

## ***“The Suspension”*** **Redding Rancheria Fee-to-Trust and Casino Project**

### ***A Follow-up to “The Double Dip” Independent Research Project***

*Written by Mary B. Machado*

On July 18, 2019, Shasta VOICES published “The Double Dip” research paper detailing the controversy surrounding the Redding Rancheria Tribe’s Fee-to-Trust and Casino Project application to the Bureau of Indian Affairs (BIA). The full report can be accessed at [shastavoices.com/studies.html](http://shastavoices.com/studies.html). In summary, the proposed Casino Project would **transfer** 232 acres of agricultural lands and lands within the 100-year floodplain of the Sacramento River **from fee to federal trust status** to facilitate the construction of a proposed 69,541 square foot casino, a nine-story 250-room hotel, conference center and 1,800 seat outdoor amphitheater, restaurants, a 130,000 square foot retail store, and parking for over 2,500 vehicles.

Much (but certainly not all) of the controversy exists due to the fact that trust lands are essentially immune to state and local taxation, and exempt from eminent domain. Trust land is considered “Indian Country” under federal law. Both the City of Redding and Shasta County will experience significant impacts to public services if this application is approved because there will be no sales or property taxes paid by the Tribe towards the provision of those public services for the Indian Country. Given the Rancheria project envisions a hotel and substantial retail development that would not be subject to state and local taxes paid by typical businesses in Redding, it places those local hotels and retailers at a severe disadvantage

On April 5, 2019, a Draft Environmental Impact Statement (DEIS) was issued for the proposed project (as required) by the Bureau of Indian Affairs (BIA). One public hearing to receive comments on the DEIS was held on May 20, 2019. The extended comment period ended on June 17, 2019. Both the City of Redding and Shasta County officials submitted lengthy letters outlining many concerns during this time. Once all the public comments are reviewed, the BIA is charged with issuing a **final environmental impact statement**, to be followed by a **record of decision on the application**. There is no timeline for a decision.

Ultimately, the Redding City Council sent a formal letter of opposition to the project on August 20, 2019. The Shasta County Board of Supervisors also sent a formal letter of opposition on October 1, 2019. Before and during the DEIS process, the project also faced unanimous opposition by many local citizens and community groups, including:

- Bonnyview Bechelli Coalition
- Churn Creek Bottom Homeowners and Friends (200 people)
- Concerned Neighbors (56 people and/or business owners)
- Shasta County Residents for Positive Community Development
- Speak Up Shasta (over 6,500 people)

It has now been *one year* since the public hearing. The community is still waiting for an answer from the BIA. What is the status of this project? Instead of answers, however, some conflicting statements were announced in May 2020. What follows is the most recent information available on this proposed project.

### **Redding Rancheria Tribe Press Release**

On May 5, 2020, an official statement was issued by the Tribe as follows: “The Redding Rancheria has asked the Bureau of Indian Affairs to put a review of a proposed casino along I-5 *on hold after concerns were raised by county and local officials.*” Mike Hollowell, Tribal Attorney for the Redding Rancheria, confirmed the request Wednesday, May 6, 2020, according to the local news media.

In a follow-up statement provided to the local news media, Redding Rancheria officials said "Redding Rancheria has requested that the Bureau of Indian Affairs *pause* the environmental review process for the I-5 casino relocation project. We believe that the City and County’s opposition to the project has caused concern among federal decision-makers within the Trump administration and *may prove insurmountable.* Redding Rancheria regrets that this opposition will postpone many job opportunities and other economic benefits that the project would have otherwise provided our local community. We will continue to try to work with our local leaders as we monitor the long-term plan for the I-5 casino relocation project."

### **Official Notice of Suspension**

On May 14, 2020, the Department of the Interior, Bureau of Indian Affairs (BIA) published an official “*Notice of Suspension* of Preparation of Environmental Impact Statement” for the proposed Redding Rancheria Fee-to-Trust and Casino Project in the Federal Register as follows:

“SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA) is suspending preparation of an environmental impact statement (EIS) for the Redding Rancheria’s (Tribe’s) application requesting that the United States acquire land in trust in Shasta County for the construction and operation of a casino resort.”

“SUPPLEMENTARY INFORMATION: By letter dated February 21, 2020, the Redding Rancheria Tribe notified the Department of the Interior that it would await a decision from California Supreme Court in a case arising under State law and involving Indian Game Regulatory Act, 25 U.S.C. 2719 *et.seq.*, before the Tribe decided how to proceed on its application. Therefore, the Department is suspending its review of the Tribe’s application and preparation of the EIS. Since the Tribe’s request involves action by the California Supreme Court, the Department does not have a definite time frame for how long the suspension will last; however, the Department will provide notice when it resumes the environmental review process.”

### **Conflicting Information**

It remains unclear why the two statements (by the BIA and by Redding Rancheria Tribe) are not the same. Therefore, we have conducted additional research to try and understand why the “suspension” from the BIA, and why the “pause” from the Tribe. We researched the California Supreme Court case (Indian Game Regulatory Act, 25 U.S.C. 2719 *et.seq* referenced in the BIA’s Federal Register official notice detailed above) to learn more about why this case is pertinent to the Tribe’s application, and share what we have learned.

We did find more than one California Supreme Court case regarding the Indian Game Regulatory Act (IGRA), each referencing (at least in part) 25 U.S.C. 2719. That section of the IGRA provides limited conditions for BIA to take lands into trust for the purpose of gaming for tribes recognized after 1988. Two of these conditions are the “Restored Lands Exception” and the “Two-Part Determination.”

The two California Supreme Court cases we found are challenging California’s regulations that implement the state’s role in the Two-Part Determination process. Because the Redding Rancheria’s project is pursuing the Restored Lands Exception (and not the Two-Part Determination), we found it initially odd that BIA is citing these court cases as a reason to suspend the current application. However, in reading some of the public comments submitted during the Draft EIS review, it seems possible that BIA may believe this casino application should be considered under the Two-Part Determination instead of the Restored Land Exception.

### **Restored Lands Exception**

The Redding Rancheria’s fee-to-trust application was trying to utilize the “**Restored Lands Exception**” which provides BIA the authority to take lands into trust for gaming purposes if it’s part of “the restoration of the lands for an Indian tribe that is restored to Federal recognition” (25 U.S.C.S § 2719(b)(1)(B)(iii)). This exception does **not** require approval by the governor or community considerations.

BIA’s regulations further provide that lands can be taken into trust under this exception if “...the tribe **is not** gaming on other lands.” 25 C.F.R. § 292.12(c)(2) (emphasis added). The plain language of the regulations appears to indicate that if the tribe **is** gaming on other lands, it does not qualify for IGRA’s “Restored Lands Exception.” The issue was raised in comment letters to BIA with one commenter concluding “the Redding Rancheria cannot make use of the “restored lands” exception to circumvent IGRA’s standard two-part determination because it **is** gaming on other lands” with their current Win-River location.

## **Two-Part Determination**

If the Tribe wants to obtain additional benefits from the options provided by the Indian Gaming Regulatory Act (IGRA) to expand gaming operations, it must use the same process that the other tribes are required to follow – the ***full and complete consideration*** of state, local, and tribal interests, along with the Redding Rancheria itself. This is referred to as a “Two Part Determination” and requires approval from California officials and the Federal government.

Relevant to the pending cases, land taken into trust after October 17, 1988, which is not otherwise permitted to be used for gaming by the IGRA, may be converted to such use if “the Secretary (of the Interior), after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, ***determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community***, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary’s determination.” (25 U.S.C.S. § 2719(b)(1)(A).)

Local government leaders and cooperating agencies, along with surrounding Indian tribes, all submitted detailed documents stating ***how detrimental a gaming establishment would be to the surrounding community***.

Therefore, the pending Supreme Court cases based on the “Two-Part Determination” that the Redding Rancheria was hoping to avoid using, appears to be a legitimate reason for the Tribe to “pause” their pending application and review. This “pause” would make sense if the BIA were asking them to revise their application using the “Two-Part Determination” instead of the “Restored Lands Exception.”

The bigger question is why the Tribe’s statements indicate a different reason. They have openly acknowledged that they have issues with the current administration and the current local leadership.

## **Hidden Fee-to-Trust Applications**

Additional information has surfaced that might explain some of the Tribe’s concerns with local leadership. On April 4, 2020, the United States Department of the Interior provided a quarterly report to the Redding Rancheria Tribe stating a list of their pending “Discretionary Fee-to-Trust Applications.” Included on that list, in addition to the 230-acre Strawberry Fields property, is the 13.29 acre “***Mini Mart/Hilton Property***,” which is located at 5050 Bechelli Lane, in the City of Redding. These businesses have been paying the required property tax, sales tax, and TOT tax since they were built (in 2004), as would any other business that was granted the appropriate permits necessary for approval to build and/or operate businesses in the City and County. The Tribe ***didn’t notify the City or County*** of the Fee-to-Trust application for these properties. If the application were to be approved, these lands move into Federal ownership to be held in trust for the Redding Rancheria. If that occurs, the City and County would lose all local sales tax and property tax paid by the Tribe for these properties, and the City would

additionally lose TOT tax paid by the Hilton Property. In total, many hundreds of thousands of dollars each year that go towards the provision of public services would be lost, despite the fact that the Tribe agreed to pay these taxes in order to construct and operate these businesses in Redding.

It is difficult to understand how this bad-faith effort to put this property in fee-to-federal trust status, which provides exemption from state and local taxation, would instill any trust that the Tribe would adhere to any agreements made with local governments if the proposed Casino Project were to move forward, regardless of the statement that the Tribe “will try to work with our local leaders as we monitor the long-term plan for the I-5 casino relocation project.”

### **Conclusion**

At this moment in time, the “suspension” and “pause” of the EIS process *directly relates* to the very section of the Indian Gaming Regulatory Act (25 U.S.C.S. § 2719(b)(1)(A) that calls into question the use of the “Restored Lands Exception” process. It also relates to the more appropriate path for expanded gaming, which is a “Two Part Determination” process, which would require California officials as well as the Federal government to concur. That process would require the Redding Rancheria Tribe to refile a new application, should they choose to continue.

In the Redding Rancheria Tribe’s follow-up to the initial press release dated May 5, 2020, the statement “We believe that the *City and County’s opposition* to the project has caused concern among federal decision-makers within the Trump administration and *may prove insurmountable*” seems to answer the question as to why the Tribe opted to “pause” their application at this time.

It *does actually matter* if local government leaders, cooperating agencies, and the community they represent determine that a gaming establishment *would be detrimental* to the surrounding community. The BIA knows it, and now the Redding Rancheria Tribe knows it.

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