew the proposal. LAFCO staff recommended that ECF join DSP's application to request a concurrent sphere amendment and annexation or an out-of-agency service agreement, but to-date ECF has declined. Nevertheless, staff does not recommend addressing the fire service provision issue with this application.

Wastewater service through EID is not a part of this proposal; the Tribe operates its own wastewater treatment facility. According to the 2008 MOU, the Tribe has agreed to join the EID wastewater service area at a later and undetermined date. No other services appear to be necessary for the Rancheria, and there are no additional properties in the vicinity which appear to require reorganization or additional services at this time.

(Numbered items 7-12 relate to cost and revenues)

- 7. PRESENT COST/ADEQUACY OF GOVERNMENTAL SERVICES, INCLUDING PUBLIC FACILITIES:** The Commission shall consider existing government services and facilities, cost and adequacy of such services and facilities (§56668(b), Policy 3.3). If service capacity and/or infrastructure will be expanded, the applicant will submit cost and financing plans (Policy 3.3.2.2).

RESPONSE: EID does not appear to have any current service deficiencies from providing water service to the Rancheria, consistent with the 2008 MOU between EID and the Tribe. There is no reason to believe that detachment and re-annexation of the Rancheria would result in any negative cost or service impacts to present customers.

- 8. EFFECT OF PROPOSAL ON COST & ADEQUACY OF SERVICE IN AREA AND ADJACENT AREAS:** The Commission shall consider existing and proposed government services and facilities, the cost and adequacy of such services and facilities and probable effect of the proposal on the area and adjacent areas (§56668(b) and Policy 3.3). LAFCO will discourage projects that shift the cost of service and/or service benefits to others or other service areas (Policy 6.1.8).

RESPONSE: The Tribe has entered into a MOU for services with EID, which will presumably cover the cost of services to the Rancheria. According to the MOU, the Tribe purchases water at the regular District Retail Rate, which may be amended as necessary.

- 9. EFFECT OF ALTERNATIVE COURSES OF ACTION ON COST & ADEQUACY OF SERVICE IN AREA AND ADJACENT AREAS:** The Commission shall consider the cost and adequacy of alternative services and facilities (§56668).

RESPONSE: Since water service has been provided to the Rancheria at current levels for several years, staff does not believe that continuing service to the Rancheria would have an adverse effect on other existing customers.

- 10. SUFFICIENCY OF REVENUES, PER CAPITA ASSESSED VALUATION:** 56668(j)

RESPONSE: APN 319-100-37 is non-taxable because it is tribal land owned by the Bureau of Indian Affairs, held in trust for the Shingle Springs Band of Miwok Indians. Therefore, the total assessed value of the parcel is \$0 and the total local agency share of property tax revenue from the parcel is a percentage of zero.

Though the redistribution of the property tax increment will not have a monetary impact to any local agency at this time, the negotiation of property tax increment is required by Revenue and Taxation Code Sections 99 and 99.01. Therefore, the County and EID negotiated a property tax revenue sharing agreement, based upon the Chief Administrative Officer's proposal (Attachment G), with no changes to any of the affected agencies.

11. **REVENUE PRODUCING TERRITORY:** The proposed annexation shall not represent an attempt to annex only revenue-producing territory (Policy 6.1.1).

RESPONSE: For reasons explained immediately above, this section is not applicable to this reorganization application. The 2008 MOU specifies the rate in which the Tribe purchases water from EID, which presumably covers the cost of service provision.

12. **"BEST INTEREST":** The Commission shall consider whether the proposed annexation will be for the interest of landowners or present or future inhabitants within the district and within the territory proposed to be annexed to the district (§56668.3).

RESPONSE: Detachment and concurrent re-annexation into EID is the best option to reverse the flawed 1988 annexation while still allowing for the provision of water service to the Rancheria at the levels required for the current land use and without interruption, consistent with the 2008 MOU between the Tribe and EID.

(Numbered items 13-17 relate to boundaries)

13. **BOUNDARIES: LOGICAL, CONTIGUOUS, NOT DIFFICULT TO SERVE, DEFINITE AND CERTAIN:** The proposed boundary shall be a logical and reasonable expansion and shall not produce areas that are difficult to serve (§56001). Lands to be annexed shall be contiguous (Policy 3.9.3, §56741-cities) and should not create irregular boundaries, islands, peninsulas or flags (Policy 3.9.4). The boundaries of the annexation shall be definite and certain and conform to existing lines of assessment and ownership (Policy 3.9.2, §56668(f)).

RESPONSE: The proposed detachment and concurrent annexation will not have a real effect on the EID service boundary. The parcel is currently within the EID service boundary and is surrounded on all sides by other parcels within EID.

14. **TOPOGRAPHY, NATURAL BOUNDARIES, DRAINAGE BASINS, LAND AREA:** Natural boundary lines which may be irregular may be appropriate (Policy 3.9.6). The resulting boundary shall not produce areas that are difficult to serve (Policy 3.9.7).

RESPONSE: The 160-acre parcel consists of gently rolling hills with several oak and pine varieties, ranging in elevation from 1,300 to 1,600 feet. There are no topographical features that will hinder service to this area.

- 15. CREATION OF IRREGULAR BOUNDARIES:** Islands, peninsulas, "flags", "cherry stems", or pin point contiguity shall be strongly discouraged. The resulting boundary shall not produce areas that are difficult to serve. The Commission shall determine contiguity (Policies 3.9.3, 3.9.4, 3.9.7).

RESPONSE: The reorganization will result in an identical service boundary for EID as what currently exists.

- 16. CONFORMANCE TO LINES OF ASSESSMENT, OWNERSHIP:** The Commission shall modify, condition or disapprove boundaries that are not definite and certain or do not conform to lines of assessment or ownership (Policy 3.9.2).

RESPONSE: The subject parcel is tribal land owned by the Bureau of Indian Affairs, held in trust for the Shingle Springs Band of Miwok Indians.

The boundaries of the proposed reorganization conform to the existing lines of assessment and ownership. The proposal maps have been reviewed by the County Surveyor and have been found to be definite and certain.

- 17. SPHERES OF INFLUENCE:** Commission determinations shall be consistent with the spheres of influence of affected local agencies (Policy 3.9.1).

RESPONSE: The boundaries of the parcel proposed for detachment and concurrent re-annexation are fully contained within the EID sphere of influence. As a result, there is no need to amend the sphere of influence in connection with this reorganization.

(Numbered items 18-21 relate to potential effect on others and comments)

- 18. EFFECT ON ADJACENT AREAS, COMMUNITIES OF INTEREST:** The Commission shall consider the effect of the proposal and alternative actions on adjacent areas, mutual social and economic interests and on the local governmental structure of the county (§56668(c)).

RESPONSE: The proposed reorganization does not break any Community of Interest. The subject parcel is bounded to the north and east by the gated Grassy Run community formerly known as the Grassy Run CSD, which is also fully within EID's service area. Residents of the Grassy Run community are not expected to be affected by the proposed reorganization.

- 19. INFORMATION OR COMMENTS FROM THE LANDOWNER OR OWNERS:** The Commission shall consider any information or comments from the landowner or owners.

RESPONSE: The United States Department of the Interior, Bureau of Indian Affairs (BIA) has provided written consent to LAFCO in support of the reorganization. The

BIA owns the land making up the Shingle Springs Rancheria, and holds that property in trust for the Shingle Springs Band of Miwok Indians.

Landowner consent allows the Commission to waive the Conducting Authority hearing, as well as the noticing requirement of neighbors within 300 feet of the project. No comments or protest from neighboring landowners have been received.

- 20. EFFECT ON OTHER COMMUNITY SERVICES, SCHOOLS:** LAFCO's review of services refers to governmental services whether or not those services are provided by local agencies subject to the Cortese-Knox-Hertzberg Act, and includes public facilities necessary to provide those services.

RESPONSE: There are no negative impacts expected for the other public service providers to the Rancheria property.

As described in Section #6, the Rancheria is within the Diamond Springs-El Dorado Fire Protection District (DSP); however, the El Dorado County Fire Protection District (ECF) provides fire protection services to the Rancheria through a compensated agreement with the Tribe.

Police Protection services are provided by the El Dorado County Sheriff's Department through a compensated agreement. Response times to the area would depend on the location of the nearest unit at the time of dispatch.

The subject parcels are currently within El Dorado County's Service Area 9, Zone 17 – Ponderosa Recreation Zone for park and recreation services, which is not requested to change as a part of this proposal. The El Dorado County Parks and Recreation Department is responsible for providing recreation areas and parks within the unincorporated areas not in Community Service Districts.

The Rancheria parcel is located within the Mother Lode Union School District, the El Dorado Union High School District and the Los Rios Community College District. Students within the detachment area would most likely attend the following schools: Indian Creek Elementary at 6701 Green Valley in Placerville, Herbert Green Middle School at 3781 Forni Road in Placerville and Ponderosa High School at 3661 Ponderosa Road in Shingle Springs.

- 21. OTHER AGENCY COMMENTS, OBJECTIONS:** All affected and interested agencies are provided application related material and notified of the proposal and proposed property tax redistribution plan. Comments have been requested and shall be considered (Policy 3.1.4 (l), §56668(i)).

For district annexations and city detachments only, the Commission shall also consider any resolution objecting to the action filed by an affected agency (§56668.3(4)). The Commission must give great weight to any resolution objecting to the action which is filed by a city or a district. The Commission's consideration shall be based only on financial or service-related concerns expressed in the protest (§56668.3(5b)).

RESPONSE: The following agencies were provided an opportunity to comment on this proposal:

- Shingle Springs Band of Miwok Indians
- Bureau of Indian Affairs, Pacific Regional Office, Central California Division
- Shingle Springs Gaming Authority
- El Dorado County Fire Protection District
- Diamond Springs-El Dorado Fire Protection District
- El Dorado County Emergency Services Authority
- El Dorado Irrigation District
- El Dorado County Representing CSAs 7, 9, 9 Mother Lode Recreation Tax, 10 and 10 Zone H
- El Dorado County Water Agency
- El Dorado County Resource Conservation District
- El Dorado County Department of Agriculture
- El Dorado County Chief Administrative Office
- El Dorado County Office of Education
- Mother Lode Union School District
- El Dorado Union High School District
- Los Rios Community College District
- El Dorado County Planning Department
- El Dorado County Assessor's Office
- El Dorado County Auditor-Controller's Office
- El Dorado County Surveyor's Office
- El Dorado County Elections Department
- El Dorado County Sheriff's Department
- Farm Bureau

The Bureau of Indian Affairs, which is the legal landowner, submitted a letter in support of the reorganization. A letter from the Tribe was also received in support of this proposal. There were no other comments received regarding the proposed reorganization from other agencies or members of the public.

(Numbered items 22-26 relate to land use, population and planning)

22. FAIR SHARE OF REGIONAL HOUSING NEEDS: The Commission shall review the extent to which the proposal will assist the receiving entity in achieving its fair share of regional housing needs as determined by Sacramento Area Council of Governments (SACOG) (§56668(I)).

RESPONSE: The proposed reorganization does not include any type of new housing or other development; therefore, it will not assist the County in achieving its RHNA goals. The reorganization is not expected to contribute to, nor hinder, the County in achieving its fair share of regional housing needs. The only foreseeable impact is a reduction in available water supply; however, such a reduction would still occur in similar developments or in projects of similar size.

23. LAND USE, INFORMATION RELATING TO EXISTING LAND USE DESIGNATIONS: The Commission shall consider any information relating to existing land use designations (§56668(m)).

RESPONSE: As a tribal reservation, the Rancheria is not subject to local land use designations and is not required to conform to surrounding land uses or to the County’s General Plan. Current land use within the Rancheria is consistent with the Indian Gaming Regulatory Act.

Existing land uses within the Shingle Springs Rancheria and adjacent properties consist of the following:

	Zoning	General Plan	Current Land Use
Shingle Springs Rancheria (APN 319-100-37):	RE-5	Shingle Springs Rancheria (SSR)	Casino, residential, tribal/church/community/fire facilities; not subject to zoning/land use designations of the General Plan
North:	RE-5	LDR	Residential; gated Grassy Run neighborhood
East:	RE-5	LDR	Residential; gated Grassy Run neighborhood
South:	RE-5	LDR	Residential; US Highway 50
West:	RE-5	LDR	Residential; Shingle Springs Drive
Northwest:	RE-10	LDR	Residential; Shingle Springs Drive

24. POPULATION, DENSITY, GROWTH, LIKELIHOOD OF GROWTH IN AND IN ADJACENT AREAS OVER 10 YEARS: The Commission will consider information related to current population, projected growth and number of registered voters and inhabitants in the proposal area.

RESPONSE: Approximately 52 families containing 141 tribal members reside on the reservation. According to the County Registrar of Voters, there are currently no registered voters registered to APN 319-100-37 (5281 Honpie Road, Placerville). The subject territory is currently considered uninhabited per State Law. Reorganization of the Rancheria within the EID service boundary will not directly or indirectly induce growth.

25. PROXIMITY TO OTHER POPULATED AREAS: The Commission shall consider population and the proximity of other populated areas, growth in the area and in adjacent incorporated and unincorporated areas during the next 10 years (Policy 3.1.4 (a)).

RESPONSE: The Rancheria parcel is substantially surrounded by low density residential 5-acre parcels that are mostly built-out; the gated Grassy Run

neighborhood borders the Rancheria to the north and east. The reorganization of the Rancheria parcel will have no effect on service provision to the surrounding areas.

- 26. CONSISTENCY WITH GENERAL PLANS, SPECIFIC PLANS, ZONING:** The Commission shall consider the general plans of neighboring governmental entities (Policy 3.1.4(g)).

RESPONSE: The reorganization area is owned by the Shingle Springs Band of Miwok Indians, a federally-recognized Indian Tribe, which is a sovereign entity that is not subject to the El Dorado County General Plan.

- 27. PHYSICAL AND ECONOMIC INTEGRITY OF AGRICULTURE LANDS AND OPEN SPACE LANDS:** LAFCO decisions will reflect its legislative responsibility to maximize the retention of prime agricultural land while facilitating the logical and orderly expansion of urban areas (Policy 3.1.4(e), §56016, 56064).

RESPONSE: The reorganization area is not considered to be to be “Prime Farmland,” nor does it contain any choice soils. The Rancheria is not used for any formal agricultural operations and there are no agricultural activities adjacent to the site; the Rancheria is surrounded on all sides by Low Density Residential parcels with RE-5 zoning. The reorganization will have no impact on agriculture or open space.

- 28. OPTIONAL FACTOR: REGIONAL GROWTH GOALS AND POLICIES:** The Commission may, but is not required to, consider regional growth goals on a regional or sub-regional basis (§56668.5).

RESPONSE: The reorganization proposal does not include any type of new housing or other development; therefore, it will not assist the County in achieving its RHNA goals.

ATTACHMENTS

- Attachment A: Reorganization Map
- Attachment B: EID Resolution of Application
- Attachment C: 2008 MOU
- Attachment D: Annexation History
- Attachment E: Environmental Impact Report
- Attachment F: Water Supply Assessment
- Attachment G: BOS Property Tax Redistribution (AB-8) Resolution
- Attachment H: LAFCO Draft Resolution L-2012-12