

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re: Dry Creek Rancheria)
Wastewater Treatment Plant) NPDES Appeal Nos. 07-14 & 07-15
NPDES Permit No. CA 0005241)

**DRY CREEK RANCHERIA BAND OF POMO INDIANS
REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
RESPONSE TO PETITIONS FOR REVIEW**

Pursuant to Rule 201 of the Federal Rules of Evidence, the Dry Creek Rancheria Band of Pomo Indians ("Tribe") respectfully requests that the Environmental Appeals Board take judicial notice of the following documentary evidence:

1. The County of Sonoma's Protest to Application for Alcoholic Beverage License for River Rock Casino ("Protest"), attached as Exhibit 1 to the Tribe's Response to Petitions for Review ("Response") in the above-captioned matter. The Protest, which is part of an agency administrative record, is subject to judicial notice under FRE 201. *See Fletcher v. Jones*, 105 F.2d 58, 61 (D.C. Cir.) (taking judicial notice of reports and records of federal agency), *cert. denied*, 308 U.S. 555 (1939); *Mack v. S. Bay Beer Distribs.*, 798 F.2d 1279, 1282 (9th Cir. 1986) (finding it proper to take judicial notice of administrative records of state insurance appeals board), *overruled on other grounds by Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104 (1991).
2. The Notice of Appeal by Sonoma County regarding the Proposed Notice of Decision for Dry Creek Rancheria Band of Pomo Indians ("County Appeal"), attached as Exhibit 2 to the Tribe's Response. The County Appeal, which is party of an agency administrative record, is subject to judicial notice under FRE 201 for the same reasons set forth in paragraph 1 above.
3. The Notice of Appeal by Alexander Valley Association of Proposed Notice of Decision for Dry Creek Rancheria Band of Pomo Indians ("AVA Appeal"), attached as Exhibit 3 to the Tribe's Response. The AVA Appeal, which is party of an agency administrative record, is subject to judicial notice under FRE 201 for the same reasons set forth in paragraph 1 above.
4. The Order Granting in Part and Denying in Part Tribe's Motion to Dismiss Pursuant to Rule 12(b)(7) With Leave to Amend in *In re Sonoma County Fire Chief's*

Application for an Inspection Warrant re: Sonoma County's Assessor's Parcel Number 131-040-001 or 3250 Highway 128, Geyserville, No. C 02-04873 (N.D. Cal. Mar. 1, 2005), attached as Exhibit 4 to the Tribe's Response. This Order is subject to notice under FRE 201, as it is a well-established principle that decisions of other courts are proper subjects of judicial notice. *See, e.g., Green v. Warden, United States Penitentiary*, 699 F.2d 364, 369 (7th Cir.), *cert. denied*, 461 U.S. 960 (1983); *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994); *Liberty Mutual Ins. Co., Rotches Pork Packers, Inc.*, 969 F.2d 1384, 1388 (2d Cir. 1992).

5. The Order Granting Tribe's Motion for Summary Judgment in *In re Sonoma County Fire Chief's Application for an Inspection Warrant re: Sonoma County's Assessor's Parcel Number 131-040-001 or 3250 Highway 128, Geyserville*, No. C 02-04873 (N.D. Cal. Apr. 29, 2005), attached as Exhibit 5 to the Tribe's Response. This Order is subject to judicial notice under FRE 201 for the same reasons set forth in paragraph 4 above.

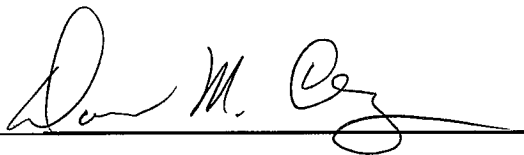
6. The Order affirming the judgment of the District Court in *Proschold v. United States*, No. 02-16655 (9th Cir. Feb. 20, 2004), attached as Exhibit 6 to the Tribe's Response. This Order is subject to judicial notice under FRE 201 for the same reasons set forth in paragraph 4 above.

7. The Tribal-State Compact Between the State of California and the Dry Creek Rancheria Band of Pomo Indians ("Compact"), attached as Exhibit 7 to the Tribe's Response. The Compact is subject to judicial notice under FRE 201 because it is a matter of public record. *See, e.g., Lee v. City of Los Angeles*, 250 F.3d 668, 689-90 (9th Cir. 2001) (court may judicially notice matters of public record).

By this Request the Tribe respectfully asks that the Board take judicial notice of the above-listed documentary evidence.

Dated: February 21, 2008

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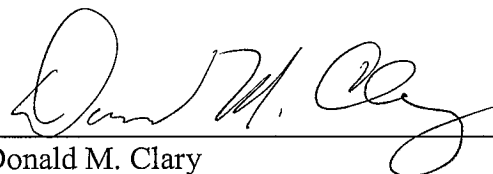
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **DRY CREEK RANCHERIA BAND OF POMO INDIANS REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF RESPONSE TO PETITIONS FOR REVIEW** in the matter of Dry Creek Rancheria Wastewater Treatment Plant, NPDES Permit No. CA 0005241, Appeal Nos. 07-14 & 07-15, were served by United States First Class Mail on the following persons, this 22nd day of February, 2008:

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