



## Legislation Text

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**File #:** 2021-0189, **Version:** 1

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**To:** Board of Supervisors

**Department or Agency Name(s):** County Administrator's Office, County Counsel

**Staff Name and Phone Number:** Marissa Montenegro 565-3771, Holly Rickett 565-3739

**Vote Requirement:** Majority

**Supervisorial District(s):** Fourth

**Title:**

Third Amendment to the 2008 Memorandum of Agreement with the Dry Creek Rancheria Band of Pomo Indians

**Recommended Action:**

Authorize Chair to Execute Third Amendment to the 2008 Memorandum of Agreement with Dry Creek Band of Pomo Indians to address annual mitigation payments due to the County in 2020 and 2021 and to extend the term of the Agreement from December 31, 2030 to December 31, 2032. (Fourth District)

**Executive Summary:**

This item is to amend the 2008 Memorandum of Agreement (MOA) with the Dry Creek Band of Pomo Indians (Tribe) by waiving the annual mitigation payment of \$750,000 due to the County in 2020 and 2021 and extending the term of the MOA from December 31, 2030 to December 31, 2032. The proposed third amendment to the MOA addresses alleged fiscal impacts to the Tribe associated with the voluntary shutdown of the River Rock Casino from two and one half months in support of the County's stay-at-home order to mitigate the spread of COVID-19. The Tribe's position is that these facts invoke the Force majeure provision of the MOA and have requested the waiver of two years of the annual mitigation payments based on this provision.

**Discussion:**

The Tribe is a federally-recognized Indian Tribe located on federal trust lands known as the Dry Creek Rancheria (Rancheria). The Tribe operates a class III casino on the Rancheria, known as the River Rock Casino (Casino). In addition to the Rancheria, the Tribe also owns non-trust properties including land in Petaluma (Petaluma property) and Geyserville (Bellacana property).

The County entered into an MOA with the Tribe in 2008, where the Tribe agreed to pay the County \$75 million over the course of the 12 year MOA. Annual payments were set at \$3.5 million, with a balloon payment due at the end of 2020 for whatever the remaining balance of the \$75 million would be at that time. The MOA also includes other provisions related to mitigation development, and general government-to-government relations.

In 2013, the Tribe initiated a "reopener" of the MOA, because it was experiencing a decline in business due to the recession, and anticipating further revenue declines upon the opening of the Graton Resort and Casino in fall 2013. In 2015, your Board approved a First Amendment to the MOA, extending the agreement from 2020 to 2030,

reducing the missed payments due from \$7 million to \$4.2 million, reducing the annual mitigation payment from \$3.5 million to a baseline amount of \$750,000. Other provisions were also included in the amendment, covering limitations on gaming, a moratorium on gaming fee to trust applications and agreement to seek to negotiate an amended and restated MOA to incorporate past, present and future modifications into a unified document. A second amendment to the MOA in October 2017, and 3 other letters have also changed the terms of the MOA.

On March 2, 2020, the County's Health Officer issued a Declaration of local health emergency for the County, declaring that the potential outbreak of a respiratory illness due to novel coronavirus (COVID-19) in the County is a threat to the public health. On March 4, 2020 California Governor Newsom proclaimed a State of Emergency for the State of California. On March 17, 2020, the Sonoma County Health Officer issued a Health Order directing residents to shelter in place and on March 19, 2020, Governor Newsom issued Executive Order N-33-20 ordering all California residents to stay home.

In response to the State and local emergency, the Tribe made the decision to close the Casino to the public on March 17, 2020 in order to protect the health and safety of the Casino Tribe members, employees, guests, and the public. The Tribe re-opened the Casino to the public on June 29, 2020.

On March 24, 2020 the Tribe proposed that the MOA be amended again to allow for a waiver of the Tribe's Annual Payment for a year and also an extension of the MOA for one year so the Tribe could make the waived Annual Payment at that later date. This request was withdrawn by the Tribe on April 7, 2020.

On August 10, 2020 the Tribe formally invoked the Force majeure provision of the MOA (Section 26.1) and requested the County for a waiver of any payment to the County pursuant to the MOA for five (5) years. The Tribe stated the reason for this extended waiver request was due to the impacts of COVID-19 on the Casino revenues. During that five year period the Tribe stated they would move forward with restructuring the Casino financing and agree to negotiate with the County for a re-opener of the MOA.

In November 2020 the BOS reviewed the Tribe's August 10 request in Closed Session and decided not to waive the Tribe's Annual Payments for five years, but did agree to waive the Annual Payment for years 2020 and 2021 and extend the Existing MOA terms by two years.

On November 23, 2020 the Board proposed a formal amendment to the MOA with those terms and agreed to enter into negotiations for a re-opener of the MOA. The Tribe accepted the County's proposal on February 10, 2021.

Staff have worked with the Tribe to produce the proposed third amendment to the MOA that takes into account the financial impacts of the County and State shutdown and a mutually acceptable path toward fulfillment of the MOA. Staff recommend your Board authorize the Chair to execute the amendment, which was negotiated in good faith with the Tribe, and which will be the third amendment to the 2008 MOA.

**Prior Board Actions:**

October 24, 2017 - Board approved Second Amendment to Memorandum of Agreement with the Dry Creek Rancheria Band of Pomo Indians to Address Events, Noise Mitigation, and Notice to Sheriff.

September 22, 2015 - Board approved [first] Amendment to Memorandum of Agreement with Dry Creek

Rancheria

March 18, 2008 - Board approved Memorandum of Agreement with Dry Creek Rancheria

**FISCAL SUMMARY**

<b>Expenditures</b>	<b>FY 20-21 Adopted</b>	<b>FY21-22 Projected</b>	<b>FY 22-23 Projected</b>
Budgeted Expenses			
Additional Appropriation Requested			
<b>Total Expenditures</b>			
<b>Funding Sources</b>			
General Fund/WA GF			
State/Federal			
Fees/Other	(750,000)	(750,000)	
Use of Fund Balance			
Contingencies			
<b>Total Sources</b>	<b>(750,000)</b>	<b>(750,000)</b>	

**Narrative Explanation of Fiscal Impacts:**

There is no adjustment to expected expenditures as the result of this agreement. Due to the previous amended agreement, tribal revenues do not meet costs associated with mitigation. Tribal mitigation funds are transferred annually to the General Fund to partially offset costs associated with the mitigation, while direct work on tribal relations is paid from the fund directly. Budgeted expenditures for direct tribal relations will be paid from fund balance in FY 20-21 and FY 21-22. The Tribal Mitigation Fund has an available fund balance of \$483,601. In addition, as needed mitigation such as enhanced law enforcement and increased road cleanup will continue to be funded, but without revenue from the tribe this will need to be fully covered by the General Fund.

<b>Staffing Impacts:</b>			
<b>Position Title (Payroll Classification)</b>	<b>Monthly Salary Range (A-I Step)</b>	<b>Additions (Number)</b>	<b>Deletions (Number)</b>

**Narrative Explanation of Staffing Impacts (If Required):**

None

**Attachments:**

Third Amendment to 2008 MOA

**Related Items "On File" with the Clerk of the Board:**

n/a