

**Annexation History: Shingle Springs Rancheria Annexation to EID (LAFCO
Project #87-15) aka 1988 Annexation**

1988 Annexation Timeline

The 1988 Shingle Springs Rancheria Annexation proposal involved the annexation of 159.25 acres, APN 319-100-37, into the El Dorado Irrigation District (EID). At the time of the 1988 annexation, the parcel was landlocked and mostly uninhabited. This parcel is located northeast of the Shingle Springs area, north of Highway 50 between the Shingle Springs Road and Greenstone Road off ramps.

According to the application materials and the 1988 LAFCO staff report, the Tribe requested the annexation because the on-site well failed. Also according to these materials, the Tribe contemplated developing the parcel into approximately 40 residential lots over a “slow, long-term process.” No waiver of sovereign immunity was given to LAFCO by either the Tribe or the Bureau of Indian Affairs for the LAFCO proceedings. The April 7, 1988 staff report contained the following findings:

- The “proposal would not contribute to the likelihood of significant growth in the area during the next 10 years”;
- The “annexation will not have a growth inducing impact... and poses no concern with comparable single family residences.”

At the April 7, 1988 meeting, the project was continued “for one month until County Counsel researches the ability of local government agencies to control development on this property.”

At the May 5, 1988 meeting, the project was continued “off calendar on the grounds that the property does not adequately set forth the ultimate ramifications of annexation to the district and unanswered questions concerning future development of the property make it impossible to determine whether the proposal is consistent with the LAFCO guidelines.”

On June 21, 1988, the Tribe’s representative submitted to LAFCO a “Statement of Position,” followed by a Tribal Ordinance on June 22, 1988 detailing the Tribe’s development plans for the parcel, describing the development of the parcel as “compatible with surrounding land uses and the El Dorado general plan.”

At the July 7, 1988 meeting, the minutes state that LAFCO, the County and the Tribe reached “an agreement” and that the motion of approval “represented a good faith agreement between the parties.” 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.

At the hearing, the Tribe’s representative stated two concerns. The first was that “If the circumstances change, the conditions of the [Tribal] ordinance can be changed and wanted LAFCO to be satisfied with the full environmental evaluation process being completed.” Second, “the Tribe does not want additional restrictions. If the [County] general plan designation for that area were to change and allow commercial development, the Tribe would like to be able to change provisions of the ordinance to allow the commercial use.”

On July 20, 1988 the Tribe’s representative sent a letter to LAFCO contending that “it cannot be said... as a factual matter that the Rancheria agreed to each and every one of the conditions imposed by the vote of the Commission. Rather, the conditions reflect the extent to which LAFCO was willing to accomodate (*sic*) the Rancheria based on LAFCO’s concerns.”

The letter was not a request for reconsideration nor was such request subsequently submitted.

There is no record of BIA review and approval of the annexation. Although the 1989 EID Conducting Authority Resolution asserts that it “secured by an instrument in writing dated November 2, 1988” the required consent from the Secretary of the Interior on behalf of the BIA, there is no record that such consent was granted. There is a November 2, 1988 letter from EID to the Bureau of Reclamation (USBR) requesting their approval to serve USBR water on the Rancheria, but it is unknown whether that letter is what the EID resolution references.

2002 Hearings

Led by then-Chairman Charlie Paine, LAFCO held a series of contentious hearings and special meetings in the first half of 2002 that were widely viewed as antagonistic towards the Tribe and the then-proposed casino on the Rancheria. The hearings stopped when Commissioner Paine was removed as LAFCO Chair on June 6, 2002. No discernible action was taken towards resolving the 1988 annexation and its legal questions.

2007-2008 Reorganization Effort

Following the completion and execution of a settlement agreement between the County of El Dorado and the Tribe, in April 2007 LAFCO staff approached EID staff to discuss the available options to address and resolve the legal issues. Of three possible options, the superior alternative that did not involve either a court ruling or the use of a novel process was the reorganization of the Rancheria (detachment with concurrent re-annexation).

After receiving preliminary buy-in from EID management and staff, EID arranged for LAFCO staff to meet with the Tribal Council. Following a June 2007 meeting, all parties appeared to be on board with the reorganization proposal except for one obstacle: Timing. At the time Red Hawk Casino was about 15 months from opening and for construction purposes the additional water needed to be secured within a year, by June 2008 at the latest. The Tribe's stated concern was that the LAFCO process would not be completed in time. The reorganization proposal was modified by adding an out of agency service agreement (OOA), which has a shorter completion time, followed by a reorganization proposal at a later date.

In August 2007 EID staff notified LAFCO not to spend any additional time on this proposal and by September 2007 this agency was notified that the EID Board would not proceed with the reorganization proposal.

No lawsuit was initiated by any party, but LAFCO staff speculates that in the second half of 2007 EID and the Tribe engaged in negotiations on a memorandum of understanding for EID to provide additional water. Once the existence of a draft MOU was revealed, LAFCO staff attempted to persuade the Tribe and EID to return to the negotiating table with the proposal that the MOU could be used as an OOA.

On May 28, 2008, EID adopted the MOU with the Tribe under the determination that the LAFCO conditions are not "legally valid or binding upon EID." At that public hearing, the LAFCO Executive Officer testified in the public comment period that EID did not have the authority under the law to make the determination. In addition, the other legal questions surrounding the annexation's validity were not resolved in the adoption of the MOU.

December 2009 Ruling

EID was sued by Voices for Rural Living following its adoption of the MOU in El Dorado County Superior Court on four grounds. Judge Melikian ruled against EID on two of those grounds: That there was a fair argument that EID did not comply with CEQA when it adopted the MOU and that EID did not have the authority to unilaterally invalidate the LAFCO conditions. Soon afterwards EID contacted LAFCO to discuss the ruling.

In March 2010 the then-chair and vice chair of LAFCO and its staff met with legal representatives from the Tribe and EID to discuss the available options to address the LAFCO conditions. Again various options were discussed with LAFCO advocating for the reorganization proposal as being the superior alternative.

While there was only a tentative agreement on pursuing the reorganization proposal, EID and LAFCO agreed that the immediate focus should be on the environmental review. Beginning in April 2010 until May 2012, LAFCO worked closely with EID and its consultants in the preparation of an environmental review that would satisfy the court order, the needs of the EID-Tribe MOU and the LAFCO process. The EID Board certified the EIR in May 2012.

After additional discussions with EID staff on the preferred approach, the Shingle Springs Rancheria Reorganization proposal was submitted in July 2012.