Grand jury questions EDC-tribe finances

By Joann Eisenbrandt

In September 2006, El Dorado County and the Shingle Springs Band of Miwok Indians signed a memorandum of understanding that ended the county's two lawsuits that had delayed construction of the tribe's Red Hawk Casino. The casino opened in 2008.

The 2016-17 El Dorado County Grand Jury responded to concerns raised by county residents about how well El Dorado County has administered the terms of this agreement. The MOU was later amended in 2012 and again in June 2017.

"None of the reports submitted by the tribe provide any detail about the increased expenses associated with caring for non-Indian residents of the county as required by

the 2012 amendment." – *2016-17 El Dorado County Grand Jury Report*

El Dorado County Chief Administrative Officer Don Ashton was asked by *Lake Tahoe News* to describe the current relationship between the county and the tribe. "The relationship between the county and the tribe right now is very good," he said. "There is open dialogue, so that is all positive. They have the right to do the things on their land that they choose to, but they try to work with the county as much as possible."

AmyAnn Taylor, attorney general for the Shingle Springs Band of Miwok Indians, handles government affairs for the tribe and is the contact person with the county for the MOU. She agrees with Ashton, "Over the years, the relationship between the Shingle Springs Band of Miwok Indians and the county has become more collaborative as we both look for opportunities to partner."

The relationship between the county and the tribe began quite differently.

Early opposition to the casino

In a position statement in April 2003, the El Dorado County Board of Supervisors declared, "Many county residents have expressed to us the reasons why they feel that this huge proposed casino in Shingle Springs would be a disaster for the county. The board has heard and understands these concerns, and is adamantly opposed to the building of a casino that will degrade the quality of life in El Dorado County in so many ways."

They called it a "planning nightmare," adding, "No rational

planner and no sensible public official would ever approve a commercial project of this magnitude in an area zoned for rural residences …. Anyone who believes that casinos make good neighbors is sadly misinformed."

The county subsequently filed two lawsuits to stop construction of the casino. One challenged the state's environmental analysis regarding impacts of the interchange to be constructed on Highway 50. The tribe's Rancheria was landlocked and needed this interchange in order to construct the casino. The second lawsuit challenged the official federal recognition of the tribe by the Bureau of Indian Affairs (BIA).

Opposition ends, funding begins

In September 2006, the county dropped both lawsuits in return for payments from the tribe to mitigate the expected impacts of the casino on area residents. The original MOU was drawn up. The county stipulated that the tribe was a legitimate, federally-recognized tribe entitled to have a gaming facility on its rancheria, which was "Indian lands." Lands like this are held in trust by the federal government for the tribe and are not subject to local or state environmental or land-use planning regulations or to property and sales taxes.

The tribe agreed to fund a 5.3-mile portion of a proposed high occupancy vehicle lane on Highway 50 from South Shingle Road/Ponderosa Road to El Dorado Boulevard. It would also pay the county $500,000 annually for law enforcement, agree to collect sales and hotel taxes similar to that being charged by non-Indian businesses in the county, and pay an additional $500,000 annually for 20 years or the life of its gaming compact with the state in recognition of the fact that the casino is not subject to the same taxes as other El Dorado County businesses. It would pay an additional $100,000 for every 100 slot machines it added over the 2,000 limit in its current state compact.



“They have the right to do the things on their land that they choose to, but they try to work with the county as much as possible.” *– CAO Don Ashton*

Amendments change the MOU

The impacts of the casino on Highway 50 had been less than expected the 2012 amendment said, and other funding had been found to construct the HOV lane. In place of paying for the HOV lane, the tribe agreed to give the county $5.2 million annually to be used for “qualifying public improvements,” including but not limited to road improvements or maintenance within the boundaries of a map drawn outward from the rancheria. The boundaries extended south from the rancheria just below Highway 50 in Cameron Park, and north to include the Missouri Flat area and just above.

The county agreed to give the tribe $2.6 million annually for its health clinic “in consideration of the increased expenses to the tribe’s health program for caring for non-Indian citizens of the county ….” The tribe was required to submit a detailed annual report showing how these funds were spent.

Uses of tribal funds are expanded

At its June 6, 2017, meeting the Board of Supervisors approved

a second amendment to the MOU. It removed all geographical restrictions on where the "qualifying public improvements" money could be spent within the county. It says, "The parties recognize that spending flexibility will enable the county to utilize the MOU funds in a more effective and efficient manner which will benefit both parties." The 2016-17 grand jury report came out before the 2017 amendment to the MOU so it is not referenced in the report.

Concerns have been expressed by residents with property near the casino that the impacts to those living in this area need to be more fully mitigated before money from the tribe is spent elsewhere. County resident Lori Parlin has been actively involved with this issue. She has discussed additional mitigations for impacts in the area around the casino with Ashton. At the June 6 board meeting she told county supervisors, "… the expectations (of residents near the casino) have not been met. A fraction of the money (the tribe gives the county) should be spent to help local residents. That's what the intent of this money was originally." Ashton was the negotiator for the county with the tribe for the second amendment.

Where should the money be spent?

"We have a board policy that they have as much flexibility over spending money as possible, and the map from the 2012 MOU Amendment did not allow for this," Ashton told *Lake Tahoe News*. The board can use the money from the tribe, he added, as it sees fit. Right now, as in many California counties, roads are the priority. Raising the sales tax to fund road improvements, Ashton noted, is most likely not a viable option. "(The tribe) gives us over $7 million each year and I can't give up that $7 million. It is important to the county."

According to Ashton, the roads in the area defined by the MOU map drawn in 2012 have an overall pavement condition index (PCI) of 70, while those in other areas of the county are at

60. Roads in the Tahoe basin can be as low as 40. The PCI is a numerical scale from 0 to100 that identifies the condition of roadways; 0 is worst, 100 is best. “Nobody would dispute,” Ashton said, “that road maintenance is a qualifying public improvement.” Because qualifying public improvements are not well defined in the MOU, “it leaves a lot open to interpretation.”

It remains difficult for some to accept that using money from the tribe to fix roads in Tahoe, miles away from the casino, is an appropriate use of those funds. Ashton said there is $3 million in the current year budget for road maintenance in the Tahoe basin. “The casino has drawn many visitors away from Tahoe,” he explains. “The revenue that they lost could have been used to fix the roads in Tahoe.” District 5 Supervisor Sue Novasel, who represents the Tahoe area, agrees. She strongly favored the second amendment to the MOU. “Because the casino was built down here, it has had a terrible financial impact on the South Shore of the lake.”

A failure in administration

The 2016-17 grand jury’s concerns are only with the county’s failure to properly administer the 2012 MOU amendment. Its report notes the county did not designate a point of contact for administration of the amended document and it did not keep a centralized file for it. Their investigation showed that the board had been relying on the county’s CAO to deal with matters related to the agreement. The board itself had limited knowledge of the terms of the agreement and the turnover rate for CAOs in the county had been high. This made it difficult to ensure compliance with the MOU. Ashton became county CAO in May 2016. He told *Lake Tahoe News* that there was no central file before he assumed the position, but that he has since created one. He found it difficult to find anyone who had been involved in the creation of the original 2006 MOU. “I started from the hand that was dealt to me.” Ashton is the county’s contact with the tribe regarding administration of the MOU.

The amendment's terms

Under the MOU, the county is to audit the number of gaming machines at Red Hawk Casino to see if there are more than 2,000, but no audits have been done. The grand jury interviewed county officials and found they, "… had no knowledge of any monitoring of the number of machines. There is no process or oversight in place that follows up on annual changes in machine count." The tribe did pay the county twice for extra gaming machines—$100,000 in February 2014 and $300,000 in December 2015. Ashton confirmed that the county had not performed any prior audits of gaming machines at Red Hawk Casino.

The latest amendment to the tribe's compact with the state allows for up to 4,000 gaming devices after June 30, 2020. If Red Hawk Casino reached this number of machines, it would mean an additional $2 million for the county. The casino currently has approximately 2,100 gaming machines.

Show us the money

The tribe is to report annually on how it has used the $2.6 million from the county. The grand jury said the tribe's one-page reports "have been inconsistent and lacking in detail. The use of these funds needs to be in compliance with the intent of the amended agreement; it is difficult to ascertain the use based on the limited reports provided."

Several of the tribe's reports said the funds were applied to "the general operating budget for the Shingle Springs Health and Wellness Center." Page 21 of the grand jury report entitled, "Shingle Springs Band of Miwok Indians (Governmental Activities and Funds)" does contain what appear to be financial figures, but they have all been redacted. The grand jury report states that no one at the county "could explain exactly what the above provision meant or how it was to be implemented."

The bigger issue the grand jury addressed was whether “the payment may not be justified in terms of direct dollar benefits for the increased expenses associated with caring for non-Indian citizens of the county.” It noted that the tribe had been serving both Indian and non-Indian communities since 1995 and that their health clinics get a significantly higher reimbursement rate for Medi-Cal and Medicare patients than some other county health care providers do. In its findings, the grand jury noted, “None of the reports submitted by the tribe provide any detail about the increased expenses associated with caring for non-Indian residents of the county as required by the 2012 amendment.” It recommended the county adopt a policy requiring the tribe to provide a detailed report of the use of the county’s “qualifying healthcare contributions.”



“However, we have a government-to-government relationship that respects the sovereignty of each body to spend the funds as needed.” — *AmyAnn Taylor, Miwok tribe*

Not a new concern

In March 2015, Parlin had sent a letter to county Auditor-Controller Joe Harn requesting that he “perform an audit of

the $2,600,000 that El Dorado County donates annually to the Shingle Springs Band of Miwok Indians for qualifying healthcare contributions ….”

She noted, “The letters (provided by the tribe) do not meet any standards of a detailed summary of expenditures, and do not give the county of El Dorado taxpayers enough information to assess whether the $2,600,000 is a worthwhile investment of county funds.” Parlin told *Lake Tahoe News* that her request “fell on deaf ears.”

At the August 15, 2015, board meeting, Parlin brought up the issue again and asked the board if the county had received a detailed summary in July from the tribe and if the county had sent the tribe a check. “I would like to ask that the payment be withheld until we receive a detailed summary of expenditures.”

A detailed financial audit would give dollar figures for the tribal health clinic’s “unreimbursed expenses” from the treatment of non-Indian patients. Unreimbursed expenses are those not covered by any payment sources. These payment sources include Medi-Cal – California’s expanded version of Medicaid –, Medicare, private insurance, a sliding fee scale, straight charity and grants. Critics of the county’s payment to the tribe want the board to require the tribe to provide the clinic’s actual income and expense amounts.

Harn told *Lake Tahoe News*, “As for the public demands that I perform an audit of the Shingle Springs Health & Wellness Center (clinic), I do not have the authority to perform an audit of the clinic … or IBM or Burger King.” He added that the clinic is audited each year by their independent auditors. “Tribal Administrator Ernest Vargas has shared portions of the clinic’s (independent) audit with us,” Harn said. “The reports indicate that the tribe expends more than $2.6 (million) on the clinic each year.”

El Dorado Community Health Centers (EDCHC) also expressed reservations about the $2.6 million payment to the tribe. In a letter to the board in February 2016, the agency commended the county for its commitment "to support healthcare for county residents," but had issues, "surrounding the manner in which these county funds are being used." They requested an independent audit of the county's financial contributions to the tribe's health clinic.

They referenced a Nov. 7, 2012, report from then-County Counsel Ed Knapp to the board supporting the 2012 amendment. That report said the tribe's new facility was, "the only medical facility in the area which serves indigent and Medi-Cal patients." EDCHC board treasurer Stan Stailey told *LTN* that the county should have known this was incorrect. It was El Dorado County that provided the $300,000 start-up loan to the El Dorado Community Health Center in 2003 from state tobacco funds. It was intended to help take the burden off the ER at Marshall Hospital for the treatment of indigent and Medi-Cal patients. EDCHC currently operates four health facilities in the county.

Stailey said they did not receive a response to their 2016 request for an audit. He also believes that recent conversations with Ashton and members of the Board of Supervisors have not adequately addressed his health care organization's concerns. Ashton said that even though "the spirit of the MOU is open to interpretation, we have to live by what the MOU amendments say now." The MOU itself, Ashton added, does not require the level of financial detail that some are demanding.

The tribe's view

AmyAnn Taylor explains, "Non-Indians have access to all of the services available to Indians at the Shingle Springs Health & Wellness Center. Since 1996, we have had an increase of 1,134 percent of non-Indian patients, some of which is due to

increased capacity.” She indicated that 75 percent of the patients at their clinic are currently non-Indians.

With regard to the tribe’s annual reports, Taylor added, “The tribe has worked with the county to be more specific. However, we have a government-to-government relationship that respects the sovereignty of each body to spend the funds as needed. The tribe doesn’t ask El Dorado County for information on how the county uses money provided by the tribe.” Asked if the tribe plans on providing more detailed reports on the use of the $2.6 million in the future, she said, “The tribe’s reports will be similar to the one provided this year.” County CAO Ashton said that the county has kept an accounting of how the money is being spent but the tribe has never asked for one.

The path forward

Whether or not the county will follow the grand jury’s recommendation and require more detailed financial accountings from the tribe or look to make any further modifications to the MOU is something Ashton could not answer now. He confirmed that the county is still in the process of preparing its formal responses to the grand jury report. These are due in August and will provide detailed answers to the issues raised by the grand jury.

Both Ashton and Harn agree the county has made mistakes since the MOU with the tribe was first signed in 2006. They believe the relationship between the tribe and the county is now on solid footing. “The tribe’s enormously positive economic impact on the county is indisputable,” Harn stated. “If there was poor communication between the county and the tribe in the past, that was 100 percent the county’s fault. We had the wrong individuals in the CAO’s office.”

Some remain skeptical. “I was pleased to see the grand jury make the same recommendations I had asked for years earlier,” Lori Parlin said. “I am happy that I am not the only one who

has remained concerned.” The county’s response to the grand jury report next month should give more insights into where the relationship between El Dorado County and the Shingle Springs Band of Miwok Indians goes from here.