



Sept. 8, 2004 - County wins 2nd casino court ruling

By NOEL STACK Staff writer

It's back to square one for the California Department of Transportation to prove the interchange project leading to the Shingle Springs Rancheria will comply with state ozone standards. Construction of the interchange depends on the project's compliance.

Sacramento Superior Court Judge Lloyd G. Connelly rejected Caltrans' arguments that it cannot do any more analysis than what has already been done to prove the interchange project, which will ultimately lead to a casino-hotel complex, will not run afoul of state standards.

"No analysis is provided ... that would inform respondents or interested members of the public about the impact of interchange operations on the attainment of the state standard to the extent it is more stringent than the federal standard," Connelly wrote in his ruling released Tuesday. "Indeed, the absence of such analysis implies that the interchange operations would not permit attainment of the state standard without additional control measures."

Supervisor Rusty Dupray, who also serves as board chairman this year, said he was happy with the judge's ruling. The project would bring in more traffic and contribute to air pollution, he added.

"My No. 1 hope is the casino is never built," Dupray said. "If that's not possible, my No. 2 goal would be that if it is built, it's built with major, major mitigation factors."

If the interchange is built, followed by the casino and hotel, an estimated 10,000 to 15,000 extra car trips a day will travel on Highway 50.

Nick Fonseca, tribal chairman of the Shingle Springs Band of Miwok, did not return telephone messages seeking comment left at his office Tuesday. After the Aug. 20 hearing, Fonseca told the Mountain Democrat the ruling was hard to predict.

The legal battle with Caltrans began in December 2002 when the California Transportation Commission approved the interchange project based on an environmental report prepared by Caltrans that stated the project would have no significant environmental impact.

With the kind of traffic generation that was projected, El Dorado County argued that the entire project will have negative impacts on the air quality and environment. El Dorado County is already part of a non-attainment zone for air quality.

Caltrans attorneys argued last month that because the interchange project doesn't violate federal standards, which are less strict, the project can achieve state ozone standards. Furthermore, attorney Michael Zischke said, Caltrans is not the agency that should answer questions posed because it's a transportation agency, not an agency focused on air quality.

Zischke did not return a telephone message left at his San Francisco office Tuesday morning.

Prior to the August hearing, Chief Assistant County Counsel Ed Knapp called the transportation agency's arguments a "fraud and a scam," adding that the only purpose of not doing the analysis is to save casino backers, Lakes Entertainment Inc., time and money. In a press release issued Tuesday, Knapp stated that Caltrans should abandon its current approach to getting the interchange project approved.

"We continue to be amazed why Caltrans would pursue a course of action which does nothing but save the out-of-

state casino backers millions of dollars and makes the air that we all breath in the county worse," Knapp said in a telephone interview. "It's time for Caltrans to start working for us for a change."

Knapp wrote in his press release that the state agency has two good options in front of it right now. Caltrans can either abandon the project or perform a legitimate analysis of the true air impacts, he wrote. Once the true impacts are identified, Knapp continued, the cost of mitigation would be passed on to the casino backers, not the state.

Connelly also noted in his ruling that Caltrans' argument, which states that it lacks the jurisdiction to determine if a project meets state ozone standards, is problematic because it "may improperly constrict (California Environmental Quality Act) requirements for full disclosure of the environmental impacts of projects to the extent feasible."

Declarations included in Caltrans earlier argument do not adequately address why no methodology exists to analyze the impacts of a project on attainment of state ozone standards, Connelly continued.

"Only when such methodological issues are fully explored can there be a determination of whether it is technically feasible to analyze the impact of interchange operations on attainment of state ozone standards," the judge wrote. "Only then can there be a determination of whether (Caltrans) air quality impact analysis in the (environmental impact report) for the interchange is as complete as reasonably feasible and represents a good faith effort."

Leslie Case with Caltrans' Public Information Office said the department will review the ruling.

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