

**FILED**

APR 10 1998

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY                     

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHINGLE SPRINGS RANCHERIA,

Plaintiff,

v.

GRASSY RUN COMMUNITY SERVICES  
DISTRICT, a public entity; et  
al.,

Defendants

Civ. S-96-1414-DFL

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER

The Grassy Run Community Services District and the allied intervenors (collectively the "District") seek a civil contempt citation from the court as to the Shingle Springs Rancheria, Shingle Springs Band of Miwok Indians, (collectively the

1 "Rancheria") and Richard L. Moody, an employee of the Rancheria.  
2 In addition, the District seeks a contempt citation as to Loring  
3 Brunius d/b/a Sierra Rock (collectively "Sierra Rock"). The  
4 court held an evidentiary hearing on April 3, 1998, and heard  
5 oral argument on April 8, 1998.

6 The court issued a preliminary injunction on December 9,  
7 1997, limiting use of the District's roads. The injunction  
8 implements an earlier order of the Court finding that the  
9 District's roads are private.

10 The facts are not much in dispute. There are two areas of  
11 dispute that must be resolved. First, there is a question as to  
12 whether the purpose of the road building undertaken by the  
13 Rancheria on an adjoining parcel was a commercial purpose. The  
14 court finds that the predominant purpose of the Rancheria in  
15 seeking to establish a second access road was to further its goal  
16 of opening a gambling casino on the Rancheria. Second, there is  
17 some dispute as to whether Mr. Moody urged the Sierra Rock truck  
18 driver to deliver a third load on December 10. According to Mr.  
19 Moody he was surprised and upset by the second delivery of road  
20 base because it was after 2:30 p.m. However, in light of the  
21 credible testimony of the truck driver, Mr. McCoy, who has not  
22 been involved in the continuing conflict between the District and  
23 the Rancheria, the court finds that Mr. Moody did urge a third  
24 delivery on that day knowing that the delivery would be in  
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1 violation of the preliminary injunction and further that Mr.  
2 Moody did not chastise the truck driver for the late second  
3 delivery. Shortly after requesting the third delivery, however,  
4 Mr. Moody retracted the request and telephoned Sierra Rock to  
5 call off the third load.

6 The court finds that on December 10 and 11, 1997, the  
7 preliminary injunction was violated by the Rancheria, Mr. Moody  
8 and Sierra Rock. All of the three deliveries of road base  
9 violated the court's order because the order prohibits use of the  
10 District's roads except for noncommercial, residential purposes.  
11 The order permits access for "entities delivering goods and  
12 services to Rancheria residents for their personal and non-  
13 commercial use only." This section of the preliminary injunction  
14 does not apply to the rock deliveries here since a purpose-  
15 -certainly the principal, if not the only, purpose--of those  
16 deliveries was to build a road for the development of the casino.  
17 These road base deliveries cannot fairly be described as for the  
18 "personal and non-commercial use only" of Rancheria residents.  
19 Further, the second delivery was also after 2:30 in the afternoon  
20 which constituted a distinct violation of the terms of the order  
21 prohibiting commercial vehicles from using the District roads  
22 outside of the period from 9:00 a.m. to 2:30 p.m.

23 Applying the standards in Perry v. O'Donnell, 759 F.2d 702  
24 (9<sup>th</sup> Cir. 1985) and In re Dual-Deck Video Cassette Recorder  
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1 Antitrust Litigation, 10 F.3d 693 (9<sup>th</sup> Cir. 1993), the court  
2 finds that the Rancheria and Richard L. Moody are in contempt of  
3 the preliminary injunction. The Rancheria and Mr. Moody had  
4 actual notice of the injunction and a copy of the injunction by  
5 9:00 a.m. on December 10, 1997. Given that Mr. Moody had just  
6 that morning ordered three truck loads of road base, it was  
7 incumbent on him and Chairman Murray to read the order and to  
8 assure compliance with the order. According to Chairman Murray,  
9 he believed that the injunction was so broad as to prohibit  
10 virtually any use of the District's private roads. Although this  
11 overstates the sweep of the order, it should have been clear to  
12 Murray and Moody that the order did uphold the private character  
13 of the District roads and could affect any commercial use by the  
14 Rancheria of those roads. In these circumstances, the Rancheria  
15 and Mr. Moody should have sought advice from counsel or from the  
16 District before making use of the District roads with heavy  
17 equipment. There was no urgency to the delivery of the three  
18 loads. In short, the road base order should have been withdrawn  
19 once Mr. Moody realized that a court order had been entered.

20 Furthermore, Mr. Moody, upon reading the order, did not  
21 instruct Sierra Rock to make any deliveries before 2:30. Thus,  
22 even had he been confused as to whether building a road off the  
23 Rancheria was a use of the roads permitted by the order, there  
24 could have been no confusion as to the time limitation in the  
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1 order. Mr. Moody apparently instructed Sierra Rock in November,  
2 when the order for road base was first made, that the delivery  
3 should be between 9:00 a.m. and 2:30 p.m. This was consistent  
4 with an earlier order of the court. But when the preliminary  
5 injunction was issued, it was Mr. Moody's duty to advise Sierra  
6 Rock of the terms of the order and to seek assurance that Sierra  
7 Rock would comply. Instead, Mr. Moody placed the order and left  
8 the Rancheria, leaving it to chance and the memory of Sierra Rock  
9 as to when the deliveries would be made.

10 Sierra Rock is a third party that finds itself unhappily  
11 situated in the midst of contending parties all of whom are  
12 potential customers. It received notice of the impending order  
13 from Mr. Johnson, attorney for the District, by a letter in late  
14 November.<sup>1</sup> The letter warns Sierra Rock not to use District  
15 roads for the building of a road adjoining the Rancheria. On  
16 December 10, 1997 at 2:25 p.m. it received a fax copy of the  
17 preliminary injunction as well as a second copy of the letter  
18 from Mr. Johnson. This was just before the second load was  
19 delivered from the quarry. According to Sherry Kope, she paid no  
20 attention to the fax even though the machine was close at hand.  
21 When a Grassy Run property owner called to angrily protest, Ms.

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24 <sup>1</sup> To the extent that Sierra Rock personnel are claiming that  
25 the Johnson letter was not received or that its significance was  
26 not understood, the court finds to the contrary. This testimony  
is not credible.

1 Kope and others at Sierra Rock read and discussed the fax. On  
2 the view that only the timing of the delivery was at issue, Mr.  
3 Brunius decided to deliver the third load the following morning  
4 after 9:00 a.m. It was not a particularly difficult decision to  
5 call off the late afternoon delivery since Mr. Moody also called  
6 to postpone the third delivery until the following morning.

7 One aspect of Sierra Rock's knowledge and conduct bears  
8 particular attention and this concerns the timing of the second  
9 load. Sierra Rock knew that the deliveries were to be made only  
10 between 9:00 a.m. and 2:30 p.m. Mr. Moody had told Sierra Rock  
11 in November about this time limitation, and the limitation is  
12 posted on a sign at the entrance of the District road. The  
13 limitation also appears on the delivery order. See exhibit O.  
14 Further, the Johnson letter advised Sierra Rock of the September  
15 24, 1996 order that limited use of the District roads by large  
16 trucks to the hours of 9:00 a.m. to 2:30 p.m. Sherry Kope, the  
17 weight master and receptionist at Sierra Rock, testified that she  
18 was under the impression that Sierra Rock had until 3:00 p.m. to  
19 use the District roads. Yet the second truck on December 10 left  
20 Sierra Rock so late that it would necessarily be on the  
21 District's roads after 3:00.

22 The controversy between the District and the Rancheria is a  
23 matter of considerable local notoriety and has been continuing  
24 for well over a year. There have been newspaper articles. There  
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1 have been confrontations between Sierra Rock trucks and Grassy  
2 Run residents. Mr. Brunius was aware of the controversy. In  
3 light of the previous orders entered, as well as the Johnson  
4 letter, and in view of the continuing controversy, it was  
5 incumbent upon Sierra Rock to at least check with the District  
6 before using the District Roads on December 10, 1997,  
7 particularly since part of that use was in a time period that  
8 Sierra Rock knew was not permitted by District regulations and a  
9 prior order of the court. Further, Sierra Rock was not entitled  
10 to assume that it could traverse the District's private roads so  
11 long as it adhered to the time limitations. Even a cursory  
12 reading of the order by a lay person would have caused a prudent  
13 person in the position of Mr. Brunius to hesitate to send any  
14 further trucks across District property, particularly in light of  
15 the Johnson letter that specifically warned against use of the  
16 District's roads for the purpose of building a road on the  
17 property adjoining the Rancheria. Again, the easy and obvious  
18 step to take was to inquire of the District whether the final  
19 delivery would be permitted.

20 In these circumstances, the court finds that Loring Brunius  
21 d/b/a Sierra Rock is in contempt of the court's December 9, 1997  
22 order.

23 In crafting a remedy the court has considerable discretion.  
24 The purpose of civil contempt is to assure future compliance.  
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1 Since the December 11, 1997 delivery there do not appear to have  
2 been any other similar violations of the court's order by the  
3 Rancheria, Mr. Moody or Sierra Rock. Further, although the  
4 violations here are not fairly described as "technical," they  
5 also are not flagrant. Finally, there are mitigating  
6 circumstances. The Rancheria posted a sign limiting deliveries;  
7 Mr. Moody instructed Sierra Rock to abide by the 9:00 to 2:30  
8 time limit; and the third delivery was postponed until the  
9 following day. Sierra Rock's position as a third party, caught  
10 between contending factions, is relevant to any sanction as to  
11 Sierra Rock.

12 In light of all of the circumstances, the court finds it  
13 unnecessary to impose any sanction to assure future compliance.

14 The District requests attorneys fees in the amount of  
15 \$8,500. This consists of 28 hours at \$240 an hour for Mr.  
16 Nichols and 15 hours at \$125 an hour for Mr. Johnson. The court  
17 will not apply Mr. Nichols' rate for a number of reasons. Mr.  
18 Nichols is a District homeowner which explains his participation  
19 in the case. Much of the preparation could have been handled by  
20 an associate at a lower rate. Moreover, Mr. Johnson would have  
21 handled the matter were it not for a conflict with Sierra Rock.  
22 Forty-three hours at Mr. Johnson's rate comes to \$5,375. The  
23 court finds that this is a reasonable amount of time at a  
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1 reasonable rate.<sup>2</sup>

2       The court has discretion to order payment of attorneys fees  
3 depending on the particular facts of the case. In the  
4 circumstances here the court awards \$3,000 in fees to the  
5 District payable by the Rancheria and Mr. Moody, jointly and  
6 severally. The fees shall be paid within fourteen days of the  
7 date of this order. As to the remaining \$2,375 the court orders  
8 that this sum shall be paid by Sierra Rock, the Rancheria, and  
9 Mr. Moody jointly and severally; however, the court holds this  
10 portion of the award in abeyance and shall not order payment of  
11 the \$2,375 unless there is a violation of the court's December 9,  
12 1997 order within 240 days of the date of this order by Sierra  
13 Rock, the Rancheria or Mr. Moody. If there is a violation by  
14 Sierra Rock, the Rancheria or Mr. Moody within the next 240 days,  
15 the party who violates the order shall be responsible for payment  
16 of the entire sum of \$2,375 immediately. Moreover, in the event  
17 of a new violation, the court may also make a further finding of  
18 contempt, whether civil or criminal, and impose such sanctions as  
19 appear appropriate. Thus, the \$2,375 figure shall not act as a  
20 limit on the court in the event of a new violation; its purpose

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23       <sup>2</sup> The Rancheria and Sierra Rock each contend that it should  
24 not be liable for attorney time spent preparing the case as to  
25 the other. However, the activities of the two entities was so  
interrelated that no segregation of time is appropriate.  
Furthermore, the Rancheria and Mr. Moody caused Sierra Rock to  
violate the order.

1 is only to induce compliance. If there is no further violation  
2 by Sierra Rock, the Rancheria or Mr. Moody during the next 240  
3 days, the obligation to pay \$2,375 shall be purged.

4 The court declines to order payment of the expense incurred  
5 by the District in hiring a security guard.

6 IT IS SO ORDERED.

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8 Dated: April 9, 1998.

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10 David F. Levi  
11 DAVID F. LEVI  
12 United States District Judge  
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