

Water Supply Agreement for Casino Fails CEQA and LAFCO Tests

In a case packed with hot-button issues -- CEQA exemptions, water supply impacts, climate change, LAFCO regulation of land uses, and preemption of state law on tribal lands -- a court of appeal has ruled that the El Dorado Irrigation District erred in approving an agreement to supply water to a tribal casino. **Background.** In 1987, the irrigation district agreed to supply water to residents of the Shingle Springs Rancheria. The Local Agency Formation Commission approved annexation of the Rancheria into the district, but imposed conditions authorizing the district to provide the water only for residential uses on no more than 40 lots. No one challenged these conditions at the time. Years later the tribe sought an increase in water service to supply a planned casino on the property. The district initially declined the request, citing the LAFCO conditions. After the Department of Interior issued an opinion stating the LAFCO conditions were likely preempted as in conflict with the federally-prescribed use of the land, the district agreed to the tribe's request for more water. Focusing on the only physical improvement needed -- relocation of the water meter -- the district relied on CEQA's categorical exemption for construction or conversion of small structures. Voices for Rural Living sued and won in the superior court. The district then dropped out of the case, leaving the tribe to defend the water supply agreement on appeal. **No exemption from CEQA.** VRL claimed the district's reliance on the categorical exemption was barred under the exception that applies when there is a reasonable possibility the project will have a significant effect on the environment due to "unusual circumstances." The appellate court found the circumstances were clearly unusual. The large amount of water that would be supplied for the casino -- a five-fold increase in the Rancheria's water use -- was dramatically different from the amount of water that would typically be supplied to a project involving "construction or conversion of small structures." The court then considered whether there was evidence in the record showing a possibility that this unusual circumstance would result in significant environmental impacts. First, the court examined the district's Drought Preparedness Plan. The plan's scientific analysis concluded that in the absence of climate change, the plan would allow the district "to deliver the reduced amounts of water it says it can deliver during periods of drought with 100%' reliability." The court concluded, however, that this was not good enough: The plan also concluded that if climate change occurs, there may be times during the life of the plan when the district will be forced to choose between supplying its customers with the water they expect or meeting instream flow requirements, and that, the court found, would be a significant environmental impact. Second, the court ruled that nothing in the record showed the district had considered the effect new instream flow requirements would have on the district's supplies, so it was unclear how much water the district would actually have available to serve the casino. **Annexation conditions cannot be ignored.** Regarding the LAFCO's annexation conditions, the court ruled that the district could not treat these quasi-legislative requirements as void *ab initio* on the theory they are unconstitutional. Instead, before approving the water supply agreement, the district could have petitioned LAFCO to amend the annexation conditions, and had LAFCO refused, challenged that decision in an appropriate action. Because the district did not do so, the writ of mandate ordering the district to comply with the LAFCO conditions was proper. **A unique approach on climate change issues?** The decision is particularly notable because the argument that water supplies could be inadequate was based largely on the potential effects of global climate change. The district failed to grapple with the drought plan's conclusion that future climate change might intensify risks to its water supplies. The court's decision reflects increasing judicial attention to the interplay of climate change issues and CEQA and the need to adequately address questions raised about the effects of climate change. [Voices for Rural Living v. El Dorado Irrigation District, C064280, 3rd Dist. \(Oct. 4, 2012\), 2012 WL 4712900.](#)

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