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 RESPONSE TO PETITIONS FOR REVIEW

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I. INTRODUCTION.

The Dry Creek Rancheria Band of Pomo Indians ("Tribe")[1] respectfully submits this response to the Petitions for Review of NPDES Permit No. CA 0005241 ("Permit") filed by the County of Sonoma, California ("County"), and by the Alexander Valley Association ("AVA") (collectively, the "Petitions" or "Petitioners"). Region IX of the United States Environmental Protection Agency ("Region") properly issued the Permit with appropriate conditions to allow the Tribe to discharge treated wastewater into a tributary to the Russian River under the National Pollutant Discharge Elimination System ("NPDES"). It is the Tribe's understanding that the EPA will be filing a responsive pleading which addresses fully the Petitions' lack of merit, and the Tribe joins the EPA in its response.

In addition to joining the EPA's response, the Tribe submits this Response to defend against the Petitioners' unsupportable attacks on the Tribe's sovereignty and rights. The County's and AVA's Petitions are just another step in their ongoing march to stop the Tribe from exercising its sovereignty and its rights under federal law to build, own, and operate a government gaming project on its reservation. The Tribe's wastewater treatment facility treats water from this gaming project (the River Rock Casino, hereinafter the "Casino") and other government operations on its reservation. Moreover, AVA is attempting to improperly use this permitting procedure to obtain a waiver of the Tribe's sovereignty and to subject the Tribe to County enforcement control over the Permit. The EAB should not allow the County or AVA to succeed in either of these unlawful goals, and, for the reasons stated in the EPA's Response (adopted and incorporated herein by the Tribe), the County's and the AVA's agenda-driven Petitions

[1] The Dry Creek Rancheria Band of Pomo Indians is a federally-recognized Indian tribe with a 75-acre reservation near Geyserville, California – the Dry Creek Rancheria. The Tribe currently has approximately 950 members and is growing. As of the last federal census, however, over 70% of Tribal members had incomes below the federal poverty line.

should be denied.

II. PETITIONERS' TRUE AGENDA IS TO TERMINATE (OR AT LEAST CURTAIL) THE TRIBE'S EXERCISE OF ITS RIGHT TO OWN AND OPERATE ITS GOVERNMENT GAMING PROJECT.

The Petitions are nothing more than another groundless attempt to cause further harm to the Tribe's right to own and operate its government gaming project. Simply put, Petitioners hope that attacking the Permit will hurt the Tribe's ability to operate and expand the Casino. This is a tactic that Petitioners' have used before. Both the County and the AVA have engaged in an onslaught of legal harassment against the Tribe and its Casino since the Tribe announced its plans to build a casino on its Rancheria. This harassment has included a protest filed in an effort to stop the Tribe from getting a liquor license for its casino;[2] lawsuits filed to stop the federal government from taking land adjacent to the casino into trust for the Tribe;[3] a lawsuit filed seeking to eradicate the Tribe's jurisdiction over building and fire code inspections on the Rancheria (in which the Tribe prevailed at both the district and appeals court);[4] and a lawsuit filed by members of the AVA claiming that the Tribe had no right to use the road to the Rancheria for casino patrons (which suit they lost).[5]

The Petitioners' true agendas are evident in the filing of their meritless Petitions. As clearly outlined in the Region's Response, the Petitions are meritless. Accordingly, such Petitons would only be brought to obtain the advantage of further harming the Tribe's rights to own and operate its government gaming project. The AVA's true agenda is further demonstrated by its bold and improper request that the EAB determine that the Permit authorizes a violation of the gaming compact between the Tribe and the State of

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[2] *See* Ex. 1.
[3] *See* Exs. 2 and 3.
[4] *See* Exs. 4 and 5.
[5] *See* Ex. 6.

California ("Compact") and the Indian Gaming Regulatory Act ("IGRA")[6] because it allegedly allows the Tribe to apply effluent onto a 12-acre spray field outside the Rancheria.[7] This issue was not raised on the record and thus should not be subject to review at this time.[8]

Moreover, this argument is based on supportable facts regarding the location of the sprayfields. The only evidence in the record is that the sprayfields would be within reservation boundaries.[9] Even if this issue had been raised and were based on supportable facts, this is not a matter for the EAB to review. Compliance with the Compact is not a matter properly before the EAB but is a contract matter between the State of California and the Tribe.[10] Similarly, IGRA compliance is not within the EAB's jurisdiction. The National Indian Gaming Commission is the agency charged with *exclusive* federal jurisdiction to regulate gaming on Indian lands – and to enforce compliance with IGRA.[11] Accordingly, AVA's position in this regard should be rejected so as to prevent the Petitioners' from achieving their underlining goal of harming the Tribe's right to own and operate its government gaming project.

Throughout the permitting process, the Tribe has sought to be treated fairly and to have its Permit judged on the merits and that is all it requests here. The Tribe has the sovereign right, recognized under federal law, to own and operate a government gaming project. The County and AVA should not be allowed to use this forum to further their attempts to deny or harm the Tribe's efforts to exercise this right. Fairness and the merits dictate that the County's and AVA's agenda-driven Petitions requesting review of the

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[6] 25 U.S.C. § 2701 *et seq.*
[7] AVA Petition at 17-19.
[8] *See In re City of Newburyport Wastewater Treatment Facility*, NPDES Appeal No. 04-06, slip op. at 22 (EAB, Dec. 8 2005).
[9] *See* AR at 348 (Supplement to Application at Figure 2A-1); AR at 180 (Permit Application at 3 (Form 3510-2A)).
[10] *See* Ex. 7, Compact Section 9.0.
[11] *See* 25 U.S.C. §§ 2702(3), 2704, 2705, and 2706; *Sac and Fox Nation v. Norton*, 240 F.3d 1250, 1265 (10th Cir. 2001).

Permit conditions be denied.

III. PETITIONER AVA IMPROPERLY SEEKS TO OVERTURN WELL ESTABLISHED LAW HOLDING THAT INDIAN TRIBES, BY VIRTUE OF THEIR SOVEREIGN STATUS, ARE NOT SUBJECT TO STATE OR COUNTY CONTROL AND ARE IMMUNE FROM UNCONSENTED SUIT.

AVA boldly asserts that the Tribe should be forced to give up its sovereignty and subject itself to County control to obtain the Permit.[12] The AVA seeks such a waiver to give the County the authority to bring an action directly against the Tribe to enforce the Permit.[13] This in effect would give the County enforcement jurisdiction and control over the Tribe's federal Permit.

Because AVA at no time raised this issue on the record, it is not properly addressed here.[14] In any case, AVA does not – and cannot – cite any other instance where a tribe has been compelled to so cede its sovereignty and subject itself to local control just to get an NPDES permit. And nothing in the Clean Water Act ("CWA")[15] authorizes the EPA to require a Tribe to waive its sovereign immunity or subject itself to local control as a condition to obtaining an NPDES permit. Indeed, the ostensible purpose of the EPA's Indian program is to promote – and not undermine – tribal sovereignty.[16]

Given the County's and AVA's continuous and improper attempts (noted above) to utilize legal procedures and processes in an effort to bludgeon and stifle the Tribe's lawful pursuit of economic development on its reservation, it is not surprising that AVA

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[12] AVA Petition at 19-21.
[13] AVA Petition at 20.
[14] *See In re City of Newburyport Wastewater Treatment Facility*, NPDES Appeal No. 04-06, slip op. at 22 (EAB, Dec. 8 2005).
[15] 33 U.S.C. § 1251 *et seq.*
[16] James M. Grijalva, The Origins of EPA's Indian Program, 15 Kan. J. L. & Pub. Pol. 191 (2006).

would now suggest that the Tribe should not be entitled to retain its basic sovereign status as recognized under federal law. Longstanding and well-established principles of federal Indian law hold that tribes are not subject to state or county jurisdiction or laws and are immune from state and local control.[17] And it is a fundamental principle of federal Indian law that tribes enjoy sovereign immunity from unconsented suit except where a tribe has expressly and unequivocally waived this immunity or where it has been abrogated by Congress.[18]

In light of this long chain of precedent and the absence of any authority or example to the contrary, it is apparent that AVA's position (that the Tribe must somehow waive its sovereignty and be subordinated to the County in the manner suggested as a condition to obtaining the Permit) should be denied. Such an argument is simply erroneous and contrary to well-established law. And such an abrogation of sovereign immunity or exercise of County enforcement control is unnecessary. As AVA notes, the EPA will retain jurisdiction to enforce the Permit (should this become necessary),[19] and the Permit has all necessary and appropriate conditions.

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[17] *See, e.g., Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 n. 1 (1998) ("[P]rimary jurisdiction over land that is Indian country rests with the Federal Government and the Indian tribe inhabiting it, and not with the States."); *Cabazon v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987) ("[T]ribal sovereignty is dependent on, and subordinate to, only the Federal Government, not the States."); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 332, (1983) ("Because of their sovereign status, tribes and their reservation lands are insulated in some respects by a historic immunity from state and local control, and tribes retain any aspect of their historical sovereignty not inconsistent with the overriding interests of the National Government.") (internal quotations and citations omitted); *id.* ("[Supreme Court] cases establish that absent governing Acts of Congress, a State may not act in a manner that infringe[s] on the right of reservation Indians to make their own laws and be ruled by them."); *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir. 1975); *Middletown Rancheria v. Workers' Comp. Appeals Bd.*, 60 Cal. App. 4th 1340, 1347 (1998).

[18] *See, e.g., Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991) (*citing Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 58-59 (1978)). *See also Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998).

[19] AVA Petition at 19. *See also EEOC v. Karuk Tribe Housing Authority*, 260 F.3d 1071, 1075 (9th Cir. 2001) (noting that tribal sovereign immunity does not protect tribes against unconsented suit by the federal government) (citations omitted).

IV. CONCLUSION.

For the foregoing reasons, the Tribe requests that the Petitions be rejected and that no review be undertaken. The Tribe further requests that, in the event that any review is ordered, the Tribe be permitted to brief any issues that may be considered at that time.

Dated: February 21, 2008

HOLLAND & KNIGHT LLP

By: _____
Donald M. Clary

Attorneys for DRY CREEK RANCHERIA BAND OF POMO INDIANS

EXHIBIT 1

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

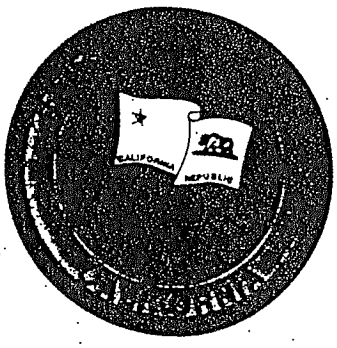
In re Dry Creek Rancheria Wastewater Treatment Plant
NPDES Permit No. CA 0005241

NPDES Appeal Nos. 07-14 & 07-15

COUNTY OF SONOMA
BOARD OF SUPERVISORS
575 ADMINISTRATION DRIVE, RM. 100A
SANTA ROSA, CALIFORNIA 95403

(707) 565-2241
FAX (707) 565-3778

EEVE T. LEWIS
COUNTY CLERK



PAUL L. KELLEY
SUPERVISOR FOURTH DISTRICT

pkelley@sonoma-county.org

March 5, 2003

Michael Mann
District Administrator
Department of Alcoholic Beverage Control
50 "D" Street, Suite 130
Santa Rosa, CA 95404

Re: Protest to Application for Alcoholic Beverage License
for River Rock Casino.

Dear Mr. Mann:

I am currently Chairman of the Sonoma County Board of Supervisors and the Supervisor representing the Fourth District in which the River Rock Casino is located. I am sending this letter to protest the alcohol beverage application submitted for the River Rock Casino by the Dry Creek Rancheria of Pomo Indians ("Tribe"). The casino represents the largest gathering spot in Sonoma County that is open on a 24-hour, seven-day-per-week basis. It is in the rural Alexander Valley area and served by State Highway 128 which is a winding two-lane highway marked by several ninety degree turns. In addition, the dead end narrow access road to the casino itself twists up a narrow canyon to an otherwise inaccessible location. The casino estimates that, with a liquor license, it will draw more than two thousand cars per day, largely of out-of-area customers unfamiliar with the location or roads.

The casino facility and application to serve alcohol are unique in both my District and indeed in the County. The combination of the facility's large size (roughly 60,000 sq. ft.), location on remote federal government property, and involvement of a recognized Indian tribe (that takes the position it is not subject to County land use planning and permit approvals), requires that the application be reviewed in a manner that looks at the total implications of granting the license to serve alcohol. It is not similar to a convenience store, neighborhood bar, restaurant or even a wine tasting room to which your regulations are most often applied.

MAR 5 2003
270387

A primary concern is the infusion of the potentially thousands of drivers per day who have been drinking alcohol onto the public rural roads surrounding the casino. As stated above, the casino is served by a single access road. An accident on that road would limit the ability of first responders to reach the casino in an emergency. The experience of similar casinos in rural areas is an increase of accidents and fatalities leading to the facility. For example, the Cache Creek casino in Yolo County, which is served by a similar two lane state highway (SR 16) has suffered a significant increase in accidents and fatalities since the opening of the casino. This has lead Caltrans to conclude that the highway access to the casino is "experiencing an unacceptable level of traffic accidents." Cache Creek's application for a liquor license is currently pending.

It is important to note that Highway 128 is a major pick-up and delivery point for school buses in the morning and afternoon hours between the casino and Geyserville. It is also not unusual to have agricultural equipment travel for short distances on the road making them a potential target for customers seeking a speedy return home from the casino bar along the rural route. The link between drunk driving and auto accidents is now well accepted and approval of the alcohol beverage license would place the school children and other users of these roads at great risk.

What sets the application apart from other license requests is the scope of use in an area without the infrastructure to support this type of commercial operation. The license would allow a drinking/gambling establishment, with extended hours of operation, in the midst of a rural, residential and agricultural area. It is not only an incompatible use for the community but will result in burdening law enforcement whose resources are already stretched thin in this part of the County.

It is my understanding that the Sonoma County Sheriff will be submitting separate comments on the alcohol license application. As a Supervisor, however, I have grave concerns about how the above conditions will lead not only to a tragic loss of life and disturbance of family residences but will tend to create law enforcement problems and strain already limited resources. Use of alcohol is documented to be a factor in not only traffic accidents but a variety of illegal behavior including domestic violence and property crimes.

The area served by the Sheriff in which the River Rock Casino is located, is one of the largest law enforcement service districts in the unincorporated part of the County and is served by two Sheriff deputies. The casino is located at one side of the coverage territory. Each traffic call or response to other disturbances and potential crimes ties up at least one, if not both deputies, leaving the rest of the district underserved and requiring backup units from other areas. With people coming into the area to gamble and drink, at one of the few places in that vicinity where alcohol is available at night, increases in crime can be expected throughout the coverage area. For example, just a short time after the casino opened, a murder was committed by patrons headed to the casino but who had just left the freeway. Consumption of alcohol can only lead to increased crime in a type of facility that reputable studies and law enforcement experience have identified as a magnet for criminal behavior.

The law enforcement problems are compounded by the fact that the local county fire chief has preliminarily determined that the facility (including the access road) does not meet County fire safe standards. The Chief's jurisdiction over the property is currently being contested by the Tribe in federal court. Nonetheless, if the ABC grants a license to this facility, it is stating its approval to the public that this is a safe place to consume alcohol when the County Fire Chief has come to the opposite conclusion. The ABC should refrain from making a decision that leads to a situation where, due to granting of the liquor license, a greater segment of the public will be drawn to a remote facility where real safety questions exist.

Also of concern is that the notice the Board received listed the Tribe as the sole applicant. It is my understanding that the Casino is being operated/developed under a partnership agreement with Dry Casino Creek, L.L.C. which is to receive 20% of the net profits from the facility's operation. The controlling owner of Dry Creek Casino, L.L.C. is Nevada Gold & Casinos, Inc. ("Nevada Gold"). It is my further understanding that neither Nevada Gold nor Dry Creek Casino, L.L.C. have an agreement with the Tribe approved by the National Indian Gaming Commission, as required under federal law.

The approval of the license application will have an immediate and profound negative impact on the demands placed on law enforcement, casino patrons, and the safety of the surrounding community. I urge you to deny the application. Please contact my office if you would like additional background information or to respond to any questions you may have. Thank you for your consideration of this important public safety issue.

Very truly yours,

Paul L. Kelley

Paul Kelley
Supervisor, Fourth District

270390

Paul Kelley
COUNTY OF SONOMA
Board of Supervisors
575 ADMINISTRATION DRIVE
SANTA ROSA, CALIFORNIA
95403-2887

RETURN SERVICE REQUESTED

Michael Mann
District Administrator
Department of Alcoholic Beverage Control
50 "D" Street, Suite 130
Santa Rosa, CA 95404

STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
3810 ROSIN COURT, SUITE 150, SACRAMENTO, CA 95834
(916) 263-8111

May 1, 2003

Paul L. Kelley
Board of Supervisors
County of Sonoma
575 Administration Drive, R. 100A
San Rosa, CA 95403

DRY CREEK RANCHERIA OF POMO
River Rock Casino
3250 Highway 128 East
Geyserville, CA 95441
File: 396835

Dear Protestant(s):

Your protest against the above application has been received, and a copy has been sent to the applicant.

If the Department approves issuance of the license, a hearing on your protest will be scheduled before an Administrative Law Judge.

If the Department does not approve issuance of the license and if the applicant requests a hearing, the hearing on your protest will be held at the same time. On the other hand, if the applicant does not request a hearing, you will receive no further notice from the Department.

If there is to be a hearing, you will be notified of the date, time and place. You will be expected to attend the hearing and to testify.

Sincerely,

Theresa Laster

Theresa Laster
Legal Analyst

TL: ys

cc: Santa Rosa District Office (707) 576-2165
Applicant(s) w/Enclosure

270391

EXHIBIT 2

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

In re Dry Creek Rancheria Wastewater Treatment Plant
NPDES Permit No. CA 0005241

NPDES Appeal Nos. 07-14 & 07-15

COUNTY ADMINISTRATION CENTER
575 ADMINISTRATION DRIVE,
ROOM 105A
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TELEPHONE: (707) 565-2421
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KATHLEEN A. LAROCQUE
SUZANNE M. DE KOZAN
SUE GALLAGHER
JEFFREY L. BERK
SALLY B. MCGOUGH
DAVID R. MCFADDEN
GREGORY T. DION
STEVE S. SHUPE
PHYLLIS GALLAGHER
ANNE L. KECK
TINA M. WALLIS
BARBARA FITZMAURICE
LINDA D. SCHILTGEN
ELIZABETH S. HUTTON
WILLIAM L. ADAMS
JEFFREY M. BRAX
JENNIFER C. KLEIN
MARGARET A. SINGLETON
BRIAN E. NUSSBAUM
DEBBIE F. LATHAM

September 28, 2006

Via Overnight Mail
Interior Board of Indian Appeals
U.S. Department of the Interior
801 N. Quincy St., Suite 300
Arlington, Virginia 22203

Re: Notice of Appeal by Sonoma County, California
Proposed Notice of Decision for Dry Creek Rancheria Band of Pomo Indians

To the Honorable Members of the Board of Indian Appeals:

I. IDENTIFICATION OF APPEAL

The County of Sonoma, State of California, ("County") hereby files this Notice of Appeal ("Notice"), pursuant to 43 CFR 4.332, indicating its challenge to the Proposed Notice of Decision of the Pacific Regional Office of the Bureau of Indian Affairs ("BIA") to take land into trust status on behalf of the Dry Creek Rancheria Band of Pomo Indians ("Tribe"). Sonoma County is an "interested party" as the Proposed Decision authorizes real property to be taken into trust by the United States that is within the political subdivision (and under the regulatory and taxation authority) of the County. The Notice pertains to the Proposed Decision of the United States Department of the Interior, Bureau of Indian Affairs Regional Office issued by the Acting Regional Director on or about August 29, 2006 ("Proposed Decision"). The Proposed Decision grants the application of the Tribe to take into trust approximately 18 acres of real property located in the County of Sonoma, State of California. The proposed trust land is located adjacent to the Tribe's gaming facility and is more particularly described in the Proposed Decision which is attached hereto as **Exhibit A** and incorporated by this reference.

II. STATEMENT OF REASONS

A. THE PROPOSED DECISION WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND THE BIA ABUSED ITS DISCRETION IN GRANTING THE TRUST APPLICATION

The Proposed Decision contains serious errors of law, fact, and process which require that the preliminary trust determination be reversed. The Proposed Decision is fundamentally flawed as the BIA failed to apply the appropriate criteria in determining that the requested land should be afforded trust status.[1] The Proposed Decision also appears to adopt the Tribe's position without conducting the necessary independent investigation and consideration. Critical problems with the Decision include failure to properly take into account the fact that the Tribe's current land is not held in trust, disregard of substantial evidence that the trust land will be used for gaming purposes, and summary dismissal of legal authority that the land is bound by a Williamson Act contract. The BIA further abused its discretion by giving no weight to local government concerns and improperly issuing a Finding of No Significant Impacts (FONSI), rather than requiring a more thorough examination of the environmental impacts through an Environmental Impact Statement ("EIS").

1. The Proposed Trust Acquisition Creates Serious Jurisdictional Problems and Potential Land Use Conflicts

Without the benefit of legal analysis the Proposed Decision adopts the Tribe's position as its own that "acceptance of land by the federal government effectively causes the [Williamson] contract to become null and void." The statute and cases summarily cited in the Proposed Decision (Govt. Code § 51295; *Barnidge v. United States*, 101 F.2d 295, 298 and *State of Minnesota v. United States*, 125 F.2d 640) do not stand for the

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[1] A Statement of Reasons for the County's Appeal are provided above pursuant to 43 CFR § 4.332(a). The County of Sonoma's Comments on the Application of the Dry Creek Rancheria to the Secretary of the Interior to Accept Land Into Trust For Non-Gaming Purpose and related Comments to Dry Creek Rancheria Fee to Trust Project Draft Environmental Assessment expound further on the appeal basis, are part of the Administrative Record, and are incorporated herein by this reference. In addition, the BIA relied upon errors of law and fact throughout the Proposed Decision. The County offers the above only as examples of deficiencies requiring reversal and reserves the right to challenge additional errors in the Proposed Decision following preparation of the Administrative Record.

proposition they purport to support. In making its erroneous analysis, the Proposed Decision improperly determines that there are not jurisdictional problems and land use conflicts that would arise by the trust acquisition under 25 CFR 151.10 (f).

It is undisputed that the Tribe purchased the Property subject to a Williamson Act contract and that the proposed uses conflict with the uses permitted under the agricultural preservation requirements imposed under the Act. (Govt. Code §51200 *et seq.*) In purchasing the Property, the Tribe was notified of and agreed to be bound by the terms of the contract. The weight of authority, simply disregarded by the Proposed Decision, is that the contract would survive a transfer into trust. In *Friends of East Willits Valley v. County of Mendocino*, 101 Cal. App. 4th 191 (2002), the petitioners challenged cancellation of a Williamson Act contract for a parcel subsequently taken into trust. As here, the BIA took the position that granting of the trust application voided the Williamson Act restrictions and rendered them inapplicable. (*Id.* at 198.) The Court rejected this argument, holding that no state or federal law "invalidates contractual commitments made before the passage of land into trust." (*Id.* at 201.)

The *Friends of East Willits Valley* Court noted that the tribe had voluntarily accepted the Williamson Act restrictions, and that holding that these restrictions are "automatically voided by the passage of land into trust" would violate both law and policy. (*Id.* at 203; *see also Of Rhode Island and Providence Plantations v. Eastern Area Director* (2000) 35 I.B.I.A. 93 (BIA should consider town's pre-existing easement in the trust application because the easement rights survive into the trust); *Narragansett Indian Tribe v. Narragansett Electric Co.* (1995) 878 F. Supp. 349, 365 (easement granted to city would not be eliminated if BIA accepted land into trust because the pre-existing easement bound all successors-in-interest).

As demonstrated above, he Proposed Decision's determination that there are not significant jurisdictional and land use conflicts is not supported by substantial evidence and is in error as a matter of law.

2. The BIA Did Not Apply the Appropriate Criteria for the Trust Application as the Land Was Not Considered a Gaming-Related Acquisition

The Proposed Decision is fundamentally flawed as the trust application was not analyzed under the procedure and standards applicable to a gaming-related project. The Proposed Decision ignored the gaming requirement despite clear evidence that the land would be used as an essential component of the Tribe's casino master plan. Under the

for "gaming related purposes" must be reviewed by the Office of Indian Gaming Management (OIGM) and subject to compliance with the Indian Gaming Regulatory Act (IGRA), in addition to the Title 25 Code of Regulations Part 151 test reflected in the Proposed Decision.

The Proposed Decision asserts that such a gaming review is not appropriate in this case as the Tribe's gaming facility can operate without the proposed trust land. (*See* Proposed Decision at p. 7.) However, the Proposed Decision does not indicate any independent investigation or analysis of the County's argument that the fee-to-trust application and related project is an integral part of the gaming operation master plan. For example, ignored by the BIA's decision is that the oversized access road extending to the Rancheria is intended to provide emergency ingress and egress to the casino; the over-sized parking area is likely to be used for casino complex parking; the emergency services building is intended to primarily serve the adjacent casino (and not the trust property's proposed tasting room and residential subdivision) and, critically, the water storage and transmission facilities are an essential part of the final casino plan.

3. The Proposed Decision Erred Both in the BIA's Authority to Take the Land into Trust and the Agency's Ability to Impose Restrictions on the Property

The BIA relied on the Secretary's power to take the land into trust as it is "contiguous to the exterior boundaries of the Dry Creek Rancheria." (Proposed Decision at p. 2.) The applicable regulations contained in 25 CFR 151.3 provide that contiguous land must be adjacent to a tribe's reservation. The Rancheria is neither a "reservation" as defined under the law nor a trust property (as the land is held in fee by the United States). As such the Proposed Decision improperly relies upon 25 CFR 151.3(1) as a basis for the authority to take the land into trust.

Even assuming the BIA has the authority to take the land into trust, the Proposed Decision improperly concludes that it could not impose restrictions on trust land to insure that it was not used for gaming purposes or uses inconsistent with its Williamson Act obligations. (Proposed Decision at p. 3.) In doing so, as the Administrative Record will indicate, it misrepresented the position of the trust comments of Congressman Mike Thompson and erred as a matter of law. (*See* Proposed Decision at p. 3.) This important legal error has ramifications for the entire trust decision and NEPA analysis.

B. THE BIA FAILED TO COMPLY WITH THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

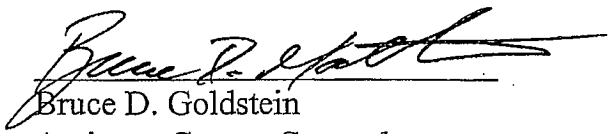
The County submitted twenty-two (22) pages of comments to the Draft EA detailing the significant long-term impacts on the environment that would be caused by approval of the trust application as well as a lack of an appropriate alternatives analysis. In its decision the BIA failed to follow its own requirements for NEPA compliance as set forth in Part 30 of the Bureau of Indian Affairs Manual (30 BIAM), Supplement 1. For example, the County comments identified significant impacts that, pursuant to 30 BIAM, Supp.1, 5.1, should have required preparation of an EIS. The County respectfully submits that the BIA cannot lawfully have approved the proposed project on the basis of the Draft EA and the agency abused its discretion in not requiring an EIS.

III. NOTICE TO INTERESTED PARTIES

The Proposed Decision was received by the County on or about August 30, 2006. Pursuant to 25 CFR 4.333, the County hereby certifies that this Notice was served on the Assistant Secretary - Indian Affairs and to all other required known interested parties as shown in the attached Proof of Service. The attached proof of service shall constitute the list of interested parties required pursuant to 43 CFR 4.332(a)(3) and is incorporated by this reference.

Respectfully submitted,

Steven M. Woodside, County Counsel



Bruce D. Goldstein
Assistant County Counsel
Attorneys for Appellant
County of Sonoma

BDG:bkm
attachments

EXHIBIT "A"

United States Department of the Interior

IN REPLY REFER TO:

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

AUG 29 2006

NOTICE OF DECISION

CERTIFIED MAIL – RETURN RECEIPT REQUESTED – 7003 1680 0002 3878 9350

Harvey Hopkins, Chairperson
Dry Creek Rancheria
P.O. Box 607
Geyersville, CA 95441

Dear Mr. Hopkins:

This is notice of our decision upon the application of the Dry Creek Rancheria, to have the below-described real property, accepted by the United States of America in trust for the Dry Creek of Pomo Indians of California. The land referred to herein is situated in the State of California, County of Sonoma, Unincorporated Area, and is described as follows:

That portion of the following described land lying Northeasterly of the Centerline of State Highway 128 as said Highway existed on April 16, 1971. Beginning at an iron pin driven in the ground in the middle of the County Road leading form Alexander Valley to Geyserville, on the East side of the Russian River, in the Northwesterly line of the Land of Frederick and Emma Drake, thence along said Northwesterly line South 47 ½° West, 31.07 chains to a station in the Bed of Russian River; thence up and along said Bed of the Russian River, North 49 ¾° West, 15.84 chains to a station; thence leaving the Bed of said River North 48 ¼° East, 28.90 chains along the Easterly line of the Land of William Smith to an iron pin driven in the ground in the middle of said Road; thence along the middle of said Road, South 54 ½° East, 6.11 chains; thence South 62 ½° East, 5.67 chains to an iron pin driven in the ground; thence North 26° East 23.03 chains to an iron pin driven in the ground in the Southwesterly line of the Caslamayomi Rancho (United States Indian Reservation); thence along said line South 46 ½° East, 12.55 chains to a post, being the most Northerly corner of the Land of said Frederick and Emma Drake; thence along the Northwesterly line of said land, South 47 ¾° West, 19.58 chains to an iron pin driven in the ground; thence South 54° East, 0.83 chains to and iron pin driven in the ground; thence South 20 ½° West, 1.69 chains to an iron pin driven in the ground, in the middle of said road; thence along the middle of said Road North 57 ¾° West, 1.63 chains to the place of beginning and being a portion of the Sotoyome Rancho.

The above-described real property contains approximately 18.03 acres, more or less and is contiguous to the exterior boundaries of the Dry Creek Rancheria.

TAKE PRIDE IN AMERICA

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c: Bd. members
Bruce Goldstein

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title on behalf of the United States of America for the benefit of tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the exterior boundaries of the tribe's reservation, or adjacent thereto, or within a tribal consolidation area, or (2) when the tribe already owns an interest in the land, or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended.

In this particular instance, the authorizing Act of Congress is the Indian Land Consolidation Act of 1983 (25 USC §2202 et seq). As previously stated, the lands that are the subject of this decision notice are contiguous to the exterior boundaries of the Dry Creek Rancheria.

On April 20, 2005, we issued notice of, and sought comments regarding the fee-to-trust application from the California Office of Planning and Research; State of California, Deputy Attorney General; State of California, Deputy Legal Affairs; State of California, Department of Conservation; Department of Alcoholic Beverage Control; James Peterson, District Director, Office of Dianne Feinstein; Bruce Goldstein, Deputy Counsel, Sonoma County; Sonoma County Board of Supervisors; Sonoma County Department of Public Works; Sonoma County Fire Protection District; Sonoma County Assessor; Sonoma County Sheriff's Dept; Chairperson, Cloverdale Rancheria; Chairperson, Lytton Rancheria; Chairperson, Stewarts Point Rancheria; Chairperson, Graton Rancheria; Alexander Valley Association.

In response to our notification, we received the following comments:

- A letter dated June 1, 2005 from the Department of Transportation stating they have no comments to offer.
- A letter dated June 6, 2005 from the Alexander Valley Association stating that the proposed acquisition should be processed under the provisions of the Indian Gaming Regulatory Act (IGRA) and that the Dry Creek Rancheria is held in fee, and not in trust.
- A 138-page packet dated June 21, 2005 from the County of Sonoma, Board of Supervisors, stating that the County is concerned that accepting the land into trust will create jurisdictional problems and land use conflicts with the Sonoma County General Plan, Zoning Ordinance, and contract between the County and Tribe under the Williamson Act, Govt. Code § 51200 et seq. The County is further concerned that the purposes for which the land will be used have not been adequately defined, and appear to necessitate review by the Office of Indian Gaming Management.

In response to the County's comments, the Tribe responded by letter dated October 28, 2005, summarized as follows:

- The Supervisors surprisingly state in their introduction that the Tribe intends to engage in "potential mining activities," which will "create a serious jurisdictional conflict." County officials know (or could have easily determined), however, that the reference to such activities in an earlier environmental document was just about a possible short-term surface use that would have taken place, if at all, well before the Parcel was taken into trust, and thus would have been subject to County permitting if it were to occur. It was

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disclosed out of an abundance of caution in anticipation of a possible temporary use of a portion of the Parcel for providing and preparing materials for some hillside stabilization and road and parking surfacing that was taking place next door on the Reservation. That activity, which was ultimately carried out without use of the Parcel, has long since been completed. There is no plan for using the Parcel for any kind of batch plant, surface mining or any other similar use, and the County should know, or could have easily determined, that fact.

- The County also states...and the Tribe acknowledges that the Parcel is subject to a Williamson Act contract. However, the Williamson Act is not necessarily inconsistent with the proposed uses, and in any event its continued application is doubtful once the land is taken into federal trust. *See Cal. Gov. Code §51295.*
- The County also alleges that a lack of regulation on the Reservation, asserting that the supposed lack of controls has led to various environmental issues on the Reservation, and that the claim is somehow relevant to the Application. The Tribe's activities on the Reservation are compliant with all applicable laws, including but certainly not limited to those related to the environment. The Tribe has spent considerable resources to ensure that it continues to be in compliance with all laws. Indeed, the County has been directly involved in court and other tests of such allegations and knows that the Tribe has been found to be in compliance time after time.
- The County is incorrect in its analysis of the intended future uses of the Parcel. The same can be said of the County's allegation that the planned irrigation ponds are effluent storage from the casino. The casino is fully contained on the Reservation and utilizes the Tribe's wastewater treatment facility. The road is intended primarily for the vineyard, tribal governmental offices, and emergency services building. In addition, the proposed road will provide additional access to the Reservation. The road will have a closed gate and will not be used by casino patrons for non-emergency purposes.
- The County again questions...whether the tribal housing proposed in the application will satisfy the housing needs for all 869 members of the Tribe. The application does not claim that the planned housing will satisfy the housing needs of every member of the Tribe. But housing eight families who are in need, particularly given the high cost of housing in Sonoma County generally, is not insignificant to those families; and should not be to the County, which does not provide for that shelter now.

In addition to the above correspondences, we received a letter dated June 20, 2005, from the Honorable Mike Thompson, through George T. Skibine, Acting Deputy Assistant Secretary-Indian Affairs, advocating that the Bureau conduct a thorough review of this application and set conditions on the type of use that will be allowed, with serious consequences if those terms are violated. Representative Thompson further acknowledges the Bureau's position that, under 40 U.S.C. 3111, it lacks the authority to impose deed restrictions. Mr. Skibine assured Representative Thompson that a final decision to take land in trust is made only after an exhaustive and deliberative review of all relevant criteria, factual information, and legal requirements.

In support of the Tribe's acquisition, we received the following:

- Four letters of support dated August 23, 2006 from residents of Sonoma County.

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- A petition signed by seventy-seven (77) supporters of the Tribe's efforts to place the subject property into trust.

Pursuant to 25 CFR 151.10, the following factors were considered in formulating our decision: (1) the need of the tribe for additional land; (2) the purposes for which the land will be used; (3) the impact on the State and its political subdivisions resulting from removal of the land from the tax rolls; (4) jurisdictional problems and potential conflicts of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; (6) the extent to which the applicant has provided information that allows the Secretary to comply with the implementing procedures of the Department of the Interior, 516 DM 1-7, and 602 DM 2, Land Acquisitions: Hazardous Substances Determination.

Factor 1 – Need of the Tribe for Additional Land

The Dry Creek Rancheria was established under the authority of the Act of June 21, 1906, which established a tribal trust land base of 75 acres. The subject acquisition request consists of land that is contiguous to the Tribe's reservation. The current trust land base is comprised largely of land that is a hillside with extremely limited buildable terrain. Land suitable for development on the reservation houses the Dry Creek Rancheria's casino, parking garage and other associated infrastructure.

The additional land contemplated in this land acquisition request will address some of the Tribe's housing and economic development needs. The Tribe currently has 869 members, none of which live on the Reservation due to previously stated limitations. It is our determination that the Dry Creek Tribe has an established need for additional trust land in order to facilitate tribal housing, self-determination and economic development.

Factor 2 – The Purposes for Which the Land Will be Used

The proposed land use for the subject acquisition includes residential, emergency services, and agricultural development. Development plans provide for eight tribal residences, an emergency services building, approximately 4.1-acres of vineyards, and a winery with tribal office space. Native plant use areas would also be identified and protected for use by tribal members. Lastly, several infrastructure projects are proposed to make developments on the proposed trust parcels possible. Each of the proposed developments is detailed further below.

Residential Development

Eight tribal residences are proposed for construction at the southeast corner of the subject parcel at approximately 2,000 square feet per unit. Water will be supplied by existing ground water wells located on the site and wastewater will be disposed of through individual septic systems. All grading for the residences (as well as all other site development) will be completed under the direction of a Storm Water Pollution Prevention Plan.

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Emergency Services Building

The Tribe is proposing to construct an 8,000 square-foot emergency services building near the northeast corner of the parcel.. The station will provide tribal security, fire suppression, and emergency services for the Tribe. Proposed staffing at the facility will include approximately five firefighters, five security officers and a licensed paramedic. Water will be supplied by existing groundwater wells located on the site and wastewater will be treated through a septic system.

Agricultural Development

Two vineyard areas, totaling approximately 4.1 acres (2.5-acre and 1.6-acre fields), are proposed for development. Water will be supplied to the vineyards by onsite groundwater wells and/or by tertiary-treated recycled water from the Tribe's existing wastewater treatment plant. Irrigation will be provided through a drip system. All grading and infrastructure for these practices will be completed under the direction of a Storm Water Pollution Prevention Plan.

Once planted, vineyards will be regularly maintained with fertilizers, herbicides, and/or pesticides that will be applied at the manufacturer's recommended rates. Only those chemicals approved for use within the State of California will be used for vineyard maintenance. Tertiary-treated recycled water used for irrigation will meet the definition of "disinfected tertiary recycled water" as provided within Title 22 of the California Code of Regulations.

Winery and Tribal Offices

A 5,600 square-foot structure is proposed where roughly half of the structure will be dedicated to wine production and the remainder committed to tribal office space. The facility will provide processing and storage for harvested grapes and wine and office space for tribal government functions. A gravel parking lot and loading area will be constructed adjacent to this building. Water will be supplied through existing groundwater wells and wastewater will be treated through a septic system. The Tribe is proposing to contract grape harvesting and wine production with local wineries.

Native Plant Use Areas

The proposed trust parcel has native plants that have traditional cultural uses by the Tribe. These areas will be protected from development and used by the Tribe in accordance with cultural traditions.

Infrastructure

Development of the proposed trust parcel will require the construction of paved roadways, water lines, and other utilities. The primary access road to the parcel will be approximately 35 feet wide (to allow truck traffic) and paved with asphalt. The lower portion of the roadway will provide tribal access from State Route 128 to tribal residences, vineyards, and winery. The interchange with State Route 128 will be built within an existing road encroachment and shall be

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designed in accordance with the California Department of Transportation's design standards for commercial driveways as described in the Highway Design Manual.

The upper portion of the access road will be restricted to tribal and emergency use. A gate will be installed at the north end of the warehouse parking to limit public access to the existing Rancheria. The emergency access road will then continue to the emergency services building and the existing Rancheria to provide an escape route in the event of an emergency on the Rancheria.

An existing water line serving the Rancheria from a well on the proposed trust parcel will be replaced and rerouted within the proposed roadway. The water line will also provide potable water to the proposed residences, tribal offices, emergency services building, and may be used for irrigation. New power lines providing service to housing and associated facilities are proposed within the access road right-of-way. Retaining walls, storm drains and curbs will be constructed to minimize erosion.

Also proposed are up to three irrigation storage ponds to provide a reliable irrigation source for the vineyards. The ponds will be constructed near the northwest corner of the parcel and will hold recycled water from the Tribe's wastewater treatment plant located on the existing Rancheria.

The Sonoma County Board of Supervisors raised several concerns with regard to the proposed land uses, specifically: (1) that the Tribe's Application fails to disclose any potential future industrial uses of the property; (2) the proposed batch plant further indicates that the Tribe may conduct mining operations on the Property to produce gravel aggregate for batch plant processing; (3) the Tribe lacks a proper disposal site for the effluent generated at its casino site, and has acquired the instant Property to serve that end; (4) the proposed parking and loading area appears oversized and far larger than necessary for the adjacent proposed office building/winery...the obvious implication is that the parking and loading area will be used in association with the adjacent casino; (5) the Tribe has proposed a 5,600 square foot winery and tribal office building...but it appears unlikely that the Tribe will actually process wine in that space...the County requests that the BIA require the Tribe to disclose whether the winery will actually be used for wine production, and identify how much of the 5,600 square feet will be used for tribal offices; and (6) the County requests that the BIA conduct further investigation to determine whether the proposed future uses of the Property truly satisfy the Tribe's alleged need for additional affordable housing.

Each of the above issues has been formally addressed by the Tribe. With regard to items 1 and 2, the Tribe provided that the temporary batch plant was considered in 2004 to support the construction of the Tribe's new parking structure. This temporary use is no longer being considered by the Tribe as construction of the parking structure is now complete.

With regard to items 3 and 4, the County has requested that BIA fully investigate the proposed use and comply with all Federal laws and regulations governing the permitting of tribal gambling activities. In accordance with the Department of Interior's March 2005 Checklist for Gaming Acquisitions, the acquisition is gaming related (1) if the land and the improvements on the land

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are going to be used exclusively for the gaming facility or (2) if the land and the improvements on the land are not used exclusively to support the gaming facility, but the gaming facility cannot operate without it. The land uses herein proposed by the Tribe clearly do not meet either criterion for gaming related acquisitions. As a result, the subject acquisition will not be governed by the land acquisition provisions of the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§2701-2721.

Items 5 and 6 have been satisfactorily addressed by the Tribe, and previously addressed in this Notice.

Factor 3 – Impact on State and its Political Subdivisions Resulting From the Removal of the Land from the Tax Rolls

The total real property taxes for fiscal year 2004 were $13,356.74. The Property was previously used for agricultural purposes, and is covered by a Williamson Act contract with Sonoma County. As such, the Property was unlikely to appreciate measurably and generate greater property taxes. Its condition would also not have generated collateral tax benefits through sales of goods and services, or payroll taxes from residents of the property. There were virtually none and no prospects in sight.

The Tribe's plans, on the other hand, do just the opposite. The local community will benefit from the Tribe's proposed development of the Property because the Tribe's use of the Property will stimulate construction activity, including the purchase of materials and services, and will keep payroll dollars in the community by housing Tribal residents who would otherwise have to commute into the area (and leave at night) in order to work on the Reservation. The surrounding community will be benefited from the added dollars in circulation, which will more than offset the loss of relatively insignificant property tax revenues.

Factor 4 - Jurisdictional Problems and Potential Conflicts of Land Use Which May Arise

The County of Sonoma had several concerns with regard to potential conflicts of land use, specifically that the Tribe's proposed uses conflict with the uses permitted under their voluntary agricultural preservation contract under the Williamson Act, Govt. Code §51200 et seq. It is the Bureau's position that acceptance of land by the federal government effectively causes the contract to become null and void pursuant to Govt. Code §51295 (Barnidge v. United States, 101 F. 2d 295, 298 and State of Minnesota v. United States, 125 F. 2d 640 [11]).

Additionally, the County stated that the proposed uses would conflict with the Sonoma County General Plan and Zoning Ordinance which provides that:

> *The primary use of any parcel shall be agricultural production and related processing, support services, and visitor serving uses. Residential uses in these are shall recognize that the primary use of the land may create agricultural "nuisance" situations, such as flies, noise, odors, and spraying of chemicals.*

and that:

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Local concentrations of commercial or industrial uses, even if related to surrounding agricultural activities, are detrimental to the primary use of the land for the productions of food, fiber and plant materials and shall be avoided.

The gist of the above concerns is the loss of jurisdiction over the subject property. The County will in fact lose jurisdictional control with an approved trust acquisition. However, the very essence of a "trust" acquisition is to enable tribes, in this case, the Dry Creek Rancheria, the opportunity to plan and implement programs for the benefit of its community. The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination. It does not appear that the Tribe's proposed uses in any way conflict with the County's General Plan and Zoning Ordinance; however, it is our determination that the needs of the Tribe in this case out weigh any jurisdictional conflicts that may arise.

Factor 5 - Whether the Bureau of Indian Affairs is Equipped to Discharge the Additional Responsibilities Resulting From the Acquisition of the Land in Trust Status

The Bureau of Indian Affairs has a trust responsibility for all lands held in trust by the United States for tribes. The Tribe currently accepts little assistance from the Bureau of Indian Affairs and anticipates even less as its gaming and other economic development projects grow. Accepting the property into trust should not impose any material additional responsibilities or burdens on the BIA beyond those already inherent in the Federal trust relationship between BIA and the Tribe. It is anticipated that any costs other than those already included in the Tribe's Tribal Priority Allocation will be borne by the Tribe, and that the Tribe will have adequate resources to assume that burden. The Tribal housing program that is anticipated is intended to be primarily based upon tribally obtained and guaranteed financing, and not as a burden on the Federal Government.

Factor 6 – The extent to which the applicant has provided information that allows the Secretary to comply with 602 DM 2, Land Acquisitions: Hazardous Substances Determination and 516 DM 1-7, National Environmental Policy Act Revised Implementing Procedures.

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential of, and extent of liability for, hazardous substances or other environmental remediation or injury. The record includes a negative Phase 1 "Contaminant Survey Checklist" dated September 28, 2005, for the subject parcel, reflecting that there were no hazardous materials or contaminants.

National Environmental Policy Act Compliance

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA's guidelines for NEPA compliance are set forth in Part 30 of the Bureau of Indian Affairs Manual (30 BIAM), Supplement 1.

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In this particular instance, a Draft Environmental Assessment (DEA), documenting and analyzing the potential impacts of the proposed project, was completed in May 2005. The DEA was distributed for public review and comment during the period beginning May 6, 2005 and ending June 6, 2005. As a result of the comments received on the Draft ED, revisions to the document were made, including two additional mitigation measures for air quality and biological resources. The Final Environment Assessment (FEA) dated August 2005 identifies potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, resource use patterns (transportation, land use and agriculture), public services, public health/hazardous materials, and other values (noise and visual resources). After review and independent evaluation, the BIA has determined that the proposed federal action, to approve the Dry Creek Rancheria's request to take the proposed 18-acre site into trust for the purpose of developing the site (tribal housing, emergency service, office space and agriculture), does not constitute a major federal action that would significantly affect the quality of the human environment within the meaning of NEPA. This conclusion is based on the analysis contained in the FEA, public comments made in response to the DEA, the Tribe's response to those comments, and the mitigation imposed. Therefore, an Environmental Impact Statement is not required, and the BIA issued a Finding of No Significant Impact (FONSI) on November 9, 2005. The FONSI was distributed to all persons and agencies known to be interested in the proposed action as indicated by the comments on the DEA.

Conclusion

Based on the foregoing, we at this time issue notice of our intent to accept the subject real property into trust. The subject acquisition will vest title in the United States of America in trust for the Dry Creek Rancheria of Pomo Indians of California in accordance with the Indian Land Consolidation Act of January 12, 1983 (25 U.S.C. §2202). The applicable regulations are set forth in the Code of Federal Regulations, Title 25, INDIANS, Part 151, as amended.

Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340 (copy enclosed).

Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within 30 days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed.

If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior 1849 C Street, N.W., MS-4140-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures.

If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b).

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If any party receiving this notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward copies of the notice to said party or timely provide our office with the name and address of said party.

Sincerely,

Amy C. Lutschke

Acting Regional Director

Enclosures
Distribution List
43 CFR 4.310-4.340

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DISTRIBUTION LIST

cc: BY CERTIFIED MAIL – RETURN RECEIPTS REQUESTED TO:

California State Clearinghouse (10 copies) – 7005 2570 0000 6695 0488
Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

Sara J. Drake, Deputy Attorney General – 7005 2570 0000 6695 0495
State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Paul Dobson – 7005 2570 0000 6695 0501
Deputy Legal Affairs Secretary
Office of the Governor of California
State Capitol Building
Sacramento, CA 95814

James Peterson, District Director – 7005 2570 00006695 0518
Office of Senator Diane Feinstein
750 B Street, Suite 1030
San Diego, CA 92101

Board of Supervisors – 7005 2570 6695 0525
Sonoma County
575 Administrative Drive
Santa Rosa, CA 95403

Public Works – 7005 2570 0000 6695 0549
Sonoma County
2300 County Center Drive, Suite B-100
Healdsburg, CA 95448

Sonoma County Fire Protection District – 7005 2570 0000 6695 0532
P.O. Box 217
Geyserville, CA 95441

Sonoma County Assessor – 7005 2570 0000 6695 0556
585 Fiscal Drive, Room 104F
Santa Rosa, CA 95403

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Sonoma County Sheriff's Dept. – 7005 2570 0000 6695 0563
2796 Ventura Ave.
Santa Rosa, CA 95403

Bruce D. Goldstein – 7005 2570 0000 6695 0617
Deputy County Counsel
575 Administration Drive, Room 105A
Santa Rosa, CA 95403

State of California – 7005 2570 0000 6695 0624
Department of Conservation
Attn: Stephen E. Oliva, Esq.
801 K Street
Sacramento, CA 95814

Department of Alcoholic Beverage Control – 7003 1680 0002 3878 9336
Attn: Michael Mann, District Administrator
50 "D" Street, Suite 130
Santa Rosa, CA 95404

Chairperson – 7005 2570 0000 6695 0570
Cloverdale Rancheria
555 S. Cloverdale Blvd., Suite 1
Cloverdale, CA 95425

Chairperson – 7005 2570 0000 6695 0587
Lytton Rancheria
1250 Coddington Center, Suite 1
Santa Rosa, CA 95401

Chairperson – 7005 2570 0000 6695 0594
Stewarts Point Rancheria
3535 Industrial Drive, Suite B-2
Santa Rosa, CA 95403

Chairperson – 7005 2570 0000 6695 0600
Graton Rancheria
P.O. Box 14428
Santa Rosa, CA 95402

Carl Winter – 7003 1680 0002 3878 9343
3189 Cactus Circle
Highland, CA 92346

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Regular Mail:

Superintendent
Bureau of Indian Affairs
Central California Agency
650 Capital Mall, Suite 8-500
Sacramento, CA 95814

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tate in one-half of the interests. The decision shall specify the right of appeal to the Board of Indian Appeals within 60 days from the date of the decision in accordance with §§4.310 through 4.323. The administrative law judge shall lodge the complete record relating to the demand for hearing with the title plant as provided in §4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

[36 FR 7186, Apr. 15, 1971, as amended at 55 FR 43133, Oct. 26, 1990]

§4.306 Time for payment.

A tribe shall pay the full fair market value of the interests purchased, as set forth in the appraisal report or as determined after hearing in accordance with §4.305, whichever is applicable, within 2 years from the date of decedent's death or within 1 year from the date of notice of purchase, whichever comes later.

§4.307 Title.

Upon payment by the tribe of the interests purchased, the Superintendent shall issue a certificate to the administrative law judge that this has been done and file therewith such documents in support thereof as the administrative law judge may require. The administrative law judge shall then issue an order that the United States holds title to such interests in trust for the tribe, lodge the complete record, including the decision, with the title plant as provided in §4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

§4.308 Disposition of income.

During the pendency of the probate and up to the date of transfer of title to the United States in trust for the tribe in accordance with §4.307, all income received or accrued from the land interests purchased by the tribe shall be credited to the estate.

CROSS REFERENCE: See 25 CFR part 2 for procedures for appeals to Area Directors and to the Commissioner of the Bureau of Indian Affairs.

GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

SOURCE: Sections 4.310 through 4.318 appear at 54 FR 6485, Feb. 10, 1989, unless otherwise noted.

§4.310 Documents.

(a) *Filing.* The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is the date of mailing or the date of personal delivery, except that a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e) shall be effective the date it is received by the Board.

(b) *Service.* Notices of appeal and pleadings shall be served on all parties in interest in any proceeding before the Interior Board of Indian Appeals by the party filing the notice or pleading with the Board. Service shall be accomplished upon personal delivery or mailing. Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party. Where a party is represented by more than one attorney, service on any one attorney is sufficient. The certificate of service on an attorney or representative shall include the name of the party whom the attorney or representative represents and indicate that service was made on the attorney or representative.

(c) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed or answered was served or the day of any other event after which a designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays, and other

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nonbusiness days shall be excluded in the computation.

(d) *Extensions of time.* (1) The time for filing or serving any document except a notice of appeal may be extended by the Board.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the Board may grant an extension of time on its own initiative.

(e) *Retention of documents.* All documents received in evidence at a hearing or submitted for the record in any proceeding before the Board will be retained with the official record of the proceeding. The Board, in its discretion, may permit the withdrawal of original documents while a case is pending or after a decision becomes final upon conditions as required by the Board.

§4.311 Briefs on appeal.

(a) The appellant may file an opening brief within 30 days after receipt of the notice of docketing. Appellant shall serve copies of the opening brief upon all interested parties or counsel and file a certificate with the Board showing service upon the named parties. Opposing parties or counsel shall have 30 days from receipt of appellant's brief to file answer briefs, copies of which shall be served upon the appellant or counsel and all other parties in interest. A certificate showing service of the answer brief upon all parties or counsel shall be attached to the answer filed with the Board.

(b) Appellant may reply to an answering brief within 15 days from its receipt. A certificate showing service of the reply brief upon all parties or counsel shall be attached to the reply filed with the Board. Except by special permission of the Board, no other briefs will be allowed on appeal.

(c) The Bureau of Indian Affairs shall be considered an interested party in any proceeding before the Board. The Board may request that the Bureau submit a brief in any case before the Board.

(d) An original only of each document should be filed with the Board. Documents should not be bound along the side.

(e) The Board may also specify a date on or before which a brief is due. Unless expedited briefing has been granted, such date shall not be less than the appropriate period of time established in this section.

§4.312 Decisions.

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse or set aside any proposed finding, conclusion or order of an official of the Bureau of Indian Affairs or an administrative law judge. Distribution of decisions shall be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board are final for the Department and shall be given immediate effect.

§4.313 Amicus Curiae; intervention; joinder motions.

(a) Any interested person or Indian tribe desiring to intervene or to join other parties or to appear as amicus curiae or to obtain an order in an appeal before the Board shall apply in writing to the Board stating the grounds for the action sought. Permission to intervene, to join parties, to appear, or for other relief, may be granted for purposes and subject to limitations established by the Board. This section shall be liberally construed.

(b) Motions to intervene, to appear as amicus curiae, to join additional parties, or to obtain an order in an appeal pending before the Board shall be served in the same manner as appeal briefs.

§4.314 Exhaustion of administrative remedies.

(a) No decision of an administrative law judge or an official of the Bureau of Indian Affairs, which at the time of its rendition is subject to appeal to the Board, shall be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. 704, unless made effective pending decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

EXHIBIT A

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

[54 FR 6485, Feb. 10, 1989; 54 FR 7504, Feb. 21, 1989]

§ 4.315 Reconsideration.

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and shall contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition shall not stay the effect of any decision or order and shall not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

§ 4.316 Remands from courts.

Whenever any matter is remanded from any court to the Board for further proceedings, the Board will either remand the matter to an administrative law judge or to the Bureau of Indian Affairs, or to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

§ 4.317 Standards of conduct.

(a) *Inquiries about cases.* All inquiries with respect to any matter pending before the Board shall be made to the Chief Administrative Judge of the Board or the administrative judge assigned the matter.

(b) *Disqualification.* An administrative judge may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the judge deems such action appropriate. If, prior to a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the Director of the Office of Hearings and Appeals shall determine the matter of disqualification.

§ 4.318 Scope of review.

An appeal shall be limited to those issues which were before the administrative law judge upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the official of the Bureau of Indian Affairs on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board shall not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

APPEALS TO THE BOARD OF INDIAN APPEALS IN PROBATE MATTERS

SOURCE: Sections 4.320 through 4.323 appear at 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

§ 4.320 Who may appeal.

A party in interest shall have a right of appeal to the Board of Indian Appeals from an order of an administrative law judge on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate.

(a) *Notice of Appeal.* Within 60 days from the date of the decision, an appellant shall file a written notice of appeal signed by appellant, appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. A statement of the errors of fact and law upon which the appeal is based shall be included in either the notice of appeal or in any brief filed. The notice of appeal shall include the names and addresses of parties served. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction.

(b) *Service of copies of notice of appeal.* The appellant shall personally deliver or mail the original notice of appeal to the Board of Indian Appeals. A copy shall be served upon the administrative law judge whose decision is appealed as well as all interested parties. The notice of appeal filed with the Board shall

EXHIBIT A

include a certification that service was made as required by this section.

(c) *Action by administrative law judge; record; inspection.* The administrative law judge, upon receiving a copy of the notice of appeal, shall notify the Superintendent concerned to return the duplicate record filed under §§ 4.236(b) and 4.241(d), or under § 4.242(f) of this part, to the Land Titles and Records Office designated under § 4.236(b) of this part. The duplicate record shall be conformed to the original by the Land Titles and Records Office and shall thereafter be available for inspection either at the Land Titles and Records Office or at the office of the Superintendent. In those cases in which a transcript of the hearing was not prepared, the administrative law judge shall have a transcript prepared which shall be forwarded to the Board within 30 days from receipt of a copy of the notice of appeal.

§ 4.321 Notice of transmittal of record on appeal.

The original record on appeal shall be forwarded by the Land Titles and Records Office to the Board by certified mail. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing issued under § 4.332 of this part.

§ 4.322 Docketing.

The appeal shall be docketed by the Board upon receipt of the administrative record from the Land Titles and Records Office. All interested parties as shown by the record on appeal shall be notified of the docketing. The docketing notice shall specify the time within which briefs may be filed and shall cite the procedural regulations governing the appeal.

§ 4.323 Disposition of the record.

Subsequent to a decision of the Board, other than remands, the record filed with the Board and all documents added during the appeal proceedings, including any transcripts prepared because of the appeal and the Board's decision, shall be forwarded by the Board to the Land Titles and Records Office designated under § 4.236(b) of this part. Upon receipt of the record by the Land Titles and Records Office, the duplicate record required by § 4.320(c) of this part shall be conformed to the original and forwarded to the Superintendent concerned.

APPEALS TO THE BOARD OF INDIAN APPEALS FROM ADMINISTRATIVE ACTIONS OF OFFICIALS OF THE BUREAU OF INDIAN AFFAIRS: ADMINISTRATIVE REVIEW IN OTHER INDIAN MATTERS NOT RELATING TO PROBATE PROCEEDINGS

SOURCE: Sections 4.330 through 4.340 appear at 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

§ 4.330 Scope.

(a) The definitions set forth in 25 CFR 2.2 apply also to these special rules. These regulations apply to the practice and procedure for: (1) Appeals to the Board of Indian Appeals from administrative actions or decisions of officials of the Bureau of Indian Affairs issued under regulations in 25 CFR chapter 1, and (2) administrative review by the Board of Indian Appeals of other matters pertaining to Indians which are referred to it for exercise of review authority of the Secretary or the Assistant Secretary—Indian Affairs.

(b) Except as otherwise permitted by the Secretary or the Assistant Secretary—Indian Affairs by special delegation or request, the Board shall not adjudicate:

(1) Tribal enrollment disputes;

(2) Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority; or

(3) Appeals from decisions pertaining to final recommendations or actions by officials of the Minerals Management Service, unless the decision is based on an interpretation of Federal Indian law (decisions not so based which arise from determinations of the Minerals Management Service, are appealable to the Interior Board of Land Appeals in accordance with 43 CFR 4.410).

§ 4.331 Who may appeal.

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in title 25 of the Code of Federal Regulations

EXHIBIT A

may appeal to the Board of Indian Appeals, except—

(a) To the extent that decisions which are subject to appeal to a higher official within the Bureau of Indian Affairs must first be appealed to that official;

(b) Where the decision has been approved in writing by the Secretary or Assistant Secretary—Indian Affairs prior to promulgation; or

(c) Where otherwise provided by law or regulation.

§4.332 Appeal to the Board; how taken; mandatory time for filing; preparation assistance; requirement for bond.

(a) A notice of appeal shall be in writing, signed by the appellant or by his attorney of record or other qualified representative as provided by 43 CFR 1.3, and filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 30 days after receipt by the appellant of the decision from which the appeal is taken. A copy of the notice of appeal shall simultaneously be filed with the Assistant Secretary—Indian Affairs. As required by §4.333 of this part, the notice of appeal sent to the Board shall certify that a copy has been sent to the Assistant Secretary—Indian Affairs. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction. A notice of appeal shall include:

(1) A full identification of the case;

(2) A statement of the reasons for the appeal and of the relief sought; and

(3) The names and addresses of all additional interested parties, Indian tribes, tribal corporations, or groups having rights or privileges which may be affected by a change in the decision, whether or not they participated as interested parties in the earlier proceedings.

(b) In accordance with 25 CFR 2.20(c) a notice of appeal shall not be effective for 20 days from receipt by the Board, during which time the Assistant Secretary—Indian Affairs may decide to review the appeal. If the Assistant Secretary—Indian Affairs properly notifies the Board that he has decided to review the appeal, any documents concerning the case filed with the Board shall be transmitted to the Assistant Secretary—Indian Affairs.

(c) When the appellant is an Indian or Indian tribe not represented by counsel, the official who issued the decision appealed shall, upon request of the appellant, render such assistance as is appropriate in the preparation of the appeal.

(d) At any time during the pendency of an appeal, an appropriate bond may be required to protect the interest of any Indian, Indian tribe, or other parties involved.

§4.333 Service of notice of appeal.

(a) On or before the date of filing of the notice of appeal the appellant shall serve a copy of the notice upon each known interested party, upon the official of the Bureau of Indian Affairs from whose decision the appeal is taken, and upon the Assistant Secretary—Indian Affairs. The notice of appeal filed with the Board shall certify that service was made as required by this section and shall show the names and addresses of all parties served. If the appellant is an Indian or an Indian tribe not represented by counsel, the appellant may request the official of the Bureau whose decision is appealed to assist in service of copies of the notice of appeal and any supporting documents.

(b) The notice of appeal will be considered to have been served upon the date of personal service or mailing.

§4.334 Extensions of time.

Requests for extensions of time to file documents may be granted upon a showing of good cause, except for the time fixed for filing a notice of appeal which, as specified in §4.332 of this part, may not be extended.

§4.335 Preparation and transmittal of record by official of the Bureau of Indian Affairs.

(a) Within 20 days after receipt of a notice of appeal, or upon notice from the Board, the official of the Bureau of Indian Affairs whose decision is appealed shall assemble and transmit the record to the Board. The record on appeal shall include, without limitation, copies of transcripts of testimony

EXHIBIT A

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taken: all original documents, petitions, or applications by which the proceeding was initiated; all supplemental documents which set forth claims of interested parties; and all documents upon which all previous decisions were based.

(b) The administrative record shall include a Table of Contents noting, at a minimum, inclusion of the following:

(1) The decision appealed from;

(2) The notice of appeal or copy thereof; and

(3) Certification that the record contains all information and documents utilized by the deciding official in rendering the decision appealed.

(c) If the deciding official receives notification that the Assistant Secretary—Indian Affairs has decided to review the appeal before the administrative record is transmitted to the Board, the administrative record shall be forwarded to the Assistant Secretary—Indian Affairs rather than to the Board.

§4.336 Docketing.

An appeal shall be assigned a docket number by the Board 20 days after receipt of the notice of appeal unless the Board has been properly notified that the Assistant Secretary—Indian Affairs has assumed jurisdiction over the appeal. A notice of docketing shall be sent to all interested parties as shown by the record on appeal upon receipt of the administrative record. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing. The docketing notice shall specify the time within which briefs shall be filed, cite the procedural regulations governing the appeal and include a copy of the Table of Contents furnished by the deciding official.

§4.337 Action by the Board.

(a) The Board may make a final decision, or where the record indicates a need for further inquiry to resolve a genuine issue of material fact, the Board may require a hearing. All hearings shall be conducted by an administrative law judge of the Office of Hearings and Appeals. The Board may, in its discretion, grant oral argument before the Board.

(b) Where the Board finds that one or more issues involved in an appeal or a matter referred to it were decided by the Bureau of Indian Affairs based upon the exercise of discretionary authority committed to the Bureau, and the Board has not otherwise been permitted to adjudicate the issue(s) pursuant to §4.330(b) of this part, the Board shall dismiss the appeal as to the issue(s) or refer the issue(s) to the Assistant Secretary—Indian Affairs for further consideration.

§4.338 Submission by administrative law judge of proposed findings, conclusions and recommended decision.

(a) When an evidentiary hearing pursuant to §4.337(a) of this part is concluded, the administrative law judge shall recommend findings of fact and conclusions of law, stating the reasons for such recommendations. A copy of the recommended decision shall be sent to each party to the proceeding, the Bureau official involved, and the Board. Simultaneously, the entire record of the proceedings, including the transcript of the hearing before the administrative law judge, shall be forwarded to the Board.

(b) The administrative law judge shall advise the parties at the conclusion of the recommended decision of their right to file exceptions or other comments regarding the recommended decision with the Board in accordance with §4.339 of this part.

§4.339 Exceptions or comments regarding recommended decision by administrative law judge.

Within 30 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to or other comments on the decision with the Board.

§4.340 Disposition of the record.

Subsequent to a decision by the Board, the record filed with the Board and all documents added during the appeal proceedings, including the Board's decision, shall be forwarded to the official of the Bureau of Indian Affairs whose decision was appealed for proper disposition in accordance with rules

EXHIBIT A

and regulations concerning treatment of Federal records.

WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985; AUTHORITY OF ADMINISTRATIVE JUDGES; DETERMINATIONS OF THE HEIRS OF PERSONS WHO DIED ENTITLED TO COMPENSATION

SOURCE: 56 FR 61333, Dec. 3, 1991, unless otherwise noted.

§ 4.350 Authority and scope.

(a) The rules and procedures set forth in §§ 4.350 through 4.357 apply only to the determination through intestate succession of the heirs of persons who died entitled to receive compensation under the White Earth Reservation Land Settlement Act of 1985, Public Law 99–264 (100 Stat. 61), amended by Public Law 100–153 (101 Stat. 886) and Public Law 100–212 (101 Stat. 1433).

(b) Whenever requested to do so by the Project Director, administrative judges shall determine such heirs by applying inheritance laws in accordance with the White Earth Reservation Land Settlement Act of 1985 as amended, notwithstanding the decedent may have died testate.

(c) As used herein, the following terms shall have the following meanings:

(1) The term *Act* means the White Earth Reservation Land Settlement Act of 1985 as amended.

(2) The term *Board* means the Board of Indian Appeals in the Office of Hearings and Appeals, Office of the Secretary.

(3) The term *Project Director* means the officer in charge of the White Earth Reservation Land Settlement Branch of the Minneapolis Area Office, Bureau of Indian Affairs, at Cass Lake, Minnesota.

(4) The term *party (parties) in interest* means the Project Director and any presumptive or actual heirs of the decedent, or of any issue of any subsequently deceased presumptive or actual heir of the decedent.

(5) The term *compensation* means a monetary sum, as determined by the Project Director, pursuant to section 8(c) of the Act.

(6) The term *administrative judge* means an administrative judge of the Office of Hearings and Appeals to whom the Director of the Office of Hearings and Appeals has redelegated his authority, as designee of the Secretary, for making heirship determinations as provided for in these regulations.

(7) The term *appellant* means a party aggrieved by a final order or final order upon reconsideration issued by an administrative judge who files an appeal with the Board.

[56 FR 61333, Dec. 3, 1991; 56 FR 65782, Dec. 18, 1991]

§ 4.351 Commencement of the determination process.

(a) Unless an heirship determination which is recognized by the Act already exists, the Project Director shall commence the determination of the heirs of those persons who died entitled to receive compensation by filing with the administrative judge all data, identifying the purpose for which they are being submitted, shown in the records relative to the family of the decedent.

(b) The data shall include but are not limited to:

(1) A copy of the death certificate if one exists. If there is no death certificate, then another form of official written evidence of the death such as a burial or transportation of remains permit, coroner's report, or church registry of death. Secondary forms of evidence of death such as an affidavit from someone with personal knowledge concerning the fact of death or an obituary or death notice from a newspaper may be used only in the absence of any official proof or evidence of death.

(2) Data for heirship finding and family history, certified by the Project Director. Such data shall contain:

(i) The facts and alleged facts of the decedent's marriages, separations and divorces, with copies of necessary supporting documents;

(ii) The names and last known addresses of probable heirs at law and other known parties in interest;

(iii) Information on whether the relationships of the probable heirs at law to the decedent arose by marriage, blood, or adoption.

(3) Known heirship determinations, including those recognized by the Act determining the heirs of relatives of

EXHIBIT A

CERTIFICATION OF SERVICE BY MAIL
Pursuant to 43 CFR Subtitle A, Section 4.333

I am employed in the County of Sonoma, California; I am over the age of 18 years and not a party to the within action; my business address is 575 Administration Dr., Rm. 105A, Santa Rosa, California. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service.

On September 28, 2006, following ordinary business practice, I served the attached letter NOTICE OF APPEAL BY SONOMA COUNTY, CALIFORNIA, by placing on that date at my place of business, a true copy thereof, enclosed in a sealed envelope, for collection and mailing with the United States Postal Service where it would be deposited with the United States Postal Service that same day in the ordinary course of business, addressed as follows:

Interior Board of Indian Appeals
Office of Hearings and Appeals
U.S. Department of the Interior
801 N. Quincy Street, Ste. 300
Arlington, VA 22203
(Via Overnight Mail)

Assistant Secretary - Indian Affairs
U.S. Department of Interior
1849 C Street, N.W., MS-4140-MIB
Washington, D.C. 20240
(Via Overnight Mail)

Amy Dutschke
Acting Regional Director
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825
(Via Overnight Mail)

Superintendent
Bureau of Indian Affairs
Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814

I hereby certify that copies have also been mailed on this date to Interested Parties as shown on the distribution list attached hereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 28, 2006 , at Santa Rosa, California.

B. Martinez
Beth Martinez

DISTRIBUTION LIST OF INTERESTED PARTIES

Harvey Hopkins
Tribal Chairperson
Dry Creek Rancheria of Pomo Indians
P.O. Box 607
Geyserville, CA 95441

Sheriff Bill Cogbill
Sonoma County Sheriff's Department
2796 Ventura Avenue
Santa Rosa, CA 95403

Geyserville Fire Protection District
P.O. Box 217
Geyserville, CA 95441

Office of Congressman Mike Thompson
1040 Main Street, Suite 101
Napa, CA 94559

California State Clearinghouse
Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

Sara J. Drake
Marc LeForestier
Deputy Attorney Generals
Department of Justice
State of California
P.O. Box 944255
Sacramento, CA 94244-2550

Paul Dobson
Deputy Legal Affairs Secretary
Office of the Governor of California
State Capitol Building
Sacramento, CA 95814

James Peterson
District Director
Office of Senator Diane Feinstein
750 B Street, Suite 1030
San Diego, CA 92101

State of California
Department of Conservation
Attn: Stephen E. Oliva, Esq.
801 K Street, MS24-03
Sacramento, CA 95814

Department of Alcoholic Beverage Control
Attn: Michael Mann, District Administrator
50 "D" Street, Suite 130
Santa Rosa, CA 95404

Alexander Valley Association
Attn: Ralph Sceales, President
P. O. Box 1195
Healdsburg, CA 95448

Chairperson
Cloverdale Rancheria
555 S. Cloverdale Blvd., Suite 1
Cloverdale, CA 95425

Chairperson
Lytton Rancheria
1250 Coddingtown Center, Suite 1
Santa Rosa, CA 95401

Chairperson
Stewarts Point Rancheria
3535 Industrial Drive, Suite B-2
Santa Rosa, CA 95403

Chairperson
Graton Rancheria
P.O. Box 14428
Santa Rosa, CA 95402

Carl Winter
3189 Cactus Circle
Highland, CA 92346

EXHIBIT 3

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

In re Dry Creek Rancheria Wastewater Treatment Plant
NPDES Permit No. CA 0005241

NPDES Appeal Nos. 07-14 & 07-15

Appeal - NPDES Permit

ALEXANDER VALLEY ASSOCIATION

PO Box 1195

October 9, 2006

Interior Board of Indian Appeals
U.S. Department of the Interior
801 N. Quincy Street, Suite 300
Arlington, VA 22203

Reference: Notice of Appeal by Alexander Valley Association of
Proposed Notice of Decision For Dry Creek Rancheria Band of Pomo Indians

To the Board of Indian Appeals:

Appellant Alexander Valley Association ("AVA") files this Notice of Appeal of the Notice of Decision referenced above and more particularly identified in this Notice. In furtherance of its appeal, AVA alleges as follows:

1. AVA is an interested party under applicable law and relevant circumstances, including the following:

    a. AVA is a not-for-profit California corporation whose members include over 300 property owners located in the Alexander Valley of Sonoma County, CA in which the lands that are the subject of this proceeding are located. AVA's mission includes promoting and preserving the rural residential and agricultural conditions and character of the lands and environment which constitute the Alexander Valley of Sonoma County. The AVA performs this mission acting for and on behalf of its members with respect to a broad range of community concerns including governmental regulatory activities affecting the public health, safety and welfare of property owners in the Valley.

    b. The proposed decision from which this appeal is taken adversely affects the interests of AVA and its members with respect to, among other things, creation of governmental jurisdictional problems and land use conflicts. Specifically, as a result of the decision, the Tribe would be empowered to undertake enterprises and activities on the subject property that would conflict with and be detrimental to the rural residential and agricultural character and conditions of the Alexander Valley region and of the lands of AVA's members. By virtue of the trust status of the subject property, if allowed, AVA and its members would become powerless to effect any outcomes to prevent or alleviate adverse impacts on them and their lands.

c. AVA has actively participated in this proceeding. As indicated in the proposed decision (p.2), not only did AVA receive notice of the proceedings, along with many other interested parties AVA was expressly invited to participate and comment on the proposed fee to trust application. The proposed decision (p.2) also acknowledges that AVA did file timely written comments objecting to the proposed action and those comments are a part of the record of these proceedings.

2. This notice and appellant AVA's appeal is timely under section 4.332(a) of 43 CFR Subtitle A (10-1-94 Edition) in that, although appellant was and is an interested party, AVA was not included in the Distribution List attached to the Notice of Decision and did not learn of the decision nor did it receive a copy of it until on or about October 4, 2006, upon receipt of a copy of the decision served by appellant County of Sonoma with its Notice of Appeal. Therefore, this appeal is taken within 30 days of receipt of the decision in conformance with the regulations.

3. Pursuant to Section 4.332(a) of the regulations, the identification of the case, a statement of the reasons for AVA's appeal and the relief sought are the same as stated in the Notice of Appeal of appellant Sonoma County, a copy of which is attached to this Notice and incorporated by reference.

4. Appellant certifies under penalty of perjury of the laws of the State of California that: (a) in addition to the Board of Indian Appeals, copies of this notice have been sent by first class United States Mail to the Assistant Secretary of Indian Affairs and to each of the persons and entities listed in the "Certificate of Service By Mail" and the "Distribution List of Interested Parties" attached to appellant Sonoma County's Notice of Appeal that is attached to this Notice; (b) likewise this Notice has been sent to the County of Sonoma on behalf of its Board of Supervisors, its Department of Public Works, its County Assessor, its County Counsel, and any other affected departments and agencies of its government, by mailing a copy of this notice to Assistant County Counsel Bruce D. Goldstein, Esq., 575 Administration Drive, Room 105A, Santa Rosa, CA 95403; (c) no other interested parties are known to appellant AVA; and (d) all matters stated in this notice are true and correct, so far as known to appellant.

Alexander Valley Association

By _____

Candace Cadd

President of the Board of Directors

COUNTY ADMINISTRATION CENTER
575 ADMINISTRATION DRIVE,
ROOM 105A
SANTA ROSA, CALIFORNIA 95403

TELEPHONE: (707) 565-2421
FACSIMILE: (707) 565-2624

ASSISTANT COUNTY COUNSEL
BRUCE D. GOLDSTEIN

OFFICE OF THE COUNTY COUNSEL
STEVEN M. WOODSIDE
County Counsel

CHIEF DEPUTIES
C. DAVID HURST
TARA HARVEY
RICHARD M. FLORES
SHERYL L. BRATTON

DEPUTIES
KATHLEEN M. FARRELLY
JILL D. GOLIS
KATHLEEN A. LAROCQUE
SUZANNE M. DE KOZAN
SUE GALLAGHER
JEFFREY L. BERK
SALLY B. MCGOUGH
DAVID R. MCFADDEN
GREGORY T. DION
STEVE S. SHUPE
PHYLLIS GALLAGHER
ANNE L. KECK
TINA M. WALLIS
BARBARA FITZMAURICE
LINDA D. SCHILTGEN
ELIZABETH S. HUTTON
WILLIAM L. ADAMS
JEFFREY M. BRAX
JENNIFER C. KLEIN
MARGARET A. SINGLETON
BRIAN E. NUSSBAUM
DEBBIE F. LATHAM

September 28, 2006

Via Overnight Mail
Interior Board of Indian Appeals
U.S. Department of the Interior
801 N. Quincy St., Suite 300
Arlington, Virginia 22203

Re: Notice of Appeal by Sonoma County, California
Proposed Notice of Decision for Dry Creek Rancheria Band of Pomo Indians

To the Honorable Members of the Board of Indian Appeals:

I. IDENTIFICATION OF APPEAL

The County of Sonoma, State of California, ("County") hereby files this Notice of Appeal ("Notice"), pursuant to 43 CFR 4.332, indicating its challenge to the Proposed Notice of Decision of the Pacific Regional Office of the Bureau of Indian Affairs ("BIA") to take land into trust status on behalf of the Dry Creek Rancheria Band of Pomo Indians ("Tribe"). Sonoma County is an "interested party" as the Proposed Decision authorizes real property to be taken into trust by the United States that is within the political subdivision (and under the regulatory and taxation authority) of the County. The Notice pertains to the Proposed Decision of the United States Department of the Interior, Bureau of Indian Affairs Regional Office issued by the Acting Regional Director on or about August 29, 2006 ("Proposed Decision"). The Proposed Decision grants the application of the Tribe to take into trust approximately 18 acres of real property located in the County of Sonoma, State of California. The proposed trust land is located adjacent to the Tribe's gaming facility and is more particularly described in the Proposed Decision which is attached hereto as **Exhibit A** and incorporated by this reference.

II. STATEMENT OF REASONS

A. THE PROPOSED DECISION WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND THE BIA ABUSED ITS DISCRETION IN GRANTING THE TRUST APPLICATION

The Proposed Decision contains serious errors of law, fact, and process which require that the preliminary trust determination be reversed. The Proposed Decision is fundamentally flawed as the BIA failed to apply the appropriate criteria in determining that the requested land should be afforded trust status.[1] The Proposed Decision also appears to adopt the Tribe's position without conducting the necessary independent investigation and consideration. Critical problems with the Decision include failure to properly take into account the fact that the Tribe's current land is not held in trust, disregard of substantial evidence that the trust land will be used for gaming purposes, and summary dismissal of legal authority that the land is bound by a Williamson Act contract. The BIA further abused its discretion by giving no weight to local government concerns and improperly issuing a Finding of No Significant Impacts (FONSI), rather than requiring a more thorough examination of the environmental impacts through an Environmental Impact Statement ("EIS").

1. The Proposed Trust Acquisition Creates Serious Jurisdictional Problems and Potential Land Use Conflicts

Without the benefit of legal analysis the Proposed Decision adopts the Tribe's position as its own that "acceptance of land by the federal government effectively causes the [Williamson] contract to become null and void." The statute and cases summarily cited in the Proposed Decision (Govt. Code § 51295; *Barnidge v. United States*, 101 F.2d 295, 298 and *State of Minnesota v. United States*, 125 F.2d 640) do not stand for the

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[1] A Statement of Reasons for the County's Appeal are provided above pursuant to 43 CFR § 4.332(a). The County of Sonoma's Comments on the Application of the Dry Creek Rancheria to the Secretary of the Interior to Accept Land Into Trust For Non-Gaming Purpose and related Comments to Dry Creek Rancheria Fee to Trust Project Draft Environmental Assessment expound further on the appeal basis, are part of the Administrative Record, and are incorporated herein by this reference. In addition, the BIA relied upon errors of law and fact throughout the Proposed Decision. The County offers the above only as examples of deficiencies requiring reversal and reserves the right to challenge additional errors in the Proposed Decision following preparation of the Administrative Record.

proposition they purport to support. In making its erroneous analysis, the Proposed Decision improperly determines that there are not jurisdictional problems and land use conflicts that would arise by the trust acquisition under 25 CFR 151.10 (f).

It is undisputed that the Tribe purchased the Property subject to a Williamson Act contract and that the proposed uses conflict with the uses permitted under the agricultural preservation requirements imposed under the Act. (Govt. Code §51200 *et seq.*) In purchasing the Property, the Tribe was notified of and agreed to be bound by the terms of the contract. The weight of authority, simply disregarded by the Proposed Decision, is that the contract would survive a transfer into trust. In *Friends of East Willits Valley v. County of Mendocino*, 101 Cal. App. 4th 191 (2002), the petitioners challenged cancellation of a Williamson Act contract for a parcel subsequently taken into trust. As here, the BIA took the position that granting of the trust application voided the Williamson Act restrictions and rendered them inapplicable. (*Id.* at 198.) The Court rejected this argument, holding that no state or federal law "invalidates contractual commitments made before the passage of land into trust." (*Id.* at 201.)

The *Friends of East Willits Valley* Court noted that the tribe had voluntarily accepted the Williamson Act restrictions, and that holding that these restrictions are "automatically voided by the passage of land into trust" would violate both law and policy. (*Id.* at 203; *see also Of Rhode Island and Providence Plantations v. Eastern Area Director* (2000) 35 I.B.I.A. 93 (BIA should consider town's pre-existing easement in the trust application because the easement rights survive into the trust); *Narragansett Indian Tribe v. Narragansett Electric Co.* (1995) 878 F. Supp. 349, 365 (easement granted to city would not be eliminated if BIA accepted land into trust because the pre-existing easement bound all successors-in-interest).

As demonstrated above, he Proposed Decision's determination that there are not significant jurisdictional and land use conflicts is not supported by substantial evidence and is in error as a matter of law.

2. The BIA Did Not Apply the Appropriate Criteria for the Trust Application as the Land Was Not Considered a Gaming-Related Acquisition

The Proposed Decision is fundamentally flawed as the trust application was not analyzed under the procedure and standards applicable to a gaming-related project. The Proposed Decision ignored the gaming requirement despite clear evidence that the land would be used as an essential component of the Tribe's casino master plan. Under the

for "gaming related purposes" must be reviewed by the Office of Indian Gaming Management (OIGM) and subject to compliance with the Indian Gaming Regulatory Act (IGRA), in addition to the Title 25 Code of Regulations Part 151 test reflected in the Proposed Decision.

The Proposed Decision asserts that such a gaming review is not appropriate in this case as the Tribe's gaming facility can operate without the proposed trust land. (*See* Proposed Decision at p. 7.) However, the Proposed Decision does not indicate any independent investigation or analysis of the County's argument that the fee-to-trust application and related project is an integral part of the gaming operation master plan. For example, ignored by the BIA's decision is that the oversized access road extending to the Rancheria is intended to provide emergency ingress and egress to the casino; the over-sized parking area is likely to be used for casino complex parking; the emergency services building is intended to primarily serve the adjacent casino (and not the trust property's proposed tasting room and residential subdivision) and, critically, the water storage and transmission facilities are an essential part of the final casino plan.

3. The Proposed Decision Erred Both in the BIA's Authority to Take the Land into Trust and the Agency's Ability to Impose Restrictions on the Property

The BIA relied on the Secretary's power to take the land into trust as it is "contiguous to the exterior boundaries of the Dry Creek Rancheria." (Proposed Decision at p. 2.) The applicable regulations contained in 25 CFR 151.3 provide that contiguous land must be adjacent to a tribe's reservation. The Rancheria is neither a "reservation" as defined under the law nor a trust property (as the land is held in fee by the United States). As such the Proposed Decision improperly relies upon 25 CFR 151.3(1) as a basis for the authority to take the land into trust.

Even assuming the BIA has the authority to take the land into trust, the Proposed Decision improperly concludes that it could not impose restrictions on trust land to insure that it was not used for gaming purposes or uses inconsistent with its Williamson Act obligations. (Proposed Decision at p. 3.) In doing so, as the Administrative Record will indicate, it misrepresented the position of the trust comments of Congressman Mike Thompson and erred as a matter of law. (*See* Proposed Decision at p. 3.) This important legal error has ramifications for the entire trust decision and NEPA analysis.

B. THE BIA FAILED TO COMPLY WITH THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

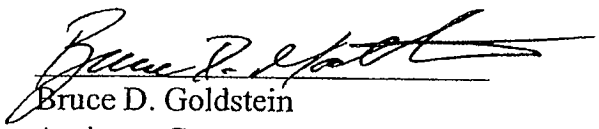
The County submitted twenty-two (22) pages of comments to the Draft EA detailing the significant long-term impacts on the environment that would be caused by approval of the trust application as well as a lack of an appropriate alternatives analysis. In its decision the BIA failed to follow its own requirements for NEPA compliance as set forth in Part 30 of the Bureau of Indian Affairs Manual (30 BIAM), Supplement 1. For example, the County comments identified significant impacts that, pursuant to 30 BIAM, Supp.1, 5.1, should have required preparation of an EIS. The County respectfully submits that the BIA cannot lawfully have approved the proposed project on the basis of the Draft EA and the agency abused its discretion in not requiring an EIS.

III. NOTICE TO INTERESTED PARTIES

The Proposed Decision was received by the County on or about August 30, 2006. Pursuant to 25 CFR 4.333, the County hereby certifies that this Notice was served on the Assistant Secretary - Indian Affairs and to all other required known interested parties as shown in the attached Proof of Service. The attached proof of service shall constitute the list of interested parties required pursuant to 43 CFR 4.332(a)(3) and is incorporated by this reference.

Respectfully submitted,

Steven M. Woodside, County Counsel



Bruce D. Goldstein
Assistant County Counsel
Attorneys for Appellant
County of Sonoma

BDG:bkm
attachments

EXHIBIT "A"

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

IN REPLY REFER TO:

AUG 29 2006

NOTICE OF DECISION

CERTIFIED MAIL – RETURN RECEIPT REQUESTED – 7003 1680 0002 3878 9350

Harvey Hopkins, Chairperson
Dry Creek Rancheria
P.O. Box 607
Geyersville, CA 95441

Dear Mr. Hopkins:

This is notice of our decision upon the application of the Dry Creek Rancheria, to have the below-described real property, accepted by the United States of America in trust for the Dry Creek of Pomo Indians of California. The land referred to herein is situated in the State of California, County of Sonoma, Unincorporated Area, and is described as follows:

That portion of the following described land lying Northeasterly of the Centerline of State Highway 128 as said Highway existed on April 16, 1971. Beginning at an iron pin driven in the ground in the middle of the County Road leading form Alexander Valley to Geyserville, on the East side of the Russian River, in the Northwesterly line of the Land of Frederick and Emma Drake, thence along said Northwesterly line South 47 ½° West, 31.07 chains to a station in the Bed of Russian River; thence up and along said Bed of the Russian River, North 49 ¾° West, 15.84 chains to a station; thence leaving the Bed of said River North 48 ¼° East, 28.90 chains along the Easterly line of the Land of William Smith to an iron pin driven in the ground in the middle of said Road; thence along the middle of said Road, South 54 ½° East, 6.11 chains; thence South 62 ½° East, 5.67 chains to an iron pin driven in the ground; thence North 26° East 23.03 chains to an iron pin driven in the ground in the Southwesterly line of the Caslamayomi Rancho (United States Indian Reservation); thence along said line South 46 ½° East, 12.55 chains to a post, being the most Northerly corner of the Land of said Frederick and Emma Drake; thence along the Northwesterly line of said land, South 47 ¾° West, 19.58 chains to an iron pin driven in the ground; thence South 54° East, 0.83 chains to and iron pin driven in the ground; thence South 20 ½° West, 1.69 chains to an iron pin driven in the ground, in the middle of said road; thence along the middle of said Road North 57 ¾° West, 1.63 chains to the place of beginning and being a portion of the Sotoyome Rancho.

The above-described real property contains approximately 18.03 acres, more or less and is contiguous to the exterior boundaries of the Dry Creek Rancheria.

Bd members
Bruce Goldstein

TAKE PRIDE IN AMERICA

EXHIBIT A

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title on behalf of the United States of America for the benefit of tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the exterior boundaries of the tribe's reservation, or adjacent thereto, or within a tribal consolidation area, or (2) when the tribe already owns an interest in the land, or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended.

In this particular instance, the authorizing Act of Congress is the Indian Land Consolidation Act of 1983 (25 USC §2202 et seq). As previously stated, the lands that are the subject of this decision notice are contiguous to the exterior boundaries of the Dry Creek Rancheria.

On April 20, 2005, we issued notice of, and sought comments regarding the fee-to-trust application from the California Office of Planning and Research; State of California, Deputy Attorney General; State of California, Deputy Legal Affairs; State of California, Department of Conservation; Department of Alcoholic Beverage Control; James Peterson, District Director, Office of Dianne Feinstein; Bruce Goldstein, Deputy Counsel, Sonoma County; Sonoma County Board of Supervisors; Sonoma County Department of Public Works; Sonoma County Fire Protection District; Sonoma County Assessor; Sonoma County Sheriff's Dept; Chairperson, Cloverdale Rancheria; Chairperson, Lytton Rancheria; Chairperson, Stewarts Point Rancheria; Chairperson, Graton Rancheria; Alexander Valley Association.

In response to our notification, we received the following comments:

- A letter dated June 1, 2005 from the Department of Transportation stating they have no comments to offer.
- A letter dated June 6, 2005 from the Alexander Valley Association stating that the proposed acquisition should be processed under the provisions of the Indian Gaming Regulatory Act (IGRA) and that the Dry Creek Rancheria is held in fee, and not in trust.
- A 138-page packet dated June 21, 2005 from the County of Sonoma, Board of Supervisors, stating that the County is concerned that accepting the land into trust will create jurisdictional problems and land use conflicts with the Sonoma County General Plan, Zoning Ordinance, and contract between the County and Tribe under the Williamson Act, Govt. Code § 51200 et seq. The County is further concerned that the purposes for which the land will be used have not been adequately defined, and appear to necessitate review by the Office of Indian Gaming Management.

In response to the County's comments, the Tribe responded by letter dated October 28, 2005, summarized as follows:

- The Supervisors surprisingly state in their introduction that the Tribe intends to engage in "potential mining activities," which will "create a serious jurisdictional conflict." County officials know (or could have easily determined), however, that the reference to such activities in an earlier environmental document was just about a possible short-term surface use that would have taken place, if at all, well before the Parcel was taken into trust, and thus would have been subject to County permitting if it were to occur. It was

EXHIBIT A

disclosed out of an abundance of caution in anticipation of a possible temporary use of a portion of the Parcel for providing and preparing materials for some hillside stabilization and road and parking surfacing that was taking place next door on the Reservation. That activity, which was ultimately carried out without use of the Parcel, has long since been completed. There is no plan for using the Parcel for any kind of batch plant, surface mining or any other similar use, and the County should know, or could have easily determined, that fact.

- The County also states...and the Tribe acknowledges that the Parcel is subject to a Williamson Act contract. However, the Williamson Act is not necessarily inconsistent with the proposed uses, and in any event its continued application is doubtful once the land is taken into federal trust. *See Cal. Gov. Code §51295.*
- The County also alleges that a lack of regulation on the Reservation, asserting that the supposed lack of controls has led to various environmental issues on the Reservation, and that the claim is somehow relevant to the Application. The Tribe's activities on the Reservation are compliant with all applicable laws, including but certainly not limited to those related to the environment. The Tribe has spent considerable resources to ensure that it continues to be in compliance with all laws. Indeed, the County has been directly involved in court and other tests of such allegations and knows that the Tribe has been found to be in compliance time after time.
- The County is incorrect in its analysis of the intended future uses of the Parcel. The same can be said of the County's allegation that the planned irrigation ponds are effluent storage from the casino. The casino is fully contained on the Reservation and utilizes the Tribe's wastewater treatment facility. The road is intended primarily for the vineyard, tribal governmental offices, and emergency services building. In addition, the proposed road will provide additional access to the Reservation. The road will have a closed gate and will not be used by casino patrons for non-emergency purposes.
- The County again questions...whether the tribal housing proposed in the application will satisfy the housing needs for all 869 members of the Tribe. The application does not claim that the planned housing will satisfy the housing needs of every member of the Tribe. But housing eight families who are in need, particularly given the high cost of housing in Sonoma County generally, is not insignificant to those families, and should not be to the County, which does not provide for that shelter now.

In addition to the above correspondences, we received a letter dated June 20, 2005, from the Honorable Mike Thompson, through George T. Skibine, Acting Deputy Assistant Secretary-Indian Affairs, advocating that the Bureau conduct a thorough review of this application and set conditions on the type of use that will be allowed, with serious consequences if those terms are violated. Representative Thompson further acknowledges the Bureau's position that, under 40 U.S.C. 3111, it lacks the authority to impose deed restrictions. Mr. Skibine assured Representative Thompson that a final decision to take land in trust is made only after an exhaustive and deliberative review of all relevant criteria, factual information, and legal requirements.

In support of the Tribe's acquisition, we received the following:

- Four letters of support dated August 23, 2006 from residents of Sonoma County.

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- A petition signed by seventy-seven (77) supporters of the Tribe's efforts to place the subject property into trust.

Pursuant to 25 CFR 151.10, the following factors were considered in formulating our decision: (1) the need of the tribe for additional land; (2) the purposes for which the land will be used; (3) the impact on the State and its political subdivisions resulting from removal of the land from the tax rolls; (4) jurisdictional problems and potential conflicts of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; (6) the extent to which the applicant has provided information that allows the Secretary to comply with the implementing procedures of the Department of the Interior, 516 DM 1-7, and 602 DM 2, Land Acquisitions: Hazardous Substances Determination.

Factor 1 – Need of the Tribe for Additional Land

The Dry Creek Rancheria was established under the authority of the Act of June 21, 1906, which established a tribal trust land base of 75 acres. The subject acquisition request consists of land that is contiguous to the Tribe's reservation. The current trust land base is comprised largely of land that is a hillside with extremely limited buildable terrain. Land suitable for development on the reservation houses the Dry Creek Rancheria's casino, parking garage and other associated infrastructure.

The additional land contemplated in this land acquisition request will address some of the Tribe's housing and economic development needs. The Tribe currently has 869 members, none of which live on the Reservation due to previously stated limitations. It is our determination that the Dry Creek Tribe has an established need for additional trust land in order to facilitate tribal housing, self-determination and economic development.

Factor 2 – The Purposes for Which the Land Will be Used

The proposed land use for the subject acquisition includes residential, emergency services, and agricultural development. Development plans provide for eight tribal residences, an emergency services building, approximately 4.1-acres of vineyards, and a winery with tribal office space. Native plant use areas would also be identified and protected for use by tribal members. Lastly, several infrastructure projects are proposed to make developments on the proposed trust parcels possible. Each of the proposed developments is detailed further below.

Residential Development

Eight tribal residences are proposed for construction at the southeast corner of the subject parcel at approximately 2,000 square feet per unit. Water will be supplied by existing ground water wells located on the site and wastewater will be disposed of through individual septic systems. All grading for the residences (as well as all other site development) will be completed under the direction of a Storm Water Pollution Prevention Plan.

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Emergency Services Building

The Tribe is proposing to construct an 8,000 square-foot emergency services building near the northeast corner of the parcel. The station will provide tribal security, fire suppression, and emergency services for the Tribe. Proposed staffing at the facility will include approximately five firefighters, five security officers and a licensed paramedic. Water will be supplied by existing groundwater wells located on the site and wastewater will be treated through a septic system.

Agricultural Development

Two vineyard areas, totaling approximately 4.1 acres (2.5-acre and 1.6-acre fields), are proposed for development. Water will be supplied to the vineyards by onsite groundwater wells and/or by tertiary-treated recycled water from the Tribe's existing wastewater treatment plant. Irrigation will be provided through a drip system. All grading and infrastructure for these practices will be completed under the direction of a Storm Water Pollution Prevention Plan.

Once planted, vineyards will be regularly maintained with fertilizers, herbicides, and/or pesticides that will be applied at the manufacturer's recommended rates. Only those chemicals approved for use within the State of California will be used for vineyard maintenance. Tertiary-treated recycled water used for irrigation will meet the definition of "disinfected tertiary recycled water" as provided within Title 22 of the California Code of Regulations.

Winery and Tribal Offices

A 5,600 square-foot structure is proposed where roughly half of the structure will be dedicated to wine production and the remainder committed to tribal office space. The facility will provide processing and storage for harvested grapes and wine and office space for tribal government functions. A gravel parking lot and loading area will be constructed adjacent to this building. Water will be supplied through existing groundwater wells and wastewater will be treated through a septic system. The Tribe is proposing to contract grape harvesting and wine production with local wineries.

Native Plant Use Areas

The proposed trust parcel has native plants that have traditional cultural uses by the Tribe. These areas will be protected from development and used by the Tribe in accordance with cultural traditions.

Infrastructure

Development of the proposed trust parcel will require the construction of paved roadways, water lines, and other utilities. The primary access road to the parcel will be approximately 35 feet wide (to allow truck traffic) and paved with asphalt. The lower portion of the roadway will provide tribal access from State Route 128 to tribal residences, vineyards, and winery. The interchange with State Route 128 will be built within an existing road encroachment and shall be

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designed in accordance with the California Department of Transportation's design standards for commercial driveways as described in the Highway Design Manual.

The upper portion of the access road will be restricted to tribal and emergency use. A gate will be installed at the north end of the warehouse parking to limit public access to the existing Rancheria. The emergency access road will then continue to the emergency services building and the existing Rancheria to provide an escape route in the event of an emergency on the Rancheria.

An existing water line serving the Rancheria from a well on the proposed trust parcel will be replaced and rerouted within the proposed roadway. The water line will also provide potable water to the proposed residences, tribal offices, emergency services building, and may be used for irrigation. New power lines providing service to housing and associated facilities are proposed within the access road right-of-way. Retaining walls, storm drains and curbs will be constructed to minimize erosion.

Also proposed are up to three irrigation storage ponds to provide a reliable irrigation source for the vineyards. The ponds will be constructed near the northwest corner of the parcel and will hold recycled water from the Tribe's wastewater treatment plant located on the existing Rancheria.

The Sonoma County Board of Supervisors raised several concerns with regard to the proposed land uses, specifically: (1) that the Tribe's Application fails to disclose any potential future industrial uses of the property; (2) the proposed batch plant further indicates that the Tribe may conduct mining operations on the Property to produce gravel aggregate for batch plant processing; (3) the Tribe lacks a proper disposal site for the effluent generated at its casino site, and has acquired the instant Property to serve that end; (4) the proposed parking and loading area appears oversized and far larger than necessary for the adjacent proposed office building/winery...the obvious implication is that the parking and loading area will be used in association with the adjacent casino; (5) the Tribe has proposed a 5,600 square foot winery and tribal office building...but it appears unlikely that the Tribe will actually process wine in that space...the County requests that the BIA require the Tribe to disclose whether the winery will actually be used for wine production, and identify how much of the 5,600 square feet will be used for tribal offices; and (6) the County requests that the BIA conduct further investigation to determine whether the proposed future uses of the Property truly satisfy the Tribe's alleged need for additional affordable housing.

Each of the above issues has been formally addressed by the Tribe. With regard to items 1 and 2, the Tribe provided that the temporary batch plant was considered in 2004 to support the construction of the Tribe's new parking structure. This temporary use is no longer being considered by the Tribe as construction of the parking structure is now complete.

With regard to items 3 and 4, the County has requested that BIA fully investigate the proposed use and comply with all Federal laws and regulations governing the permitting of tribal gambling activities. In accordance with the Department of Interior's March 2005 Checklist for Gaming Acquisitions, the acquisition is gaming related (1) if the land and the improvements on the land

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are going to be used exclusively for the gaming facility or (2) if the land and the improvements on the land are not used exclusively to support the gaming facility, but the gaming facility cannot operate without it. The land uses herein proposed by the Tribe clearly do not meet either criterion for gaming related acquisitions. As a result, the subject acquisition will not be governed by the land acquisition provisions of the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§2701-2721.

Items 5 and 6 have been satisfactorily addressed by the Tribe, and previously addressed in this Notice.

Factor 3 – Impact on State and its Political Subdivisions Resulting From the Removal of the Land from the Tax Rolls

The total real property taxes for fiscal year 2004 were $13,356.74. The Property was previously used for agricultural purposes, and is covered by a Williamson Act contract with Sonoma County. As such, the Property was unlikely to appreciate measurably and generate greater property taxes. Its condition would also not have generated collateral tax benefits through sales of goods and services, or payroll taxes from residents of the property. There were virtually none and no prospects in sight.

The Tribe's plans, on the other hand, do just the opposite. The local community will benefit from the Tribe's proposed development of the Property because the Tribe's use of the Property will stimulate construction activity, including the purchase of materials and services, and will keep payroll dollars in the community by housing Tribal residents who would otherwise have to commute into the area (and leave at night) in order to work on the Reservation. The surrounding community will be benefited from the added dollars in circulation, which will more than offset the loss of relatively insignificant property tax revenues.

Factor 4 - Jurisdictional Problems and Potential Conflicts of Land Use Which May Arise

The County of Sonoma had several concerns with regard to potential conflicts of land use, specifically that the Tribe's proposed uses conflict with the uses permitted under their voluntary agricultural preservation contract under the Williamson Act, Govt. Code §51200 et seq. It is the Bureau's position that acceptance of land by the federal government effectively causes the contract to become null and void pursuant to Govt. Code §51295 (Barnidge v. United States, 101 F. 2d 295, 298 and State of Minnesota v. United States, 125 F. 2d 640 [11]).

Additionally, the County stated that the proposed uses would conflict with the Sonoma County General Plan and Zoning Ordinance which provides that:

> *The primary use of any parcel shall be agricultural production and related processing, support services, and visitor serving uses. Residential uses in these are shall recognize that the primary use of the land may create agricultural "nuisance" situations, such as flies, noise, odors, and spraying of chemicals.*

and that:

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Local concentrations of commercial or industrial uses, even if related to surrounding agricultural activities, are detrimental to the primary use of the land for the productions of food, fiber and plant materials and shall be avoided.

The gist of the above concerns is the loss of jurisdiction over the subject property. The County will in fact lose jurisdictional control with an approved trust acquisition. However, the very essence of a "trust" acquisition is to enable tribes, in this case, the Dry Creek Rancheria, the opportunity to plan and implement programs for the benefit of its community. The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination. It does not appear that the Tribe's proposed uses in any way conflict with the County's General Plan and Zoning Ordinance; however, it is our determination that the needs of the Tribe in this case out weigh any jurisdictional conflicts that may arise.

Factor 5 - Whether the Bureau of Indian Affairs is Equipped to Discharge the Additional Responsibilities Resulting From the Acquisition of the Land in Trust Status

The Bureau of Indian Affairs has a trust responsibility for all lands held in trust by the United States for tribes. The Tribe currently accepts little assistance from the Bureau of Indian Affairs and anticipates even less as its gaming and other economic development projects grow. Accepting the property into trust should not impose any material additional responsibilities or burdens on the BIA beyond those already inherent in the Federal trust relationship between BIA and the Tribe. It is anticipated that any costs other than those already included in the Tribe's Tribal Priority Allocation will be borne by the Tribe, and that the Tribe will have adequate resources to assume that burden. The Tribal housing program that is anticipated is intended to be primarily based upon tribally obtained and guaranteed financing, and not as a burden on the Federal Government.

Factor 6 – The extent to which the applicant has provided information that allows the Secretary to comply with 602 DM 2, Land Acquisitions: Hazardous Substances Determination and 516 DM 1-7, National Environmental Policy Act Revised Implementing Procedures.

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential of, and extent of liability for, hazardous substances or other environmental remediation or injury. The record includes a negative Phase 1 "Contaminant Survey Checklist" dated September 28, 2005, for the subject parcel, reflecting that there were no hazardous materials or contaminants.

National Environmental Policy Act Compliance

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA's guidelines for NEPA compliance are set forth in Part 30 of the Bureau of Indian Affairs Manual (30 BIAM), Supplement 1.

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In this particular instance, a Draft Environmental Assessment (DEA), documenting and analyzing the potential impacts of the proposed project, was completed in May 2005. The DEA was distributed for public review and comment during the period beginning May 6, 2005 and ending June 6, 2005. As a result of the comments received on the Draft ED, revisions to the document were made, including two additional mitigation measures for air quality and biological resources. The Final Environment Assessment (FEA) dated August 2005 identifies potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, resource use patterns (transportation, land use and agriculture), public services, public health/hazardous materials, and other values (noise and visual resources). After review and independent evaluation, the BIA has determined that the proposed federal action, to approve the Dry Creek Rancheria's request to take the proposed 18-acre site into trust for the purpose of developing the site (tribal housing, emergency service, office space and agriculture), does not constitute a major federal action that would significantly affect the quality of the human environment within the meaning of NEPA. This conclusion is based on the analysis contained in the FEA, public comments made in response to the DEA, the Tribe's response to those comments, and the mitigation imposed. Therefore, an Environmental Impact Statement is not required, and the BIA issued a Finding of No Significant Impact (FONSI) on November 9, 2005. The FONSI was distributed to all persons and agencies known to be interested in the proposed action as indicated by the comments on the DEA.

Conclusion

Based on the foregoing, we at this time issue notice of our intent to accept the subject real property into trust. The subject acquisition will vest title in the United States of America in trust for the Dry Creek Rancheria of Pomo Indians of California in accordance with the Indian Land Consolidation Act of January 12, 1983 (25 U.S.C. §2202). The applicable regulations are set forth in the Code of Federal Regulations, Title 25, INDIANS, Part 151, as amended.

Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340 (copy enclosed).

Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within 30 days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed.

If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior 1849 C Street, N.W., MS-4140-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures.

If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b).

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If any party receiving this notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward copies of the notice to said party or timely provide our office with the name and address of said party.

Sincerely,

Amy C. Klutschke

Acting Regional Director

Enclosures
Distribution List
43 CFR 4.310-4.340

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DISTRIBUTION LIST

cc: BY CERTIFIED MAIL – RETURN RECEIPTS REQUESTED TO:

California State Clearinghouse (10 copies) – 7005 2570 0000 6695 0488
Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

Sara J. Drake, Deputy Attorney General – 7005 2570 0000 6695 0495
State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Paul Dobson – 7005 2570 0000 6695 0501
Deputy Legal Affairs Secretary
Office of the Governor of California
State Capitol Building
Sacramento, CA 95814

James Peterson, District Director – 7005 2570 00006695 0518
Office of Senator Diane Feinstein
750 B Street, Suite 1030
San Diego, CA 92101

Board of Supervisors – 7005 2570 6695 0525
Sonoma County
575 Administrative Drive
Santa Rosa, CA 95403

Public Works – 7005 2570 0000 6695 0549
Sonoma County
2300 County Center Drive, Suite B-100
Healdsburg, CA 95448

Sonoma County Fire Protection District – 7005 2570 0000 6695 0532
P.O. Box 217
Geyserville, CA 95441

Sonoma County Assessor – 7005 2570 0000 6695 0556
585 Fiscal Drive, Room 104F
Santa Rosa, CA 95403

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Sonoma County Sheriff's Dept. – 7005 2570 0000 6695 0563
2796 Ventura Ave.
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State of California – 7005 2570 0000 6695 0624
Department of Conservation
Attn: Stephen E. Oliva, Esq.
801 K Street
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Attn: Michael Mann, District Administrator
50 "D" Street, Suite 130
Santa Rosa, CA 95404

Chairperson – 7005 2570 0000 6695 0570
Cloverdale Rancheria
555 S. Cloverdale Blvd., Suite 1
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Chairperson – 7005 2570 0000 6695 0587
Lytton Rancheria
1250 Coddington Center, Suite 1
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Chairperson – 7005 2570 0000 6695 0594
Stewarts Point Rancheria
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P.O. Box 14428
Santa Rosa, CA 95402

Carl Winter – 7003 1680 0002 3878 9343
3189 Cactus Circle
Highland, CA 92346

EXHIBIT A

Regular Mail:

Superintendent
Bureau of Indian Affairs
Central California Agency
650 Capital Mall, Suite 8-500
Sacramento, CA 95814

EXHIBIT A

tate in one-half of the interests. The decision shall specify the right of appeal to the Board of Indian Appeals within 60 days from the date of the decision in accordance with §§4.310 through 4.323. The administrative law judge shall lodge the complete record relating to the demand for hearing with the title plant as provided in §4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

[36 FR 7188, Apr. 15, 1971, as amended at 55 FR 43133, Oct. 26, 1990]

§4.306 Time for payment.

A tribe shall pay the full fair market value of the interests purchased, as set forth in the appraisal report or as determined after hearing in accordance with §4.305, whichever is applicable, within 2 years from the date of decedent's death or within 1 year from the date of notice of purchase, whichever comes later.

§4.307 Title.

Upon payment by the tribe of the interests purchased, the Superintendent shall issue a certificate to the administrative law judge that this has been done and file therewith such documents in support thereof as the administrative law judge may require. The administrative law judge shall then issue an order that the United States holds title to such interests in trust for the tribe, lodge the complete record, including the decision, with the title plant as provided in §4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

§4.308 Disposition of income.

During the pendency of the probate and up to the date of transfer of title to the United States in trust for the tribe in accordance with §4.307, all income received or accrued from the land interests purchased by the tribe shall be credited to the estate.

CROSS REFERENCE: See 25 CFR part 2 for procedures for appeals to Area Directors and to the Commissioner of the Bureau of Indian Affairs.

GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

SOURCE: Sections 4.310 through 4.318 appear at 54 FR 6485, Feb. 10, 1989, unless otherwise noted.

§4.310 Documents.

(a) *Filing.* The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is the date of mailing or the date of personal delivery, except that a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e) shall be effective the date it is received by the Board.

(b) *Service.* Notices of appeal and pleadings shall be served on all parties in interest in any proceeding before the Interior Board of Indian Appeals by the party filing the notice or pleading with the Board. Service shall be accomplished upon personal delivery or mailing. Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party. Where a party is represented by more than one attorney, service on any one attorney is sufficient. The certificate of service on an attorney or representative shall include the name of the party whom the attorney or representative represents and indicate that service was made on the attorney or representative.

(c) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed or answered was served or the day of any other event after which a designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays, and other

EXHIBIT A

nonbusiness days shall be excluded in the computation.

(d) *Extensions of time.* (1) The time for filing or serving any document except a notice of appeal may be extended by the Board.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the Board may grant an extension of time on its own initiative.

(e) *Retention of documents.* All documents received in evidence at a hearing or submitted for the record in any proceeding before the Board will be retained with the official record of the proceeding. The Board, in its discretion, may permit the withdrawal of original documents while a case is pending or after a decision becomes final upon conditions as required by the Board.

§4.311 Briefs on appeal.

(a) The appellant may file an opening brief within 30 days after receipt of the notice of docketing. Appellant shall serve copies of the opening brief upon all interested parties or counsel and file a certificate with the Board showing service upon the named parties. Opposing parties or counsel shall have 30 days from receipt of appellant's brief to file answer briefs, copies of which shall be served upon the appellant or counsel and all other parties in interest. A certificate showing service of the answer brief upon all parties or counsel shall be attached to the answer filed with the Board.

(b) Appellant may reply to an answering brief within 15 days from its receipt. A certificate showing service of the reply brief upon all parties or counsel shall be attached to the reply filed with the Board. Except by special permission of the Board, no other briefs will be allowed on appeal.

(c) The Bureau of Indian Affairs shall be considered an interested party in any proceeding before the Board. The Board may request that the Bureau submit a brief in any case before the Board.

(d) An original only of each document should be filed with the Board. Documents should not be bound along the side.

(e) The Board may also specify a date on or before which a brief is due. Unless expedited briefing has been granted, such date shall not be less than the appropriate period of time established in this section.

§4.312 Decisions.

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse or set aside any proposed finding, conclusion or order of an official of the Bureau of Indian Affairs or an administrative law judge. Distribution of decisions shall be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board are final for the Department and shall be given immediate effect.

§4.313 Amicus Curiae; intervention; joinder motions.

(a) Any interested person or Indian tribe desiring to intervene or to join other parties or to appear as amicus curiae or to obtain an order in an appeal before the Board shall apply in writing to the Board stating the grounds for the action sought. Permission to intervene, to join parties, to appear, or for other relief, may be granted for purposes and subject to limitations established by the Board. This section shall be liberally construed.

(b) Motions to intervene, to appear as amicus curiae, to join additional parties, or to obtain an order in an appeal pending before the Board shall be served in the same manner as appeal briefs.

§4.314 Exhaustion of administrative remedies.

(a) No decision of an administrative law judge or an official of the Bureau of Indian Affairs, which at the time of its rendition is subject to appeal to the Board, shall be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. 704, unless made effective pending decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

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(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

[54 FR 6485, Feb. 10, 1989; 54 FR 7504, Feb. 21, 1989]

§ 4.315 Reconsideration.

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and shall contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition shall not stay the effect of any decision or order and shall not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

§ 4.316 Remands from courts.

Whenever any matter is remanded from any court to the Board for further proceedings, the Board will either remand the matter to an administrative law judge or to the Bureau of Indian Affairs, or to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

§ 4.317 Standards of conduct.

(a) *Inquiries about cases.* All inquiries with respect to any matter pending before the Board shall be made to the Chief Administrative Judge of the Board or the administrative judge assigned the matter.

(b) *Disqualification.* An administrative judge may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the judge deems such action appropriate. If, prior to a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the Director of the Office of Hearings and Appeals shall determine the matter of disqualification.

§ 4.318 Scope of review.

An appeal shall be limited to those issues which were before the administrative law judge upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the official of the Bureau of Indian Affairs on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board shall not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

Appeals to the Board of Indian Appeals in Probate Matters

SOURCE: Sections 4.320 through 4.323 appear at 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

§ 4.320 Who may appeal.

A party in interest shall have a right of appeal to the Board of Indian Appeals from an order of an administrative law judge on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate.

(a) *Notice of Appeal.* Within 60 days from the date of the decision, an appellant shall file a written notice of appeal signed by appellant, appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. A statement of the errors of fact and law upon which the appeal is based shall be included in either the notice of appeal or in any brief filed. The notice of appeal shall include the names and addresses of parties served. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction.

(b) *Service of copies of notice of appeal.* The appellant shall personally deliver or mail the original notice of appeal to the Board of Indian Appeals. A copy shall be served upon the administrative law judge whose decision is appealed as well as all interested parties. The notice of appeal filed with the Board shall

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include a certification that service was made as required by this section.

(c) *Action by administrative law judge; record; inspection.* The administrative law judge, upon receiving a copy of the notice of appeal, shall notify the Superintendent concerned to return the duplicate record filed under §4.238(b) and 4.241(d), or under §4.242(f) of this part, to the Land Titles and Records Office designated under §4.236(b) of this part. The duplicate record shall be conformed to the original by the Land Titles and Records Office and shall thereafter be available for inspection either at the Land Titles and Records Office or at the office of the Superintendent. In those cases in which a transcript of the hearing was not prepared, the administrative law judge shall have a transcript prepared which shall be forwarded to the Board within 30 days from receipt of a copy of the notice of appeal.

§4.321 Notice of transmittal of record on appeal.

The original record on appeal shall be forwarded by the Land Titles and Records Office to the Board by certified mail. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing issued under §4.332 of this part.

§4.322 Docketing.

The appeal shall be docketed by the Board upon receipt of the administrative record from the Land Titles and Records Office. All interested parties as shown by the record on appeal shall be notified of the docketing. The docketing notice shall specify the time within which briefs may be filed and shall cite the procedural regulations governing the appeal.

§4.323 Disposition of the record.

Subsequent to a decision of the Board, other than remands, the record filed with the Board and all documents added during the appeal proceedings, including any transcripts prepared because of the appeal and the Board's decision, shall be forwarded by the Board to the Land Titles and Records Office designated under §4.236(b) of this part. Upon receipt of the record by the Land Titles and Records Office, the duplicate record required by §4.320(c) of this part shall be conformed to the original and forwarded to the Superintendent concerned.

APPEALS TO THE BOARD OF INDIAN APPEALS FROM ADMINISTRATIVE ACTIONS OF OFFICIALS OF THE BUREAU OF INDIAN AFFAIRS: ADMINISTRATIVE REVIEW IN OTHER INDIAN MATTERS NOT RELATING TO PROBATE PROCEEDINGS

SOURCE: Sections 4.330 through 4.340 appear at 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

§4.330 Scope.

(a) The definitions set forth in 25 CFR 2.2 apply also to these special rules. These regulations apply to the practice and procedure for: (1) Appeals to the Board of Indian Appeals from administrative actions or decisions of officials of the Bureau of Indian Affairs issued under regulations in 25 CFR chapter I, and (2) administrative review by the Board of Indian Appeals of other matters pertaining to Indians which are referred to it for exercise of review authority of the Secretary or the Assistant Secretary—Indian Affairs.

(b) Except as otherwise permitted by the Secretary or the Assistant Secretary—Indian Affairs by special delegation or request, the Board shall not adjudicate:

(1) Tribal enrollment disputes;

(2) Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority; or

(3) Appeals from decisions pertaining to final recommendations or actions by officials of the Minerals Management Service, unless the decision is based on an interpretation of Federal Indian law (decisions not so based which arise from determinations of the Minerals Management Service, are appealable to the Interior Board of Land Appeals in accordance with 43 CFR 4.410).

§4.331 Who may appeal.

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in title 25 of the Code of Federal Regulations

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may appeal to the Board of Indian Appeals, except—

(a) To the extent that decisions which are subject to appeal to a higher official within the Bureau of Indian Affairs must first be appealed to that official;

(b) Where the decision has been approved in writing by the Secretary or Assistant Secretary—Indian Affairs prior to promulgation; or

(c) Where otherwise provided by law or regulation.

§4.332 Appeal to the Board; how taken; mandatory time for filing; preparation assistance; requirement for bond.

(a) A notice of appeal shall be in writing, signed by the appellant or by his attorney of record or other qualified representative as provided by 43 CFR 1.3, and filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 30 days after receipt by the appellant of the decision from which the appeal is taken. A copy of the notice of appeal shall simultaneously be filed with the Assistant Secretary—Indian Affairs. As required by §4.333 of this part, the notice of appeal sent to the Board shall certify that a copy has been sent to the Assistant Secretary—Indian Affairs. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction. A notice of appeal shall include:

(1) A full identification of the case;

(2) A statement of the reasons for the appeal and of the relief sought; and

(3) The names and addresses of all additional interested parties, Indian tribes, tribal corporations, or groups having rights or privileges which may be affected by a change in the decision, whether or not they participated as interested parties in the earlier proceedings.

(b) In accordance with 25 CFR 2.20(c) a notice of appeal shall not be effective for 20 days from receipt by the Board, during which time the Assistant Secretary—Indian Affairs may decide to review the appeal. If the Assistant Secretary—Indian Affairs properly notifies the Board that he has decided to review the appeal, any documents concerning the case filed with the Board shall be transmitted to the Assistant Secretary—Indian Affairs.

(c) When the appellant is an Indian or Indian tribe not represented by counsel, the official who issued the decision appealed shall, upon request of the appellant, render such assistance as is appropriate in the preparation of the appeal.

(d) At any time during the pendency of an appeal, an appropriate bond may be required to protect the interest of any Indian, Indian tribe, or other parties involved.

§4.333 Service of notice of appeal.

(a) On or before the date of filing of the notice of appeal the appellant shall serve a copy of the notice upon each known interested party, upon the official of the Bureau of Indian Affairs from whose decision the appeal is taken, and upon the Assistant Secretary—Indian Affairs. The notice of appeal filed with the Board shall certify that service was made as required by this section and shall show the names and addresses of all parties served. If the appellant is an Indian or an Indian tribe not represented by counsel, the appellant may request the official of the Bureau whose decision is appealed to assist in service of copies of the notice of appeal and any supporting documents.

(b) The notice of appeal will be considered to have been served upon the date of personal service or mailing.

§4.334 Extensions of time.

Requests for extensions of time to file documents may be granted upon a showing of good cause, except for the time fixed for filing a notice of appeal which, as specified in §4.332 of this part, may not be extended.

§4.335 Preparation and transmittal of record by official of the Bureau of Indian Affairs.

(a) Within 20 days after receipt of a notice of appeal, or upon notice from the Board, the official of the Bureau of Indian Affairs whose decision is appealed shall assemble and transmit the record to the Board. The record on appeal shall include, without limitation, copies of transcripts of testimony

EXHIBIT A

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taken: all original documents, petitions, or applications by which the proceeding was initiated; all supplemental documents which set forth claims of interested parties; and all documents upon which all previous decisions were based.

(b) The administrative record shall include a Table of Contents noting, at a minimum, inclusion of the following:

(1) The decision appealed from;

(2) The notice of appeal or copy thereof; and

(3) Certification that the record contains all information and documents utilized by the deciding official in rendering the decision appealed.

(c) If the deciding official receives notification that the Assistant Secretary—Indian Affairs has decided to review the appeal before the administrative record is transmitted to the Board, the administrative record shall be forwarded to the Assistant Secretary—Indian Affairs rather than to the Board.

§4.336 Docketing.

An appeal shall be assigned a docket number by the Board 20 days after receipt of the notice of appeal unless the Board has been properly notified that the Assistant Secretary—Indian Affairs has assumed jurisdiction over the appeal. A notice of docketing shall be sent to all interested parties as shown by the record on appeal upon receipt of the administrative record. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing. The docketing notice shall specify the time within which briefs shall be filed, cite the procedural regulations governing the appeal and include a copy of the Table of Contents furnished by the deciding official.

§4.337 Action by the Board.

(a) The Board may make a final decision, or where the record indicates a need for further inquiry to resolve a genuine issue of material fact, the Board may require a hearing. All hearings shall be conducted by an administrative law judge of the Office of Hearings and Appeals. The Board may, in its discretion, grant oral argument before the Board.

(b) Where the Board finds that one or more issues involved in an appeal or a matter referred to it were decided by the Bureau of Indian Affairs based upon the exercise of discretionary authority committed to the Bureau, and the Board has not otherwise been permitted to adjudicate the issue(s) pursuant to §4.330(b) of this part, the Board shall dismiss the appeal as to the issue(s) or refer the issue(s) to the Assistant Secretary—Indian Affairs for further consideration.

§4.338 Submission by administrative law judge of proposed findings, conclusions and recommended decision.

(a) When an evidentiary hearing pursuant to §4.337(a) of this part is concluded, the administrative law judge shall recommend findings of fact and conclusions of law, stating the reasons for such recommendations. A copy of the recommended decision shall be sent to each party to the proceeding, the Bureau official involved, and the Board. Simultaneously, the entire record of the proceedings, including the transcript of the hearing before the administrative law judge, shall be forwarded to the Board.

(b) The administrative law judge shall advise the parties at the conclusion of the recommended decision of their right to file exceptions or other comments regarding the recommended decision with the Board in accordance with §4.339 of this part.

§4.339 Exceptions or comments regarding recommended decision by administrative law judge.

Within 30 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to or other comments on the decision with the Board.

§4.340 Disposition of the record.

Subsequent to a decision by the Board, the record filed with the Board and all documents added during the appeal proceedings, including the Board's decision, shall be forwarded to the official of the Bureau of Indian Affairs whose decision was appealed for proper disposition in accordance with rules

EXHIBIT A

and regulations concerning treatment of Federal records.

WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985: AUTHORITY OF ADMINISTRATIVE JUDGES: DETERMINATIONS OF THE HEIRS OF PERSONS WHO DIED ENTITLED TO COMPENSATION

SOURCE: 56 FR 61383, Dec. 3, 1991, unless otherwise noted.

§ 4.350 Authority and scope.

(a) The rules and procedures set forth in §§ 4.350 through 4.357 apply only to the determination through intestate succession of the heirs of persons who died entitled to receive compensation under the White Earth Reservation Land Settlement Act of 1985, Public Law 99–264 (100 Stat. 61), amended by Public Law 100–153 (101 Stat. 886) and Public Law 100–212 (101 Stat. 1433).

(b) Whenever requested to do so by the Project Director, administrative judges shall determine such heirs by applying inheritance laws in accordance with the White Earth Reservation Land Settlement Act of 1985 as amended, notwithstanding the decedent may have died testate.

(c) As used herein, the following terms shall have the following meanings:

(1) The term *Act* means the White Earth Reservation Land Settlement Act of 1985 as amended.

(2) The term *Board* means the Board of Indian Appeals in the Office of Hearings and Appeals, Office of the Secretary.

(3) The term *Project Director* means the officer in charge of the White Earth Reservation Land Settlement Branch of the Minneapolis Area Office, Bureau of Indian Affairs, at Cass Lake, Minnesota.

(4) The term *party (parties) in interest* means the Project Director and any presumptive or actual heirs of the decedent, or of any issue of any subsequently deceased presumptive or actual heir of the decedent.

(5) The term *compensation* means a monetary sum, as determined by the Project Director, pursuant to section 8(c) of the Act.

(6) The term *administrative judge* means an administrative judge of the Office of Hearings and Appeals to whom the Director of the Office of Hearings and Appeals has redelegated his authority, as designee of the Secretary, for making heirship determinations as provided for in these regulations.

(7) The term *appellant* means a party aggrieved by a final order or final order upon reconsideration issued by an administrative judge who files an appeal with the Board.

[56 FR 61383, Dec. 3, 1991; 56 FR 65782, Dec. 18, 1991]

§ 4.351 Commencement of the determination process.

(a) Unless an heirship determination which is recognized by the Act already exists, the Project Director shall commence the determination of the heirs of those persons who died entitled to receive compensation by filing with the administrative judge all data, identifying the purpose for which they are being submitted, shown in the records relative to the family of the decedent.

(b) The data shall include but are not limited to:

(1) A copy of the death certificate if one exists. If there is no death certificate, then another form of official written evidence of the death such as a burial or transportation of remains permit, coroner's report or church registry of death. Secondary forms of evidence of death such as an affidavit from someone with personal knowledge concerning the fact of death or an obituary or death notice from a newspaper may be used only in the absence of any official proof or evidence of death.

(2) Data for heirship finding and family history, certified by the Project Director. Such data shall contain:

(i) The facts and alleged facts of the decedent's marriages, separations and divorces, with copies of necessary supporting documents;

(ii) The names and last known addresses of probable heirs at law and other known parties in interest;

(iii) Information on whether the relationships of the probable heirs at law to the decedent arose by marriage, blood, or adoption.

(3) Known heirship determinations, including those recognized by the Act determining the heirs of relatives of

EXHIBIT A

CERTIFICATION OF SERVICE BY MAIL
Pursuant to 43 CFR Subtitle A, Section 4.333

I am employed in the County of Sonoma, California; I am over the age of 18 years and not a party to the within action; my business address is 575 Administration Dr., Rm. 105A, Santa Rosa, California. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service.

On September 28, 2006, following ordinary business practice, I served the attached letter NOTICE OF APPEAL BY SONOMA COUNTY, CALIFORNIA, by placing on that date at my place of business, a true copy thereof, enclosed in a sealed envelope, for collection and mailing with the United States Postal Service where it would be deposited with the United States Postal Service that same day in the ordinary course of business, addressed as follows:

Interior Board of Indian Appeals
Office of Hearings and Appeals
U.S. Department of the Interior
801 N. Quincy Street, Ste. 300
Arlington, VA 22203
(Via Overnight Mail)

Assistant Secretary - Indian Affairs
U.S. Department of Interior
1849 C Street, N.W., MS-4140-MIB
Washington, D.C. 20240
(Via Overnight Mail)

Amy Dutschke
Acting Regional Director
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825
(Via Overnight Mail)

Superintendent
Bureau of Indian Affairs
Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814

I hereby certify that copies have also been mailed on this date to Interested Parties as shown on the distribution list attached hereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 28, 2006 , at Santa Rosa, California.

B. Martinez

Beth Martinez

DISTRIBUTION LIST OF INTERESTED PARTIES

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Tribal Chairperson
Dry Creek Rancheria of Pomo Indians
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Sonoma County Sheriff's Department
2796 Ventura Avenue
Santa Rosa, CA 95403

Geyserville Fire Protection District
P.O. Box 217
Geyserville, CA 95441

Office of Congressman Mike Thompson
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Napa, CA 94559

California State Clearinghouse
Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

Sara J. Drake
Marc LeForestier
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Department of Justice
State of California
P.O. Box 944255
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Deputy Legal Affairs Secretary
Office of the Governor of California
State Capitol Building
Sacramento, CA 95814

James Peterson
District Director
Office of Senator Diane Feinstein
750 B Street, Suite 1030
San Diego, CA 92101

State of California
Department of Conservation
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Sacramento, CA 95814

Department of Alcoholic Beverage Control
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50 "D" Street, Suite 130
Santa Rosa, CA 95404

Alexander Valley Association
Attn: Ralph Sceales, President
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555 S. Cloverdale Blvd., Suite 1
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Chairperson
Lytton Rancheria
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Santa Rosa, CA 95401

Chairperson
Stewarts Point Rancheria
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Santa Rosa, CA 95403

Chairperson
Graton Rancheria
P.O. Box 14428
Santa Rosa, CA 95402

Carl Winter
3189 Cactus Circle
Highland, CA 92346

EXHIBIT 4

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

In re Dry Creek Rancheria Wastewater Treatment Plant
NPDES Permit No. CA 0005241

NPDES Appeal Nos. 07-14 & 07-15

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 02-04873 JSW

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

ORDER GRANTING IN PART AND DENYING IN PART TRIBE'S MOTION TO DISMISS PURSUANT TO RULE 12(b)(7) WITH LEAVE TO AMEND

Now before the Court is the motion of Respondent Dry Creek Rancheria Band of Pomo Indians (the "Tribe") to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(7) for failure to join an indispensable party. Having carefully read the parties' papers and considered the arguments and the relevant legal authority, and having had the benefit of oral argument, the Court finds as a matter of law that the United States is an indispensable party with respect to whether the County has jurisdiction to enforce the fire codes on Bureau of Indian Affairs Road 93 (the "easement"), and that the United States and the State of California are not necessary parties with respect to whether the County has jurisdiction to enforce the fire codes at the gaming facility.

I. BACKGROUND

The facts underlying this dispute are outlined in the Court's order dated December 9, 2004, and are repeated here only as necessary to address the Tribe's motion. By its inspection warrant, the County seeks to enforce state and local fire codes (the "fire codes") at the gaming facility and on the easement. (*See* Stipulation dated January 3, 2005). On December 9, 2004, the Court issued an order granting the Tribe's motion to dismiss pursuant to Rule 12(b)(6) and denying the County's motion for summary adjudication on the narrow issue of whether the County's jurisdiction extended to enforcement of the fire codes at the gaming facility through Public Law 280. In that order, the Court denied the Tribe's motion to dismiss and denied the County's motion for summary adjudication relating to the issue of whether the County had jurisdiction to enforce the fire codes at the gaming facility pursuant to the "exigent circumstances" exception to *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 214-15 (1987); (*See* Order, p. 8.). Pending further briefing by the parties regarding the scope of the inspection warrant, the Court deferred ruling on the Tribe's motion to dismiss relating to whether the County has authority to enforce the fire codes on the easement.

II. ANALYSIS

The Tribe contends that because the United States is the legal owner of both the land on which the gaming facility is located and the easement providing access to the Rancheria, it is an indispensable party to the action. The Tribe also claims that the State of California is indispensable because the inspection warrant would "impose local county authority over matters that the Compact explicitly puts under the State of California's oversight jurisdiction." (Mot. p., 7.) The County disagrees and claims that because it is not seeking damages or declaratory relief against the United States or the State of California, neither can be deemed an indispensable party. (Opp., p. 5.)

Dismissal pursuant to Rule 19 of the Federal Rules of Civil Procedure involves a two-part analysis. Fed. R. Civ. P. 19(a). First, the district court must determine whether the absent party is a "necessary" party. *Id.* A party is "necessary" in two circumstances: 1) when complete relief is not possible without the absent party's presence, or 2) when the absent party claims a legally protected interest in the action such that (i) disposition of the action may "impair or impede" the person's ability to protect that interest or (ii) "leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest." *Id.*;

Yellowstone County v. Pease, 96 F.3d 1169, 1172 (9th Cir. 1996). If the absent party is "necessary," the court must determine whether joinder is feasible. *United States v. Bowen*, 172 F.3d 682, 687 (9th Cir. 1999). If the absent party is necessary and joinder is not feasible, the court must determine whether the party is "indispensable," *i.e.*, whether in "equity and good conscience" the action can continue without the absent party. *Bowen*, 172 F.3d at 688. To make the indispensability determination, the court balances four factors: 1) prejudice to any party or to the absent party; 2) whether relief can be shaped to lessen prejudice; 3) whether an adequate remedy, even if not complete, can be awarded without the absent party; and 4) whether there exists an alternative forum. *Quileute Indian Tribe v. Babbitt*, 18 F.3d 1456, 1460 (9th Cir. 1994). The moving party has the burden of proving that dismissal is warranted. *Shermoen v. United States*, 982 F.2d 1312, 1317 (9th Cir. 1992).

A. Rule 19 Analysis Relating to Gaming Facility

In its order dated December 9, 2004, the Court did not explicitly rule on whether the United States and the State of California were indispensable parties to the determination of the County's authority to enforce the fire codes at the gaming facility. In the interest of clarity, the Court will evaluate the merits of the Tribe's 12(b)(7) motion to dismiss as it relates to both the gaming facility and the easement.

1. The State of California is Not a Necessary Party

The Court rejects the Tribe's argument that because the State of California negotiated the terms of the Compact and resolution of the issues raised in the inspection warrant necessarily involve interpreting the Compact, the State of California is a necessary party whose absence will preclude complete relief. Fed. R. Civ. P. 19(a)(1). The Court's analysis with respect to the gaming facility did not require an interpretation of the Compact. Instead, the decision turned on whether the fire codes should be classified as civil/regulatory or criminal/prohibitory for purposes of Public Law 280. The "interests" of the State of California identified by the Tribe do not render the State of California a necessary party. According to the Tribe, the State of California has an interest in preserving tribal sovereignty and protecting the economic benefits realized by Indian gaming. Even assuming *arguendo* that these "interests" were sufficient, the Tribe does not make an adequate showing that a

determination of the scope of the County's authority over the gaming facility in the State of California's absence would impair or impede the State's ability to protect the identified interests, or subject the Tribe to inconsistent obligations. Rule 19(a)(2)(i), (ii).

Furthermore, the Compact is state law. California Gov't Code § 12012.25. The State of California cannot be deemed a necessary party each time an individual seeks relief under state law on the grounds that the State of California has an interest in preserving the integrity of its laws. Authority relied upon by the Tribe in support of its claim that the State of California's interest will be impaired involves attempts by one party to invalidate or validate a compact between a state and an Indian tribe. *Kikapoo Tribe v. Babbitt,* 43 F.3d 1491 (D.C. Cir. 1995). Here, the County does not seek to invalidate the Compact, but rather, to interpret state laws. Therefore, to the extent that the County seeks to enforce the fire codes at the gaming facility, the Court finds as a matter of law that the State of California is not a necessary party. Because the Court has determined that State of California is not a necessary party, it need not consider whether it is an indispensable party pursuant to Rule 19(b). *Washington v. Daley,* 173 F.3d 1158, 1169 (9th Cir. 1999).

2. The United States is Not a Necessary Party

The Court finds that the United States is not a necessary party to the determination of the County's authority over the gaming facility. Unlike the issue surrounding the easement, neither party disputes the fact that the United States holds the property on which the gaming facility is located in trust for the Tribe. Enforcement of the fire codes at the gaming facility does not threaten that ownership interest, or seek to modify it in any way. Fed. R. Civ. P. 19(a)(2); *Carlson v. Tulalip Tribes,* 510 F.2d 1337, 1339 (9th Cir. 1975). Complete relief can be afforded through an evaluation of the fire codes under Public Law 280's civil/criminal classification. The remaining issue regarding the exigent circumstances exception does not alter the Court's analysis. Again, the "exigent circumstances" analysis does not require a preliminary determination of the United States' property interest, or seek a modification of the existing interest. Aside from the Tribe's argument that the United States has a generalized interest in protecting the Tribe, the Tribe identifies no interest that justifies a finding that complete relief cannot be afforded among the parties. Therefore, to the extent

that the County seeks to enforce the fire codes at the gaming facility, the Court finds as a matter of law that the United States is not a necessary party.

B. Rule 19 Analysis Related to Easement

1. The United States is a Necessary Party

The United States is a necessary party with respect to the easement because the parties dispute whether the easement, title to which is owned by the United States, is held in trust for the Tribe. Resolution of this issue is significant because "[t]he United States, when acting as a trustee for the property of its Indian wards, is held to the most exacting fiduciary standards." *Coast Indian Community v. United States,* 550 F.2d 639, 652-53 (Ct. Cl. 1977). The "responsibility of the trustee includes accountability for the acts of those agents, even where wrongful and unauthorized." *Id.* The *Coast Indian* decision outlines the responsibilities imposed on the government by virtue of the trust relationship:

> A trustee is under a duty to exercise due care and prudence to preserve the trust property. If the trustee is guilty of negligence in his dealings with that property, the trustee is liable to the beneficiary for any losses thereon ... [D]emonstration of fraud or gross negligence in the actual conduct of the United States as trustee, or in the conduct of its agents, will make the Government liable for damages in breach of trust growing out of the fraud or negligence.

Id. Both parties rely on *Proschold v. United States,* No. 02-16655, 2004 WL 324717 (9th Cir. Feb. 20, 2004),[1] to argue that the easement either is or is not held in trust by the United States.[2] *Proschold,* however, specifically did not make a determination that the easement was held in trust, but merely recognized that the United States had not waived its sovereign immunity in an action to quiet title to the permissible scope of the same easement at issue in this case. *Proschold,* 2004 WL 324717, at * 2 (stating that "while some doubt exists as to the true status of the easement, the district court correctly concluded that the United States had asserted a colorable claim that the easement is held in trust").

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[1] Pursuant to Ninth Circuit Rule 36-3, the Court may cite to unpublished cases when, as here, the decision is relevant under the doctrine of law of the case, res judicata, and collateral estoppel.

[2] Included within the Tribe's Request for Judicial Notice are documents that purport to establish the trust status of the easement. (*See* RJN, Exs. 1-3.) As the Court explained in its order dated December 9, 2004, because the status of the easement is a disputed fact, the Court cannot take judicial notice of these documents to establish that the trust is, in fact, held in trust by the United States. Fed. R. Evid. 201(b).

If the easement were held in trust for the Tribe, the Court would analyze the County's authority to enforce the fire codes through Public Law 280, which addresses State and local jurisdiction over property held in trust by the United States. *Cabazon Band of Mission Indians*, 480 U.S. 202, 208 (1987). If the easement is not held in trust, the Court's analysis of the County's jurisdiction would fall outside the scope of Public Law 280 and, thus, follow a classic federal preemption analysis. *California Coastal Com'n*, 480 U.S. at 572. Either way, the Court would be forced to determine the nature of the United States' interest in the property without the presence of the United States in the litigation. *Carlson*, 510 F.2d at 1339 (stating that "[b]ecause the United States has fee title to unallotted Reservation lands, the dispute involves the fixing of a boundary between lands of the United States and the lands claimed by the plaintiffs. No decision made in an action in which the United States is not a party can bind the United States"); *Enterprise Mgt. Consultants v. United States ex. rel Hodel*, 883 F.2d 890, 894 (10th Cir. 1989) (recognizing that a party has a right not to have their legal duties judicially determined without their consent).

Because the Court cannot proceed to evaluate the County's authority to enforce the fire codes on the easement without first resolving the question over whether a trust relationship exists between the United States and the Tribe, the Court concludes that the United States is a necessary party whose interest in the easement will be impaired or impeded in these proceedings. Fed. R. Civ. Proc. 19(a)(2)(i); *American Greyhound v. Hull*, 305 F.3d 1015, 1024 (9th Cir. 2002) (reversing district court decision finding that interest in renewal of gaming compacts was not a "legally protected interest").

The Tribe's presence in the lawsuit does not lessen the possible impairment to the United States' interest. While the parties have cited numerous cases recognizing that the United States as a trustee can, in certain circumstances, adequately represent an absent tribe's interest, the Court is unable to find any authority recognizing the reverse situation where a tribe is found to be able to adequately represent the United States' interest. This is especially true where, as here, the Tribe would be litigating whether the United States holds the easement in trust. Contrary to the County's arguments, the interests of the Tribe and the United States are not "identical" and under these

circumstances, the Tribe cannot adequately represent the United States in resolving whether the easement is held in trust.

2. Absent Sovereign Immunity Waiver by the United States, Joinder is Not Feasible

Joinder of the United States is not feasible absent a waiver of its sovereign immunity. "Jurisdiction over any suit against the Government requires a clear statement from the United States waiving sovereign immunity, together with a claim falling within the terms of the waiver." *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472 (2003). "The terms of consent to be sued may not be inferred, but must be unequivocally expressed, in order to define [a] court's jurisdiction." *White Mountain Apache Tribe*, 537 U.S. at 472. Here, the United States has not waived its sovereign immunity and therefore cannot be joined. Thus, the Court must proceed to the next step to evaluate whether the United States is an indispensable party such that the County is precluded from attempting to enforce the fire codes on the easement absent a waiver by the United States of its sovereign immunity.[3]

3. The United States is an Indispensable Party Requiring Dismissal

The Court applies four factors to determine "whether in equity and good conscience" a matter should be dismissed under Rule 19. *Makah Indian Tribe v. Verity*, 910 F.2d 555 (9th Cir. 1990). These factors are: 1) prejudice to any party or to the absent party; 2) whether relief can be shaped to lessen prejudice; 3) whether an adequate remedy, even if not complete, can be awarded without the absent party; and 4) whether there exists an alternative forum. *Quileute Indian Tribe*, 18 F.3d at 1460. The Court's determination that the United States is a necessary party satisfies the first factor, which evaluates whether prejudice, "insofar as it focuses on the absent party, largely duplicates the consideration that made a party necessary under Rule 19(a)." *American Greyhound*, 305 F.3d at 1024. Because the Court must either conclude that a trust relationship either does or does not exist, it is difficult, if not impossible to craft the relief to lessen the prejudice to the United States, or to resolve

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[3] As part of its argument that the United States is not a necessary party, the County claims that the United States may be joined as a party under the Administrative Procedures Act, 5 U.S.C. § 702 ("APA"), which grants federal court standing to "any person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute." (Opp., p. 12.) The County contends that the United States failed to follow the proper procedures to transfer the easement into a trust. (MPA, p. 11.) The Court declines to address the merits of this argument as it raises issues and seeks relief that is entirely different from that raised by the County in its inspection warrant.

the trust issue in the United States' absence. The Court is aware that a refusal by the United States to waive its sovereign immunity may leave the County without a forum for its claims, but this fact does not outweigh the interest in preserving the United States' sovereign immunity. *Lomayaktewa v. Hathaway,* 520 F.2d 1324, 1326 (9th Cir. 1975). Based on the foregoing, the Court concludes that the United States is an indispensable party, and, absent a waiver by the United States of its sovereign immunity, the County is precluded from attempting to enforce the fire codes on the easement.

III. CONCLUSION

Based on the foregoing, the Court hereby GRANTS IN PART and DENIES IN PART the Tribe's Rule 12(b)(7) motion. The Court finds as a matter of law that the United States and the State of California are not necessary parties with respect to whether the County has jurisdiction to enforce the fire codes at the gaming facility. The United States is an indispensable party with respect to whether the County has jurisdiction to enforce the fire codes at the easement. Absent a waiver of sovereign immunity by the United States, the County is precluded from attempting to enforce the fire codes on the easement through the inspection warrant.[4] The County shall have until April 1, 2005 to attempt to obtain a waiver from the United States and to amend the inspection warrant. The only issue remaining in this matter, absent amendment of the inspection warrant, is whether the County may enforce the fire codes at the gaming facility pursuant to the "exigent circumstances" exception to *Cabazon.*

IT IS SO ORDERED.

Dated: March 1, 2005

/s/ Jeffrey S. White
JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

[4] The County's motion for summary adjudication relating to enforcement of the fire codes on the easement is DENIED as moot. Because the Court finds that the United States is an indispensable party with respect to whether the County has the authority to enforce the fire codes on the easement, it does not reach the Tribe's other argument that dismissal is warranted because the State of California is an indispensable party. The Tribe's Rule 12(b)(7) motion to dismiss on that issue is therefore DENIED as moot. The Tribe's motion pursuant to 12(b)(6) to dismiss with respect to enforcement of the fire codes on the easement is also DENIED as moot. The objections to evidence submitted in connection with the County's motion for summary adjudication that relates to the County's authority to enforce the fire codes on the easement and the gaming facility are DENIED as moot.

EXHIBIT 5

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

In re Dry Creek Rancheria Wastewater Treatment Plant
NPDES Permit No. CA 0005241

NPDES Appeal Nos. 07-14 & 07-15

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN THE MATTER OF THE 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 JSW

ORDER GRANTING TRIBE'S MOTION FOR SUMMARY JUDGMENT

Now before the Court is the motion of the Dry Creek Rancheria Band of Pomo Indians ("Tribe") for summary judgment. Having carefully read the parties' papers and considered the arguments and the relevant legal authority, and having the benefit of oral argument on April 22, 2005, the Court hereby GRANTS the Tribe's motion for summary judgment

The prior rulings in this matter have significantly narrowed the issues remaining in this case. The only remaining question is whether the Court should permit the County to assert jurisdiction over the on-reservation activities of tribal members because of the existence of sufficient "exceptional circumstances" to warrant the assertion. *See California v. Cabazon Band,* 480 U.S. 202, 214-15 (1987) (quoting *New Mexico v. Mescalero Apache Tribe,* 462 U.S.

324, 331-32 (1983)).

ANALYSIS

A. Summary Judgment Standard.

Summary judgment is proper when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). A fact is "material" if the fact may affect the outcome of the case. *Id.* at 248. "In considering a motion for summary judgment, the court may not weigh the evidence or make credibility determinations, and is required to draw all inferences in a light most favorable to the non-moving party." *Freeman v. Arpaio*, 125 F.3d 732, 735 (9th Cir. 1997). A principal purpose of the summary judgment procedure is to identify and dispose of factually unsupported claims. *Celotex Corp. v. Cattrett*, 477 U.S. 317, 323-24 (1986). The party moving for summary judgment bears the initial burden of identifying those portions of the pleadings, discovery, and affidavits which demonstrate the absence of a genuine issue of material fact. *Id.* at 323. Where the moving party will have the burden of proof on an issue at trial, it must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party. *Id.* Once the moving party meets this initial burden, the non-moving party must go beyond the pleadings and by its own evidence "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). The non-moving party must "identify with reasonable particularity the evidence that precludes summary judgment." *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996) (quoting *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 (7th Cir. 1995)) (stating that it is not a district court's task to "scour the record in search of a genuine issue of triable fact"). If the non-moving party fails to make this showing, the moving party is entitled to judgment as a matter of law. *Celotex*, 477 U.S. at 323.

B. Exceptional Circumstances Test.

Local and state laws do not generally apply to Indian tribal governments on their reservation. "[I]n demarcating the respective spheres of State and tribal authority over Indian reservations, we have continued to stress that 'Indian tribes are unique aggregations possessing attributes of sovereignty over ... their territory. Because of their sovereign status, tribes and their reservation lands are insulated in some respects by an historic immunity from state and local control, and tribes retain any aspect of their historical sovereignty not inconsistent with the overriding interests of the National Government.'" *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 332 (1983).

Only in "exceptional circumstances" may a State assert jurisdiction over the on-reservation activities of tribal members notwithstanding the lack of express congressional intent to do so. *Cabazon*, 480 U.S. at 214-15. The asserted exceptional circumstances are weighed against traditional notions of Indian sovereignty and the congressional goal of encouraging tribal self-determination, self-sufficiency, and economic development. *Id.* at 216. The burden is on the County to explain why the interests it seeks to protect are exceptional, in order to overcome the overwhelming interests of the Tribe. *See, e.g., Gobin v. Snohomish County*, 304 F.3d 909, 918 (9th Cir. 2002).

The County of Sonoma contends that exceptional circumstances exist because of health and safety concerns. Specifically, the County argues that because the casino is a large commercial business catering to non-tribal members, lacks its own fire department and relies on the Geyserville Fire Department in case of fire emergency, exceptional circumstances exist sufficient to overcome Indian sovereignty. However, the court in *Gobin* determined at summary judgment that the County's interests, which included but were not limited to local public health and safety concerns, were insufficient to outweigh the Tribe's sovereign interests.

In *Gobin*, the tribe's zoning ordinance established land use regulations throughout the reservation that differed from the county's regulations. The tribe sought a declaration that the county lacked land use jurisdiction over the reservation land and could not impose County zoning, subdivision and building code regulations on the individual tribe member's proposed

development. *Id.* at 912. The County argued that "exceptional circumstances" existed that warranted the County's jurisdiction over the reservation land. The County argued a broad array of interests, "including protecting endangered species, regulating County-maintained roads and storm sewers, providing a continuum of land use enforcement for all fee lands, and complying with applicable health and safety codes, to counterbalance the Tribe's strong interests in self-determination." *Id.* at 917. The Ninth Circuit held that the mere existence of the County's interests in assuring the health and safety of County citizens, in addition to the other circumstances present in land use regulation, was "an important interest, but an unexceptional one." *Id.* at 918. The Court found that even adding into the calculus the other interests of the County, "they do not outweigh the Tribes's interest in self-determination." *Id.*

In this matter, the County's sole contention is that the imposition of its health and safety regulations is at stake. The enumerated list of concerns relate only to the County's enforcement of its health and safety codes. Without more, those circumstances are insufficient as a matter of law to overcome the high burden of Indian sovereignty, tribal self-determination, self-sufficiency, and economic development. *See id.* Thus, no "exceptional circumstances" exist to warrant an exception to the general preclusion of the County from jurisdiction to enforce its health and safety regulations.

CONCLUSION

For the reasons stated herein, the Tribe's motion for summary judgment is GRANTED.

IT IS SO ORDERED.

Dated: April 29, 2005

/s/ Jeffrey S. White
JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

EXHIBIT 6

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

In re Dry Creek Rancheria Wastewater Treatment Plant
NPDES Permit No. CA 0005241

NPDES Appeal Nos. 07-14 & 07-15

UDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 02-16655
CT/AG#: CV-01-02390-SBA

TERRANCE C. PROSCHOLD; JACQUELINE L. PROSCHOLD, individually and as trustees of the Terrance and Jacqueline Proschold Family Living Trust; LARRY R. CADD; CANDACE B. CADD, individually and as trustees of the L.R. & C.B. Cadd Family Trust; PETER M. PROSCHOLD; LINDA PROSCHOLD, individually and as trustees of the Proschold Family Trust;

Plaintiffs - Appellants

DRY CREEK RANCHERIA BAND OF POMO INDIANS

Intervenor - Appellee

v.

UNITED STATES OF AMERICA

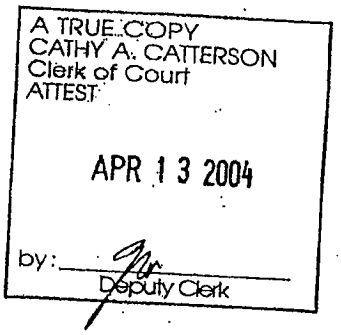
Defendant - Appellee

APPEAL FROM the United States District Court for the Northern Division of California (Oakland).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Northern Division of California (Oakland) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered February 20, 2004



NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TERRANCE C. PROSCHOLD, et al., Plaintiffs - Appellants, v. UNITED STATES OF AMERICA, Defendant - Appellee, and, DRY CREEK RANCHERIA BAND OF POMO INDIANS, Intervenor - Appellee.	No. 02-16655 D.C. No. CV-01-02390-SBA MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Saundra B. Armstrong, District Judge, Presiding

Argued and Submitted October 6, 2003
San Francisco, California

Before: SCHROEDER, Chief Judge, THOMAS, and CLIFTON, Circuit Judges.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Plaintiffs appeal the district court's order dismissing their action for lack of subject matter jurisdiction under the Quiet Title Act. We review the district court's determination of subject matter jurisdiction *de novo*, *Alaska v. Babbitt,* 38 F.3d 1068, 1072 (9th Cir. 1994) (*Alaska-Albert"*), and we affirm. Because the parties are familiar with the facts and procedural history, we need not recount it here.

Although the Quiet Title Act ("QTA") waives sovereign immunity for title disputes involving real property in which the United States claims an interest, it expressly reserves sovereign immunity in disputes involving lands held in trust for Indian tribes. 28 U.S.C. § 2409a. Under this exception, sovereign immunity applies if the United States "has a colorable claim and has chosen to assert its immunity on behalf of land of which the government declares that it is the trustee for Indians." *Wildman v. United States*, 827 F.2d 1306, 1309 (9th Cir. 1987). In this case, the government has elected to assert sovereign immunity. Thus, the only question is whether the government has a colorable claim to the property, or as we have also described it, whether "the government had some rationale for its claim." *Alaska-Albert*, 38 F.3d at 1076.

It is the Plaintiffs' burden to prove that the district court had subject matter jurisdiction to entertain their QTA action. *Thompson v. McCombe*, 99 F.3d 352,

353 (9th Cir. 1996). They failed to meet this burden. Plaintiffs' primary argument is that the United States acquired the property at issue as a sovereign, and not as trustee. Regardless of the true status of the property, under the QTA, trust land is "land the title to which is held in trust by the United States for an individual Indian or a tribe." 25 C.F.R. § 151.2(d). The Indian Reorganization Act of 1934 provided the Secretary of Interior with direct authority to acquire land in trust for Indians. 25 U.S.C. § 465. Prior to that enactment, the United States proclaimed its authority to hold title to lands for the benefit of the Indians. *See Cherokee Nation v. Georgia,* 30 U.S. (5 Pet.) 1, 17 (1831). As we previously have noted, Congress enacted the Indian land exception because of the "federal government's trust responsibility for Indian lands [which resulted from] solemn obligations entered into by the United States government. The federal government has over the years made specific commitments to the Indian people through written treaties and through informal and formal agreements." *Alaska-Albert*, 38 F.3d at 1073 (citing H.R.Rep. No. 1559, 92nd Cong., 2d Sess., *reprinted in* 1972 U.S.C.C.A.N. 4556-57). Thus, when the United States acquires real property in trust for a tribe, it holds the actual title and need not affirmatively set forth the trust status in the document of record and it can claim the easement is held in trust even if such designation does not appear on the title. *Cf. United States v. McGowan*, 302 U.S.

535, 538-39 (1938); *see also Navajo Tribe of Indians v. United States*, 624 F.2d 981, 987 (Ct. Cl. 1980).

In this case, although the easement did not designate title as held in trust, it was recorded by the Bureau of Indian Affairs, and Plaintiffs' predecessor in interest was aware that it was acquired for the assistance of the Dry Creek Rancheria Band of Pomo Indians. For almost half a century, the Bureau of Indian Affairs has claimed the easement was owned in trust with title vested in the United States and has continued to claim it in trust for the benefit of the Dry Creek Rancheria Band of Pomo Indians. The United States held title to the easement with the right to enter, improve and maintain the roadway, and it has since been maintained as part of the Bureau of Indian Affairs road system, not for its own purposes but for the benefit of the Rancheria Indians. Plaintiffs offer nothing to indicate otherwise.

For these reasons, while some doubt exists as to the true status of the easement, the district court correctly concluded that the United States had asserted a colorable claim that the easement is held in trust, within the meaning of the QTA, for the Dry Creek Rancheria Band of Pomo Indians. Thus, sovereign immunity bars the instant action "whether the government is right or wrong."

Wildman, 827 F.2d at 1309. Given the sovereign immunity bar, we need not address the other issues raised by Plaintiffs.

AFFIRMED.

A TRUE COPY
CATHY A. CATTERSON
Clerk of Court
ATTEST

APR 13 2004

by: _____
Deputy Clerk

EXHIBIT 7

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

In re Dry Creek Rancheria Wastewater Treatment Plant
NPDES Permit No. CA 0005241

NPDES Appeal Nos. 07-14 & 07-15

TRIBAL-STATE COMPACT

BETWEEN

THE STATE OF CALIFORNIA

AND THE

DRY CREEK RANCHERIA OF POMO INDIANS

TABLE OF CONTENTS

TRIBAL-STATE GAMING COMPACT
Between the DRY CREEK RANCHERIA, a federally recognized Indian Tribe,
and the
STATE OF CALIFORNIA

This Tribal-State Gaming Compact is entered into on a government-to-government basis by and between the Dry Creek Rancheria, a federally-recognized sovereign Indian tribe (hereafter "Tribe"), and the State of California, a sovereign State of the United States (hereafter "State"), pursuant to the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, codified at 18 U.S.C. Sec. 1166 et seq. and 25 U.S.C. Sec. 2701 et seq.) (hereafter "IGRA"), and any successor statute or amendments.

PREAMBLE

A. In 1988, Congress enacted IGRA as the federal statute governing Indian gaming in the United States. The purposes of IGRA are to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; to provide a statutory basis for regulation of Indian gaming adequate to shield it from organized crime and other corrupting influences; to ensure that the Indian tribe is the primary beneficiary of the gaming operation; to ensure that gaming is conducted fairly and honestly by both the operator and players; and to declare that the establishment of an independent federal regulatory authority for gaming on Indian lands, federal standards for gaming on Indian lands, and a National Indian Gaming Commission are necessary to meet congressional concerns.

B. The system of regulation of Indian gaming fashioned by Congress in IGRA rests on an allocation of regulatory jurisdiction among the three sovereigns involved: the federal government, the state in which a tribe has land, and the tribe itself. IGRA makes Class III gaming activities lawful on the lands of federally-recognized Indian tribes only if such activities are: (1) authorized by a tribal ordinance, (2) located in a state that permits such gaming for any purpose by any person, organization or entity, and (3) conducted in conformity with a gaming compact entered into between the Indian tribe and the state and approved by the Secretary of the Interior.

C. The Tribe does not currently operate a gaming facility that offers Class III gaming activities. However, on or after the effective date of this Compact, the Tribe intends to develop and operate a gaming facility offering Class III gaming activities on its reservation land, which is located in Sonoma County of California.

D. The State enters into this Compact out of respect for the sovereignty of the Tribe; in recognition of the historical fact that Indian gaming has become the single largest revenue-producing activity for Indian tribes in the United States; out of a desire to terminate pending "bad faith" litigation between the Tribe and the State; to initiate a new era of tribal-state cooperation in areas of mutual concern; out of a respect for the sentiment of the voters of California who, in approving Proposition 5, expressed their belief that the forms of gaming authorized herein should be allowed; and in anticipation of voter approval of SCA 11 as passed by the California legislature.

E. The exclusive rights that Indian tribes in California, including the Tribe, will enjoy under this Compact create a unique opportunity for the Tribe to operate its Gaming Facility in an economic environment free of competition from the Class III gaming referred to in Section 4.0 of this Compact on non-Indian lands in California. The parties are mindful that this unique environment is of great economic value to the Tribe and the fact that income from Gaming Devices represents a substantial portion of the tribes' gaming revenues. In consideration for the exclusive rights enjoyed by the tribes, and in further consideration for the State's willingness to enter into this Compact, the tribes have agreed to provide to the State, on a sovereign-to-sovereign basis, a portion of its revenue from Gaming Devices.

F. The State has a legitimate interest in promoting the purposes of IGRA for all federally-recognized Indian tribes in California, whether gaming or non-gaming. The State contends that it has an equally legitimate sovereign interest in regulating the growth of Class III gaming activities in California. The Tribe and the State share a joint sovereign interest in ensuring that tribal gaming activities are free from criminal and other undesirable elements.

Section 1.0. PURPOSES AND OBJECTIVES.

The terms of this Gaming Compact are designed and intended to:

(a) Evidence the goodwill and cooperation of the Tribe and State in fostering a mutually respectful government-to-government relationship that will serve the mutual interests of the parties.

(b) Develop and implement a means of regulating Class III gaming, and only Class III gaming, on the Tribe's Indian lands to ensure its fair and honest operation in accordance with IGRA, and through that regulated Class III gaming, enable the Tribe to develop self-sufficiency, promote tribal economic development, and generate jobs and revenues to support the Tribe's government and governmental services and programs.

(c) Promote ethical practices in conjunction with that gaming, through the licensing and control of persons and entities employed in, or providing goods and services to, the Tribe's Gaming Operation and protecting against the presence or participation of persons whose criminal backgrounds, reputations, character, or associations make them unsuitable for participation in gaming, thereby maintaining a high level of integrity in tribal government gaming.

Sec. 2.0. DEFINITIONS.

Sec. 2.1. "Applicant" means an individual or entity that applies for a Tribal license or State certification.

Sec. 2.2. "Association" means an association of California tribal and state gaming regulators, the membership of which comprises up to two representatives from each tribal gaming agency of those tribes with whom the State has a gaming compact under IGRA, and up to two delegates each from the state Division of Gambling Control and the state Gambling Control Commission.

Sec. 2.3. "Class III gaming" means the forms of Class III gaming defined as such in 25 U.S.C. Sec. 2703(8) and by regulations of the National Indian Gaming Commission.

Sec. 2.4. "Gaming Activities" means the Class III gaming activities authorized under this Gaming Compact.

Sec. 2.5. "Gaming Compact" or "Compact" means this compact.

Sec. 2.6. "Gaming Device" means a slot machine, including an electronic, electromechanical, electrical, or video device that, for consideration, permits: individual play with or against that device or the participation in any electronic, electromechanical, electrical, or video system to which that device is connected; the playing of games thereon or therewith, including, but not limited to, the playing of facsimiles of games of chance or skill; the possible delivery of, or entitlement by the player to, a prize or something of value as a result of the application of an element of

chance; and a method for viewing the outcome, prize won, and other information regarding the playing of games thereon or therewith.

Sec. 2.7. "Gaming Employee" means any person who (a) operates, maintains, repairs, assists in any Class III gaming activity, or is in any way responsible for supervising such gaming activities or persons who conduct, operate, account for, or supervise any such gaming activity, (b) is in a category under federal or tribal gaming law requiring licensing, (c) is an employee of the Tribal Gaming Agency with access to confidential information, or (d) is a person whose employment duties require or authorize access to areas of the Gaming Facility that are not open to the public.

Sec. 2.8. "Gaming Facility" or "Facility" means any building in which Class III gaming activities or gaming operations occur, or in which the business records, receipts, or other funds of the gaming operation are maintained (but excluding offsite facilities primarily dedicated to storage of those records, and financial institutions), and all rooms, buildings, and areas, including parking lots and walkways, a principal purpose of which is to serve the activities of the Gaming Operation, provided that nothing herein prevents the conduct of Class II gaming (as defined under IGRA) therein.

Sec. 2.9. "Gaming Operation" means the business enterprise that offers and operates Class III Gaming Activities, whether exclusively or otherwise.

Sec. 2.10. "Gaming Ordinance" means a tribal ordinance or resolution duly authorizing the conduct of Class III Gaming Activities on the Tribe's Indian lands and approved under IGRA.

Sec. 2.11. "Gaming Resources" means any goods or services provided or used in connection with Class III Gaming Activities, whether exclusively or otherwise, including, but not limited to, equipment, furniture, gambling devices and ancillary equipment, implements of gaming activities such as playing cards and dice, furniture designed primarily for Class III gaming activities, maintenance or security equipment and services, and Class III gaming consulting services. "Gaming Resources" does not include professional accounting and legal services.

Sec. 2.12. "Gaming Resource Supplier" means any person or entity who, directly or indirectly, manufactures, distributes, supplies, vends, leases, or otherwise purveys Gaming Resources to the Gaming Operation or Gaming Facility, provided that the Tribal Gaming Agency may exclude a purveyor of equipment or furniture that is not specifically designed for, and is distributed generally for use other than in connection with, Gaming Activities, if the purveyor is not otherwise a Gaming Resource Supplier as described by of Section 6.4.5, the compensation received by the

purveyor is not grossly disproportionate to the value of the goods or services provided, and the purveyor is not otherwise a person who exercises a significant influence over the Gambling Operation.

Sec. 2.13. "IGRA" means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. Sec. 1166 et seq. and 25 U.S.C. Sec. 2701 et seq.) any amendments thereto, and all regulations promulgated thereunder.

Sec. 2.14. "Management Contractor" means any Gaming Resource Supplier with whom the Tribe has contracted for the management of any Gaming Activity or Gaming Facility, including, but not limited to, any person who would be regarded as a management contractor under IGRA.

Sec. 2.15. "Net Win" means "net win" as defined by American Institute of Certified Public Accountants.

Sec. 2.16. "NIGC" means the National Indian Gaming Commission.

Sec. 2.17. "State" means the State of California or an authorized official or agency thereof.

Sec. 2.18. "State Gaming Agency" means the entities authorized to investigate, approve, and regulate gaming licenses pursuant to the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code).

Sec. 2.19. "Tribal Chairperson" means the person duly elected or selected under the Tribe's organic documents, customs, or traditions to serve as the primary spokesperson for the Tribe.

Sec. 2.20. "Tribal Gaming Agency" means the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those functions by the National Indian Gaming Commission, as primarily responsible for carrying out the Tribe's regulatory responsibilities under IGRA and the Tribal Gaming Ordinance. No person employed in, or in connection with, the management, supervision, or conduct of any gaming activity may be a member or employee of the Tribal Gaming Agency.

Sec. 2.21. "Tribe" means the Dry Creek Rancheria, a federally-recognized Indian tribe, or an authorized official or agency thereof.

Sec. 3.0 CLASS III GAMING AUTHORIZED AND PERMITTED. The Tribe is hereby authorized and permitted to engage in only the Class III Gaming Activities expressly referred to in Section 4.0 and shall not engage in Class III gaming that is not expressly authorized in that Section.

Sec. 4.0. SCOPE OF CLASS III GAMING.

Sec. 4.1. Authorized and Permitted Class III gaming. The Tribe is hereby authorized and permitted to operate the following Gaming Activities under the terms and conditions set forth in this Gaming Compact:

(a) The operation of Gaming Devices.

(b) Any banking or percentage card game.

(c) The operation of any devices or games that are authorized under state law to the California State Lottery, provided that the Tribe will not offer such games through use of the Internet unless others in the state are permitted to do so under state and federal law.

(e) Nothing herein shall be construed to preclude negotiation of a separate compact governing the conduct of off-track wagering at the Tribe's Gaming Facility.

Sec. 4.2. Authorized Gaming Facilities. The Tribe may establish and operate not more than two Gaming Facilities, and only on those Indian lands on which gaming may lawfully be conducted under the Indian Gaming Regulatory Act. The Tribe may combine and operate in each Gaming Facility any forms and kinds of gaming permitted under law, except to the extent limited under IGRA, this Compact, or the Tribe's Gaming Ordinance.

Sec. 4.3. Sec. 4.3. Authorized number of Gaming Devices

Sec. 4.3.1 The Tribe may operate no more Gaming Devices than the larger of the following:

(a) A number of terminals equal to the number of Gaming Devices operated by the Tribe on September 1, 1999; or

(b) Three hundred fifty (350) Gaming Devices.

Sec. 4.3.2. Revenue Sharing with Non-Gaming Tribes.

(a) For the purposes of this Section 4.3.2 and Section 5.0, the following definitions apply:

(i) A "Compact Tribe" is a tribe having a compact with the State that authorizes the Gaming Activities authorized by this Compact. Federally-recognized tribes that are operating fewer than 350 Gaming Devices are "Non-Compact Tribes." Non-Compact Tribes shall be deemed third party beneficiaries of this and other compacts identical in all material respects. A Compact Tribe that becomes a Non-Compact Tribe may not thereafter return to the status of a Compact Tribe for a period of two years becoming a Non-Compact Tribe.

(ii) The Revenue Sharing Trust Fund is a fund created by the Legislature and administered by the California Gambling Control Commission, as Trustee, for the receipt, deposit, and distribution of monies paid pursuant to this Section 4.3.2.

(iii) The Special Distribution Fund is a fund created by the Legislature for the receipt, deposit, and distribution of monies paid pursuant to Section 5.0.

Sec. 4.3.2.1. Revenue Sharing Trust Fund.

(a) The Tribe agrees with all other Compact Tribes that are parties to compacts having this Section 4.3.2, that each Non-Compact Tribe in the State shall receive the sum of $1.1 million per year. In the event there are insufficient monies in the Revenue Sharing Trust Fund to pay $1.1 million per year to each Non-Compact Tribe, any available monies in that Fund shall be distributed to Non-Compact Tribes in equal shares. Monies in excess of the amount necessary to $1.1 million to each Non-Compact Tribe shall remain in the Revenue Sharing Trust Fund available for disbursement in future years.

(b) Payments made to Non-Compact Tribes shall be made quarterly and in equal shares out of the Revenue Sharing Trust Fund. The Commission shall serve as the trustee of the fund. The Commission shall have no discretion with respect to the use or disbursement of the trust funds. Its sole authority shall be to serve as a depository of the trust funds and to disburse them on a quarterly basis to Non-Compact Tribes. In no event shall the State's General Fund be obligated to make up any shortfall or pay any unpaid claims.

Sec. 4.3.2.2. Allocation of Licenses.

(a) The Tribe, along with all other Compact Tribes, may acquire licenses to use Gaming Devices in excess of the number they are authorized to use under Sec. 4.3.1, but in no event may the Tribe operate more than 2,000 Gaming Devices, on the following terms, conditions, and priorities:

(1). The maximum number of machines that all Compact Tribes in the aggregate may license pursuant to this Section shall be a sum equal to 350 multiplied by the number of Non-Compact tribes as of September 1, 1999, plus the difference between 350 and the lesser number authorized under Section 4.3.1.

(2) The Tribe may acquire and maintain a license to operate a Gaming Device by paying into the Revenue Sharing Trust Fund, on a quarterly basis, in the following amounts:

Number of Licensed Devices	Fee Per Device Per Annum
1-350	$0
351-750	$900
751-1250	$1950
1251-2000	$4350

(3) Licenses to use Gaming Devices shall be awarded as follows:

(i) First, Compact Tribes with no Existing Devices (i.e., the number of Gaming Devices operated by a Compact Tribe as of September 1, 1999) may draw up to 150 licenses for a total of 500 Gaming Devices;

(ii) Next, Compact Tribes authorized under Section 4.3.1 to operate up to and including 500 Gaming Devices as of September 1, 1999 (including tribes, if any, that have acquired licenses through subparagraph (i)), may draw up to an additional 500 licenses, to a total of 1000 Gaming Devices;

(iii) Next, Compact Tribes operating between 501 and 1000 Gaming Devices as of September 1, 1999 (including tribes, if any, that have acquired licenses through subparagraph (ii)), shall be entitled to draw up to an additional 750 Gaming Devices;

(iv) Next, Compact Tribes authorized to operate up to and including 1500 gaming devices (including tribes, if any, that have acquired licenses through subparagraph (iii)), shall be entitled to draw up to an additional 500 licenses, for a total authorization to operate up to 2000 gaming devices.

(v) Next, Compact Tribes authorized to operate more than 1500 gaming devices (including tribes, if any, that have acquired licenses through subparagraph (iv)), shall be entitled to draw additional licenses up to a total authorization to operate up to 2000 gaming devices.

(vi). After the first round of draws, a second and subsequent round(s) shall be conducted utilizing the same order of priority as set forth above. Rounds shall continue until tribes cease making draws, at which time draws will be discontinued for one month or until the Trustee is notified that a tribe desires to acquire a license, whichever last occurs.

(e) As a condition of acquiring licenses to operate Gaming Devices, a non-refundable one-time pre-payment fee shall be required in the amount of $1,250 per Gaming Device being licensed, which fees shall be deposited in the Revenue Sharing Trust Fund. The license for any Gaming Device shall be canceled if the Gaming Device authorized by the license is not in commercial operation within twelve months of issuance of the license.

Sec. 4.3.2.3. The Tribe shall not conduct any Gaming Activity authorized by this Compact if the Tribe is more than two quarterly contributions in arrears in its license fee payments to the Revenue Sharing Trust Fund.

Sec. 4.3.3. If requested to do so by either party after March 7, 2003, but not later than March 31, 2003, the parties will promptly commence negotiations in good faith with the Tribe concerning any matters encompassed by Sections 4.3.1 and Section 4.3.2, and their subsections.

SEC. 5.0 REVENUE DISTRIBUTION

Sec. 5.1. (a) The Tribe shall make contributions to the Special Distribution Fund created by the Legislature, in accordance with the following schedule, but only with respect to the number of Gaming Devices operated by the Tribe on September 1, 1999:

Number of Terminals in Quarterly Device Base	Percent of Average Gaming Device Net Win
1 - 200	0%
201 – 500	7%
501 – 1000	7% applied to the excess over 200 terminals, up to 500 terminals, plus 10% applied to terminals over 500 terminals, up to 1000 terminals.
1000+	7% applied to excess over 200, up to 500 terminals, plus 10% applied to terminals over 500, up to 1000 terminals, plus 13% applied to the excess above 1000 terminals.

(b) The first transfer to the Special Distribution Fund of its share of the gaming revenue shall made at the conclusion of the first calendar quarter following the second anniversary date of the effective date of this Compact.

Sec. 5.2. Use of funds. The State's share of the Gaming Device revenue shall be placed in the Special Distribution Fund, available for appropriation by the Legislature for the following purposes: (a) grants, including any administrative costs, for programs designed to address gambling addiction; (b) grants, including any administrative costs, for the support of state and local government agencies impacted by tribal government gaming; (c) compensation for regulatory costs incurred by the State Gaming Agency and the state Department of Justice in connection with the implementation and administration of the Compact; (d) payment of shortfalls that may occur in the Revenue Sharing Trust Fund; and (e) any other purposes specified by the Legislature. It is the intent of the parties that Compact Tribes will be consulted in the process of identifying purposes for grants made to local governments.

Sec. 5.3. (a) The quarterly contributions due under Section 5.1 shall be determined and made not later than the thirtieth (30th) day following the end of each calendar quarter by first determining the total number of all Gaming Devices operated by a Tribe during a given quarter ("Quarterly Device Base"). The "Average Device Net Win" is calculated by dividing the total Net Win from all terminals during the quarter by the Quarterly Terminal Base.

(b) Any quarterly contribution not paid on or before the date on which such amount is due shall be deemed overdue. If any quarterly contribution under Section 5.1 is overdue to the Special Distribution Fund, the Tribe shall pay to the Special Distribution Fund, in addition to the overdue quarterly contribution, interest on such amount from the date the quarterly contribution was due until the date such quarterly contribution (together with interest thereon) was actually paid at the rate of 1.0% per month or the maximum rate permitted by state law, whichever is less. Entitlement to such interest shall be in addition to any other remedies the State may have.

(c) At the time each quarterly contribution is made, the Tribe shall submit to the State a report (the "Quarterly Contribution Report") certified by an authorized representative of the Tribe reflecting the Quarterly Device Base, the Net Win from all terminals in the Quarterly Device Base (broken down by Gaming Device), and the Average Device Net Win.

(d) If the State causes an audit to be made pursuant to subdivision (c), and the Average Device Net Win for any quarter as reflected on such quarter's Quarterly

Contribution Reports is found to be understated, the State will promptly notify the Tribe, and the Tribe will either accept the difference or provide a reconciliation satisfactory to the State. If the Tribe accepts the difference or does not provide a reconciliation satisfactory to the State, the Tribe must immediately pay the amount of the resulting deficiencies in the quarterly contribution plus interest on such amounts from the date they were due at the rate of 1.0% per month or the maximum rate permitted by applicable law, whichever is less.

(e) The Tribe shall not conduct Class III gaming if more than two quarterly contributions to the Special Distribution Fund are overdue.

Sec. 6.0. LICENSING.

Sec. 6.1. Gaming Ordinance and Regulations. All Gaming Activities conducted under this Gaming Compact shall, at a minimum, comply with a Gaming Ordinance duly adopted by the Tribe and approved in accordance with IGRA, and with all rules, regulations, procedures, specifications, and standards duly adopted by the Tribal Gaming Agency.

Sec. 6.2. Tribal Ownership, Management, and Control of Gaming Operation.The Gaming Operations authorized under this Gaming Compact shall be owned solely by the Tribe.

Sec. 6.3. Prohibition Regarding Minors. (a) Except as provided in subdivision (b), the Tribe shall not permit persons under the age of 18 years to be present in any room in which Class III Gaming Activities are being conducted unless the person is en-route to a non-gaming area of the Gaming Facility.

(b) If the Tribe permits the consumption of alcoholic beverages in the Gaming Facility, the Tribe shall prohibit persons under the age of 21 years from being present in any area in which Class III gaming activities are being conducted and in which alcoholic beverages may be consumed, to the extent required by the state Department of Alcoholic Beverage Control.

Sec. 6.4. Licensing Requirements and Procedures.

Sec. 6.4.1. Summary of Licensing Principles. All persons in any way connected with the Gaming Operation or Facility who are required to be licensed or to submit to a background investigation under IGRA, and any others required to be licensed under this Gaming Compact, including, but not limited to, all Gaming Employees and Gaming Resource Suppliers, and any other person having a significant influence over the Gaming Operation must be licensed by the Tribal Gaming Agency. The parties intend that the licensing process provided for in this Gaming Compact shall involve

joint cooperation between the Tribal Gaming Agency and the State Gaming Agency, as more particularly described herein.

Sec. 6.4.2. Gaming Facility. (a) The Gaming Facility authorized by this Gaming Compact shall be licensed by the Tribal Gaming Agency in conformity with the requirements of this Gaming Compact, the Tribal Gaming Ordinance, and IGRA. The license shall be reviewed and renewed, if appropriate, every two years thereafter. Verification that this requirement has been met shall be provided by the Tribe to the State Gaming Agency every two years. The Tribal Gaming Agency's certification to that effect shall be posted in a conspicuous and public place in the Gaming Facility at all times.

(b) In order to protect the health and safety of all Gaming Facility patrons, guests, and employees, all Gaming Facilities of the Tribe constructed after the effective date of this Gaming Compact, and all expansions or modifications to a Gaming Facility in operation as of the effective date of this Compact, shall meet the building and safety codes of the Tribe, which, as a condition for engaging in that construction, expansion, modification, or renovation, shall amend its existing building and safety codes if necessary, or enact such codes if there are none, so that they meet the standards of either the building and safety codes of any county within the boundaries of which the site of the Facility is located, or the Uniform Building Codes, including all uniform fire, plumbing, electrical, mechanical, and related codes then in effect provided that nothing herein shall be deemed to confer jurisdiction upon any county or the State with respect to any reference to such building and safety codes. Any such construction, expansion or modification will also comply with the federal Americans with Disabilities Act, P.L. 101-336, as amended, 42 U.S.C. § 12101 et seq.

(c) Any Gaming Facility in which gaming authorized by this Gaming Compact is conducted shall be issued a certificate of occupancy by the Tribal Gaming Agency prior to occupancy if it was not used for any Gaming Activities under IGRA prior to the effective date of this Gaming Compact, or, if it was so used, within one year thereafter. The issuance of this certificate shall be reviewed for continuing compliance every two years thereafter. Inspections by qualified building and safety experts shall be conducted under the direction of the Tribal Gaming Agency as the basis for issuing any certificate hereunder. The Tribal Gaming Agency shall determine and certify that, as to new construction or new use for gaming, the Facility meets the Tribe's building and safety code, or, as to facilities or portions of facilities that were used for the Tribe's Gaming Activities prior to this Gaming Compact, that the facility or portions thereof do not endanger the health or safety of occupants or the integrity of the

Gaming Operation. The Tribe will not offer Class III gaming in a Facility that is constructed or maintained in a manner that endangers the health or safety of occupants or the integrity of the gaming operation.

(d) The State shall designate an agent or agents to be given reasonable notice of each inspection by the Tribal Gaming Agency's experts, which state agents may accompany any such inspection. The Tribe agrees to correct any Gaming Facility condition noted in an inspection that does not meet the standards set forth in subdivisions (b) and (c). The Tribal Gaming Agency and the State's designated agent or agents shall exchange any reports of an inspection within 10 daysafter completion of the report, which reports shall also be separately and simultaneously forwarded by both agencies to the Tribal Chairperson. Upon certification by the Tribal Gaming Agency's experts that a Gaming Facility meets applicable standards, the Tribal Gaming Agency shall forward the experts' certification to the State within 10 days of issuance. If the State's agent objects to that certification, the Tribe shall make a good faith effort to address the State's concerns, but if the State does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of Section 9.0.

Sec. 6.4.3. Suitability Standard Regarding Gaming Licenses.(a) In reviewing an application for a gaming license, and in addition to any standards set forth in the Tribal Gaming Ordinance, the Tribal Gaming Agency shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the Tribe's Gaming Operations, or tribal government gaming generally, are free from criminal and dishonest elements and would be conducted honestly. A license may not be issued unless, based on all information and documents submitted, the Tribal Gaming Agency is satisfied that the applicant is all of the following, in addition to any other criteria in IGRA or the Tribal Gaming Ordinance:

(a) A person of good character, honesty, and integrity.

(b) A person whose prior activities, criminal record (if any), reputation, habits, and associations do not pose a threat to the public interest or to the effective regulation and control of gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gambling, or in the carrying on of the business and financial arrangements incidental thereto.

(c) A person who is in all other respects qualified to be licensed as provided in this Gaming Compact, IGRA, the Tribal Gaming Ordinance, and any other criteria adopted by the Tribal Gaming Agency or the Tribe. An applicant shall not be found to be

unsuitable solely on the ground that the applicant was an employee of a tribal gaming operation in California that was conducted prior to the effective date of this Compact.

Sec. 6.4.4. Gaming Employees. (a) Every Gaming Employee shall obtain, and thereafter maintain current, a valid tribal gaming license, which shall be subject to biennial renewal; provided that in accordance with Section 6.4.9, those persons may be employed on a temporary or conditional basis pending completion of the licensing process.

(b) Except as provided in subdivisions (c) and (d), the Tribe will not employ or continue to employ, any person whose application to the State Gaming Agency for a determination of suitability, or for a renewal of such a determination, has been denied or has expired without renewal.

(c) Notwithstanding subdivision (a), the Tribe may retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if: (i) the person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially; (ii) the denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate the filing of the person's initial application to the State Gaming Agency for a determination of suitability; (iii) the person is not an employee or agent of any other gaming operation; and (iv) the person has been in the continuous employ of the Tribe for at least three years prior to the effective date of this Compact.

(d) Notwithstanding subdivision (a), the Tribe may employ or retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if the person is an enrolled member of the Tribe, as defined in this subdivision, and if (i) the person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially; (ii) the denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate the filing of the person's initial application to the State Gaming Agency for a determination of suitability; and (iii) the person is not an employee or agent of any other gaming operation. For purposes of this subdivision, "enrolled member" means a person who is either (a) certified by the Tribe as having been a member of the Tribe for at least five (5) years, or (b) a holder of confirmation of membership issued by the Bureau of Indian Affairs.

(e) Nothing herein shall be construed to relieve any person of the obligation to apply for a renewal of a determination of suitability as required by Section 6.5.6.

Sec. 6.4.5. Gaming Resource Supplier. Any Gaming Resource Supplier who, directly or indirectly, provides, has provided, or is deemed likely to provide at least twenty-five thousand dollars ($25,000) in Gaming Resources in any 12month period, or who has received at least twenty-five thousand dollars ($25,000) in any consecutive 12-month period within the 24-month period immediately preceding application, shall be licensed by the Tribal Gaming Agency prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any such Gaming Resources to or in connection with the Tribe's Operation or Facility. These licenses shall be reviewed at least every two years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Supplier to update all information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to constitute an application for renewal. The Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of Gaming Resources with any person whose application to the State Gaming Agency for a determination of suitability has been denied or has expired without renewal. Any agreement between the Tribe and a Gaming Resource Supplier shall be deemed to include a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of, or payment for services or materials received up to, the date of termination, upon revocation or non-renewal of the Supplier's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency.

Sec. 6.4.6. Financial Sources. Any person extending financing, directly or indirectly, to the Tribe's Gaming Facility or Gaming Operation shall be licensed by the Tribal Gaming Agency prior to extending that financing, provided that any person who is extending financing at the time of the execution of this Compact shall be licensed by the Tribal Gaming Agency within ninety (90) days of such execution. These licenses shall be reviewed at least every two years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to constitute an application for renewal. Any agreement between the Tribe and a Financial Source shall be deemed to include a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of the date of termination, upon revocation or non-renewal of the Financial Source's license by the Tribal Gaming Agency based on a determination of

unsuitability by the State Gaming Agency. The Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of financing with any person whose application to the State Gaming Agency for a determination of suitability has been denied or has expired without renewal. A Gaming Resource Supplier who provides financing exclusively in connection with the sale or lease of Gaming Resources obtained from that Supplier may be licensed solely in accordance with licensing procedures applicable, if at all, to Gaming Resource Suppliers. The Tribal Gaming Agency may, at its discretion, exclude from the licensing requirements of this section, financing provided by a federally regulated or state-regulated bank, savings and loan, or other federally- or state-regulated lending institution; or any agency of the federal, state, or local government; or any investor who, alone or in conjunction with others, holds less than 10% of any outstanding indebtedness evidenced by bonds issued by the Tribe.

Sec. 6.4.7. Processing Tribal Gaming License Applications. Each applicant for a tribal gaming license shall submit the completed application along with the required information and an application fee, if required, to the Tribal Gaming Agency in accordance with the rules and regulations of that agency. At a minimum, the Tribal Gaming Agency shall require submission and consideration of all information required under IGRA, including Section 556.4 of Title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees.For applicants who are business entities, these licensing provisions shall apply to the entity as well as: (i each of its officers and directors; (ii) each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager; (iii) each of its owners or partners, if an unincorporated business; (iv) each of its shareholders who owns more than 10 percent of the shares of the corporation, if a corporation; and (v) each person or entity (other than a financial institution that the Tribal Gaming Agency has determined does not require a license under the preceding section) that, alone or in combination with others, has provided financing in connection with any gaming authorized under this Gaming Compact, if that person or entity provided more than 10 percent of (a) the start-up capital, (b) the operating capital over a 12-month period, or (c) a combination thereof. For purposes of this Section, where there is any commonality of the characteristics identified in clauses (i) to (v), inclusive, between any two or more entities, those entities may be deemed to be a single entity. Nothing herein precludes the Tribe or Tribal Gaming Agency from requiring more stringent licensing requirements.

Sec. 6.4.8. Background Investigations of Applicants. The Tribal Gaming Agency shall conduct or cause to be conducted all necessary background investigations reasonably required to determine that the applicant is qualified for a gaming license under the standards set forth in Section 6.4.3, and to fulfill all requirements for licensing under IGRA, the Tribal Gaming Ordinance, and this Gaming Compact. The Tribal Gaming Agency shall not issue other than a temporary license until a determination is made that those qualifications have been met. In lieu of completing its own background investigation, and to the extent that doing so does not conflict with or violate IGRA or the Tribal Gaming Ordinance, the Tribal Gaming Agency may contract with the State Gaming Agency for the conduct of background investigations, may rely on a state certification of non-objection previously issued under a gaming compact involving another tribe, or may rely on a State gaming license previously issued to the applicant, to fulfill some or all of the Tribal Gaming Agency's background investigation obligation. An applicant for a tribal gaming license shall be required to provide releases to the State Gaming Agency to make available to the Tribal Gaming Agency background information regarding the applicant.The State Gaming Agency shall cooperate in furnishing to the Tribal Gaming Agency that information, unless doing so would violate any agreement the State Gaming Agency has with a source of the information other than the applicant, or would impair or impede a criminal investigation, or unless the Tribal Gaming Agency cannot provide sufficient safeguards to assure the State Gaming Agency that the information will remain confidential or that provision of the information would violate state or federal law. If the Tribe adopts an ordinance confirming that Article 6 (commencing with section 11140) of Chapter 1 of Title 1 of Part 4 of the California Penal Code is applicable to members, investigators, and staff of the Tribal Gaming Agency, and those members, investigators, and staff thereafter comply with that ordinance, then, for purposes of carrying out its obligations under this Section, the Tribal Gaming Agency shall be considered to be an entity entitled to receive state summary criminal history information within the meaning of subdivision (b)(12) of section 11105 of the California Penal Code. The California Department of Justice shall provide services to the Tribal Gaming Agency through the California Law Enforcement Telecommunications System (CLETS), subject to a determination by the CLETS advisory committee that the Tribal Gaming Agency is qualified for receipt of such services, and on such terms and conditions as are deemed reasonable by that advisory committee.

Sec. 6.4.9. Temporary Licensing of Gaming Employees. Notwithstanding anything herein to the contrary, if the applicant has completed a license application in a manner satisfactory to the Tribal Gaming Agency, and that agency has conducted a preliminary background investigation, and the investigation or other information held by that agency does not indicate that the applicant has a criminal history or other information in his or her background that would either automatically disqualify the applicant from obtaining a license or cause a reasonable person to investigate further before issuing a license, or is otherwise unsuitable for licensing, the Tribal Gaming Agency may issue a temporary license and may impose such specific conditions thereon pending completion of the applicant's background investigation, as the Tribal Gaming Agency in its sole discretion shall determine. Special fees may be required by the Tribal Gaming Agency to issue or maintain a temporary license. A temporary license shall remain in effect until suspended or revoked, or a final determination is made on the application. At any time after issuance of a temporary license, the Tribal Gaming Agency may suspend or revoke it in accordance with Sections 6.5.1 or 6.5.5, and the State Gaming Agency may request suspension or revocation in accordance with subdivision (d) of Section 6.5.6. Nothing herein shall be construed to relieve the Tribe of any obligation under Part 558 of Title 25 of the Code of Federal Regulations.

Sec. 6.5. Gaming License Issuance. Upon completion of the necessary background investigation, the Tribal Gaming Agency may issue a license on a conditional or unconditional basis. Nothing herein shall create a property or other right of an applicant in an opportunity to be licensed, or in a license itself, both of which shall be considered to be privileges granted to the applicant in the sole discretion of the Tribal Gaming Agency.

Sec. 6.5.1. Denial, Suspension, or Revocation of Licenses. (a) Any application for a gaming license may be denied, and any license issued may be revoked, if the Tribal Gaming Agency determines that the application is incomplete or deficient, or if the applicant is determined to be unsuitable or otherwise unqualified for a gaming license. Pending consideration of revocation, the Tribal Gaming Agency may suspend a license in accordance with Section 6.5.5. All rights to notice and hearing shall be governed by tribal law, as to which the applicant will be notified in writing along with notice of an intent to suspend or revoke the license.

(b) (i) Except as provided in paragraph (ii) below, upon receipt of notice that the State Gaming Agency has determined that a person would be unsuitable for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency, the Tribal Gaming Agency shall promptly revoke any license that has theretofore been

issued to the person; provided that the Tribal Gaming Agency may, in its discretion, re-issue a license to the person following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in state court conducted pursuant to section 1085 of the California Civil Code.

(ii) Notwithstanding a determination of unsuitability by the State Gaming Agency, the Tribal Gaming Agency may, in its discretion, decline to revoke a tribal license issued to a person employed by the Tribe pursuant to Section 6.4.4(c) or Section 6.4.4(d).

Sec. 6.5.2. Renewal of Licenses; Extensions; Further Investigation. The term of a tribal gaming license shall not exceed two years, and application for renewal of a license must be made prior to its expiration. Applicants for renewal of a license shall provide updated material as requested, on the appropriate renewal forms, but, at the discretion of the Tribal Gaming Agency, may not be required to resubmit historical data previously submitted or that is otherwise available to the Tribal Gaming Agency. At the discretion of the Tribal Gaming Agency, an additional background investigation may be required at any time if the Tribal Gaming Agency determines the need for further information concerning the applicant's continuing suitability or eligibility for a license. Prior to renewing a license, the Tribal Gaming Agency shall deliver to the State Gaming Agency copies of all information and documents received in connection with the application for renewal.

Sec. 6.5.3. Identification Cards. The Tribal Gaming Agency shall require that all persons who are required to be licensed wear, in plain view at all times while in the Gaming Facility, identification badges issued by the Tribal Gaming Agency. Identification badges must display information including, but not limited to, a photograph and an identification number that is adequate to enable agents of the Tribal Gaming Agency to readily identify the person and determine the validity and date of expiration of his or her license.

Sec. 6.5.4. Fees for Tribal License. The fees for all tribal licenses shall be set by the Tribal Gaming Agency.

Sec. 6.5.5. Suspension of Tribal License. The Tribal Gaming Agency may summarily suspend the license of any employee if the Tribal Gaming Agency determines that the continued licensing of the person or entity could constitute a threat to the public health or safety or may violate the Tribal Gaming Agency's licensing or other standards. Any right to notice or hearing in regard thereto shall be governed by Tribal law.

Sec. 6.5.6. State Certification Process. (a) Upon receipt of a completed license application and a determination by the Tribal Gaming Agency that it intends to issue the earlier of a temporary or permanent license, the Tribal Gaming Agency shall transmit to the State Gaming Agency a notice of intent to license the applicant, together with all of the following: (i) a copy of all tribal license application materials and information received by the Tribal Gaming Agency from the applicant; (ii) an original set of fingerprint cards; (iii) a current photograph; and (iv) except to the extent waived by the State Gaming Agency, such releases of information, waivers, and other completed and executed forms as have been obtained by the Tribal Gaming Agency. Except for an applicant for licensing as a non-key Gaming Employee, as defined by agreement between the Tribal Gaming Agency and the State Gaming Agency, the Tribal Gaming Agency shall require the applicant also to file an application with the State Gaming Agency, prior to issuance of a temporary or permanent tribal gaming license, for a determination of suitability for licensure under the California Gambling Control Act. Investigation and disposition of that application shall be governed entirely by state law, and the State Gaming Agency shall determine whether the applicant would be found suitable for licensure in a gambling establishment subject to that Agency's jurisdiction. Additional information may be required by the State Gaming Agency to assist it in its background investigation, provided that such State Gaming Agency requirement shall be no greater than that which may be required of applicants for a State gaming license in connection withnontribal gaming activities and at a similar level of participation or employment. A determination of suitability is valid for the term of the tribal license held by the applicant, and the Tribal Gaming Agency shall require a licensee to apply for renewal of a determination of suitability at such time as the licensee applies for renewal of a tribal gaming license.The State Gaming Agency and the Tribal Gaming Agency (together with tribal gaming agencies under other gaming compacts) shall cooperate in developing standard licensing forms for tribal gaming license applicants, on a statewide basis, that reduce or eliminate duplicative or excessive paperwork, which forms and procedures shall take into account the Tribe's requirements under IGRA and the expense thereof.

(b) Background Investigations of Applicants. Upon receipt of completed license application information from the Tribal Gaming Agency, the State Gaming Agency may conduct a background investigation pursuant to state law to determine whether the applicant would be suitable to be licensed for association with a gambling establishment subject to the jurisdiction of the State Gaming Agency. If further investigation is required to supplement the investigation conducted by the Tribal

Gaming Agency, the applicant will be required to pay the statutory application fee charged by the State Gaming Agency pursuant to California Business and Professions Code section 19941(a), but any deposit requested by the State Gaming Agency pursuant to section 19855 of that Code shall take into account reports of the background investigation already conducted by the Tribal Gaming Agency and the NIGC, if any. Failure to pay the application fee or deposit may be grounds for denial of the application by the State Gaming Agency. The State Gaming Agency and Tribal Gaming Agency shall cooperate in sharing as much background information as possible, both to maximize investigative efficiency and thoroughness, and to minimize investigative costs. Upon completion of the necessary background investigation or other verification of suitability, the State Gaming Agency shall issue a notice to the Tribal Gaming Agency certifying that the State has determined that the applicant would be suitable, or that the applicant would be unsuitable, for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency and, if unsuitable, stating the reasons therefor.

(c) The Tribe shall monthly provide the State Gaming Agency with the name, badge identification number, and job descriptions of all non-key Gaming Employees.

(d) Prior to denying an application for a determination of suitability, the State Gaming Agency shall notify the Tribal Gaming Agency and afford the Tribe an opportunity to be heard. If the State Gaming Agency denies an application for a determination of suitability, that Agency shall provide the applicant with written notice of all appeal rights available under state law.

Sec. 7.0. COMPLIANCE ENFORCEMENT.

Sec. 7.1. On-Site Regulation. It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact, IGRA, and the Tribal Gaming Ordinance with respect to Gaming Operation and Facility compliance, and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein.

Sec. 7.2. Investigation and Sanctions. The Tribal Gaming Agency shall investigate any reported violation of this Gaming Compact and shall require the Gaming Operation to correct the violation upon such terms and conditions as the Tribal Gaming Agency determines are necessary. The Tribal Gaming Agency shall be

empowered by the Tribal Gaming Ordinance to impose fines or other sanctions within the jurisdiction of the Tribe against gaming licensees or other persons who interfere with or violate the Tribe's gaming regulatory requirements and obligations under IGRA, the Tribal Gaming Ordinance, or this Gaming Compact. The Tribal Gaming Agency shall report significant or continued violations of this Compact or failures to comply with its orders to the State Gaming Agency.

Sec. 7.3. Assistance by State Gaming Agency. The Tribe may request the assistance of the State Gaming Agency whenever it reasonably appears that such assistance may be necessary to carry out the purposes described in Section 7.1, or otherwise to protect public health, safety, or welfare. If requested by the Tribe or Tribal Gaming Agency, the State Gaming Agency shall provide requested services to ensure proper compliance with this Gaming Compact. The State shall be reimbursed for its actual and reasonable costs of that assistance, if the assistance required expenditure of extraordinary costs.

Sec. 7.4. Access to Premises by State Gaming Agency; Notification Inspections. Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto, subject to the following conditions:

Sec. 7.4.1. Inspection of public areas of a Gaming Facility may be made at any time without prior notice during normal Gaming Facility business hours.

Sec. 7.4.2. Inspection of areas of a Gaming Facility not normally accessible to the public may be made at any time during normal Gaming Facility business hours, immediately after the State Gaming Agency's authorized inspector notifies the Tribal Gaming Agency of his or her presence on the premises, presents proper identification, and requests access to the non-public areas of the Gaming Facility. The Tribal Gaming Agency, in its sole discretion, may require a member of the Tribal Gaming Agency to accompany the State Gaming Agency inspector at all times that the State Gaming Agency inspector is in a non-public area of the Gaming Facility. If the Tribal Gaming Agency imposes such a requirement, it shall require such member to be available at all times for those purposes and shall ensure that the member has the ability to gain immediate access to all non-public areas of the Gaming Facility. Nothing in this Compact shall be construed to limit the State Gaming Agency to one inspector during inspections.

Sec. 7.4.3. (a) Inspection and copying of Gaming Operation papers, books, and records may occur at any time, immediately after notice to the Tribal Gaming Agency, during the normal hours of the Gaming Facility's business office, provided that the inspection and copying of those papers, books or records shall not interfere with the normal functioning of the Gaming Operation or Facility.Notwithstanding any other provision of California law, all information and records that the State Gaming Agency obtains, inspects, or copies pursuant to this Gaming Compact shall be, and remain, the property solely of the Tribe; provided that such records and copies may be retained by the State Gaming Agency as reasonably necessary for completion of any investigation of the Tribe's compliance with this Compact.

(b)(i) The State Gaming Agency will exercise utmost care in the preservation of the confidentiality of any and all information and documents received from the Tribe, and will apply the highest standards of confidentiality expected under state law to preserve such information and documents from disclosure. The Tribe mayavail itself of any and all remedies under state law for improper disclosure of information or documents. To the extent reasonably feasible, the State Gaming Agency will consult with representatives of the Tribe prior to disclosure of any documents received from the Tribe, or any documents compiled from such documents or from information received from the Tribe, including any disclosure compelled by judicial process, and, in the case of any disclosure compelled by judicial process, will endeavor to give the Tribe immediate notice of the order compelling disclosure and a reasonable opportunity to interpose an objection thereto with the court.

(ii) The Tribal Gaming Agency and the State Gaming Agency shall confer and agree upon protocols for release to other law enforcement agencies of information obtained during the course of background investigations.

(c) Records received by the State Gaming Agency from the Tribe in compliance with this Compact, or information compiled by the State Gaming Agency from those records, shall be exempt from disclosure under the California Public Records Act.

Sec. 7.4.4. Notwithstanding any other provision of this Compact, the State Gaming Agency shall not be denied access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with this Compact.

Sec. 7.4.5. (a) Subject to the provisions of subdivision (b), the Tribal Gaming Agency shall not permit any Gaming Device to be transported to or from the Tribe's land except in accordance with procedures established by agreement between the State Gaming Agency and the Tribal Gaming Agency and upon at least 10 days' notice to the Sheriff's Department for the county in which the land is located.

(b) Transportation of a Gaming Device from the Gaming Facility within California is permissible only if: (i) The final destination of the device is a gaming facility of any tribe in California that has a compact with the State; (ii) The final destination of the device is any other state in which possession of the device or devices is made lawful by state law or by tribal-state compact; (iii) The final destination of the device is another country, or any state or province of another country, wherein possession of the device is lawful; or (iv) The final destination is a location within California for testing, repair, maintenance, or storage by a person or entity that has been licensed by the Tribal Gaming Agency and has been found suitable for licensure by the State Gaming Agency.

(c) Gaming Devices transported off the Tribe's land in violation of this Section 7.4.5 or in violation of any permit issued pursuant thereto is subject to summary seizure by California peace officers.

Sec. 8.0. RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE TRIBAL GAMING OPERATION.

Sec. 8.1. Adoption of Regulations for Operation and Management; Minimum Standards. In order to meet the goals set forth in this Gaming Compact and required of the Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum, rules and regulations or specifications governing the following subjects, and to ensure their enforcement in an effective manner:

Sec. 8.1.1. The enforcement of all relevant laws and rules with respect to the Gaming Operation and Facility, and the power to conduct investigations and hearings with respect thereto, and to any other subject within its jurisdiction.

Sec. 8.1.2. Ensuring the physical safety of Gaming Operation patrons and employees, and any other person while in the Gaming Facility. Nothing herein shall be construed to make applicable to the Tribe any state laws, regulations, or standards governing the use of tobacco.

Sec. 8.1.3. The physical safeguarding of assets transported to, within, and from the Gaming Facility.

Sec. 8.1.4. The prevention of illegal activity from occurring within the Gaming Facility or with regard to the Gaming Operation, including, but not limited to, the maintenance of employee procedures and a surveillance system as provided below.

Sec. 8.1.5. The recording of any and all occurrences within the Gaming Facility that deviate from normal operating policies and procedures (hereafter "incidents"). The procedure for recording incidents shall: (1) specify that security personnel record

all incidents, regardless of an employee's determination that the incident may be immaterial (all incidents shall be identified in writing); (2) require the assignment of a sequential number to each report; (3) provide for permanent reporting in indelible ink in a bound notebook from which pages cannot be removed and in which entries are made on each side of each page; and (4) require that each report include, at a minimum, all of the following:

(a) The record number.

(b) The date.

(c) The time.

(d) The location of the incident.

(e) A detailed description of the incident.

(f) The persons involved in the incident.

(g) The security department employee assigned to the incident.

Sec. 8.1.6. The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud, or the like, consistent with industry practice.

Sec. 8.1.7. Maintenance of a list of persons barred from the Gaming Facility who, because of their past behavior, criminal history, or association with persons or organizations, pose a threat to the integrity of the Gaming Activities of the Tribe or to the integrity of regulated gaming within the State.

Sec. 8.1.8. The conduct of an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants.

Sec. 8.1.9. Submission to, and prior approval, from the Tribal Gaming Agency of the rules and regulations of each Class III game to be operated by the Tribe, and of any changes in those rules and regulations. No Class III game may be played that has not received Tribal Gaming Agency approval.

Sec. 8.1.10. Addressing all of the following:

(a) Maintenance of a copy of the rules, regulations, and procedures for each game as played, including, but not limited to, the method of play and the odds and method of determining amounts paid to winners;

(b) Specifications and standards to ensure that information regarding the method of play, odds, and payoff determinations shall be visibly displayed or available to patrons in written form in the Gaming Facility;

(c) Specifications ensuring that betting limits applicable to any gaming station shall be displayed at that gaming station;

(d) Procedures ensuring that in the event of a patron dispute over the application of any gaming rule or regulation, the matter shall be handled in accordance with, industry practice and principles of fairness, pursuant to the Tribal Gaming Ordinance and any rules and regulations promulgated by the Tribal Gaming Agency.

Sec. 8.1.11. Maintenance of a closed-circuit television surveillance system consistent with industry standards for gaming facilities of the type and scale operated by the Tribe, which system shall be approved by, and may not be modified without the approval of, the Tribal Gaming Agency. The Tribal Gaming Agency shall have current copies of the Gaming Facility floor plan and closed-circuit television system at all times, and any modifications thereof first shall be approved by the Tribal Gaming Agency.

Sec. 8.1.12. Maintenance of a cashier's cage in accordance with industry standards for such facilities.

Sec. 8.1.13. Specification of minimum staff and supervisory requirements for each Gaming Activity to be conducted.

Sec. 8.1.14. Technical standards and specifications for the operation of Gaming Devices and other games authorized herein to be conducted by the Tribe, which technical specifications may be no less stringent than those approved by a recognized gaming testing laboratory in the gaming industry.

Sec. 8.2. State Civil and Criminal Jurisdiction. Nothing in this Gaming Compact affects the civil or criminal jurisdiction of the State under Public Law 280 (18 U.S.C. Sec. 1162; 28 U.S.C. Sec. 1360) or IGRA, to the extent applicable. In addition, criminal jurisdiction to enforce state gambling laws is transferred to the State pursuant to 18 U.S.C. § 1166(d), provided that no Gaming Activity conducted by the Tribe pursuant to this Gaming Compact may be deemed to be a civil or criminal violation of any law of the State.

Sec. 8.3. (a) The Tribe shall take all reasonable steps to ensure that members of the Tribal Gaming Agency are free from corruption, undue influence, compromise, and conflicting interests in the conduct of their duties under this Compact; shall adopt a conflict-of-interest code to that end; and shall ensure the prompt removal of any member of the Tribal Gaming Agency who is found to have acted in a corrupt or compromised manner.

(b) The Tribe shall conduct a background investigation on a prospective member of the Tribal Gaming Agency, who shall meet the background requirements of a

management contractor under IGRA; provided that, if such official is elected through a tribal election process, that official may not participate in any Tribal Gaming Agency matters under this Compact unless a background investigation has been concluded and the official has been found to be suitable. If requested by the tribal government or the Tribal Gaming Agency, the State Gaming Agency may assist in the conduct of such a background investigation and may assist in the investigation of any possible corruption or compromise of a member of the agency.

Sec. 8.4. In order to foster statewide uniformity of regulation of Class III gaming operations throughout the state, rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0, or 8.0 shall be consistent with regulations adopted by the State Gaming Agency in accordance with Section 8.4.1. Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the California Government Code does not apply to regulations adopted by the State Gaming Agency in respect to tribal gaming operations under this Section.

Sec. 8.4.1. (a) Except as provided in subdivision (d), no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation.

(b) Every State Gaming Agency regulation that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the Tribe for comment unless it is re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections.

(c) Except as provided in subdivision (d), no regulation of the State Gaming Agency shall be adopted as a final regulation in respect to the Tribe's Gaming Operation before the expiration of 30 days after submission of the proposed regulation to the Tribe for comment as a proposed regulation, and after consideration of the Tribe's comments, if any.

(d) In exigent circumstances (e.g., imminent threat to public health and safety), the State Gaming Agency may adopt a regulation that becomes effective immediately. Any such regulation shall be accompanied by a detailed, written description of the exigent circumstances, and shall be submitted immediately to the Association for consideration. If the regulation is disapproved by the Association, it shall cease to be

effective, but may be re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections, and thereafter submitted to the Tribe for comment as provided in subdivision (c).

(e) The Tribe may object to a State Gaming Agency regulation on the ground that it is unnecessary, unduly burdensome, or unfairly discriminatory, and may seek repeal or amendment of the regulation through the dispute resolution process of Section 9.0.

Sec. 9.0. DISPUTE RESOLUTION PROVISIONS.

Sec. 9.1. Voluntary Resolution; Reference to Other Means of Resolution. In recognition of the government-to-government relationship of the Tribe and the State, the parties shall make their best efforts to resolve disputes that occur under this Gaming Compact by good faith negotiations whenever possible.Therefore, without prejudice to the right of either party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the parties hereby establish a threshold requirement that disputes between the Tribe and the State first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions, and conditions of this Gaming Compact, as follows:

(a) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.

(b) The parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than 10 days after receipt of the notice, unless both parties agree in writing to an extension of time.

(c) If the dispute is not resolved to the satisfaction of the parties within 30 calendar days after the first meeting, then either party may seek to have the dispute resolved by an arbitrator in accordance with this section, but neither party shall be required to agree to submit to arbitration.

(d) Disagreements that are not otherwise resolved by arbitration or other mutually acceptable means as provided in Section 9.3 may be resolved in theUnited States District Court where the Tribe's Gaming Facility is located, or is to be located, and the Ninth Circuit Court of Appeals (or, if those federal courts lack jurisdiction, in any state court of competent jurisdiction and its related courts of appeal). The disputes to be submitted to court action include, but are not limited to, claims of breach or violation of this Compact, or failure to negotiate in good faith as required by the terms of this Compact. In no event may the Tribe be precluded from pursuing any arbitration or

judicial remedy against the State on the grounds that the Tribe has failed to exhaust its state administrative remedies. The parties agree that, except in the case of imminent threat to the public health or safety, reasonable efforts will be made to explore alternative dispute resolution avenues prior to resort to judicial process.

Sec. 9.2. Arbitration Rules. Arbitration shall be conducted in accordance with the policies and procedures of the Commercial Arbitration Rules of the American Arbitration Association, and shall be held on the Tribe's land or, if unreasonably inconvenient under the circumstances, at such other location as the parties may agree. Each side shall bear its own costs, attorneys' fees, and onehalf the costs and expenses of the American Arbitration Association and the arbitrator, unless the arbitrator rules otherwise. Only one neutral arbitrator may be named, unless the Tribe or the State objects, in which case a panel of three arbitrators (one ofwhom is selected by each party) will be named. The provisions of Section 1283.05 of the California Code of Civil Procedure shall apply; provided that no discovery authorized by that section may be conducted without leave of the arbitrator. The decision of the arbitrator shall be in writing, give reasons for the decision, and shall be binding. Judgment on the award may be entered in any federal or state court having jurisdiction thereof.

Sec. 9.3. No Waiver or Preclusion of Other Means of Dispute Resolution. This Section 9.0 may not be construed to waive, limit, or restrict any remedy that is otherwise available to either party, nor may this Section be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation or utilization of a technical advisor to the Tribal and State Gaming Agencies; provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

Sec. 9.4. Limited Waiver of Sovereign Immunity. (a) In the event that a dispute is to be resolved in federal court or a state court of competent jurisdiction as provided in this Section 9.0, the State and the Tribe expressly consent to be sued therein and waive any immunity therefrom that they may have provided that:

(1) The dispute is limited solely to issues arising under this Gaming Compact;

(2) Neither side makes any claim for monetary damages (that is, only injunctive, specific performance, including enforcement of a provision of this Compact requiring payment of money to one or another of the parties, or declaratory relief is sought); and

(3) No person or entity other than the Tribe and the State is party to the action, unless failure to join a third party would deprive the court of jurisdiction; provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the Tribe or the State in respect to any such third party.

(b) In the event of intervention by any additional party into any such action without the consent of the Tribe and the State, the waivers of either the Tribe or the State provided for herein may be revoked, unlessjoinder is required to preserve the court's jurisdiction; provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the Tribe or the State in respect to any such third party.

(c) The waivers and consents provided for under this Section 9.0 shall extend to civil actions authorized by this Compact, including, but not limited to, actions to compel arbitration, any arbitration proceeding herein, any action to confirm or enforce any judgment or arbitration award as provided herein, and any appellate proceedings emanating from a matter in which an immunity waiver has been granted. Except as stated herein or elsewhere in this Compact, no other waivers or consents to be sued, either express or implied, are granted by either party.

Sec. 10.0. PUBLIC AND WORKPLACE HEALTH, SAFETY, AND LIABILITY.

Sec. 10.1. The Tribe will not conduct Class III gaming in a manner that endangers the public health, safety, or welfare; provided that nothing herein shall be construed to make applicable to the Tribe any state laws or regulations governing the use of tobacco.

Sec. 10.2. Compliance. For the purposes of this Gaming Compact, the Tribal Gaming Operation shall:

(a) Adopt and comply with standards no less stringent than state public health standards for food and beverage handling. The Gaming Operation will allow inspection of food and beverage services by state or county health inspectors, during normal hours of operation, to assess compliance with these standards, unless inspections are routinely made by an agency of the United States government to ensure compliance with equivalent standards of the United States Public Health Service. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(b) Adopt and comply with standards no less stringent than federal water quality and safe drinking water standards applicable in California; the Gaming Operation will allow for inspection and testing of water quality by state or county health inspectors, as applicable, during normal hours of operation, to assess compliance with these standards, unless inspections and testing are made by an agency of the United States pursuant to, or by the Tribe under express authorization of, federal law, to ensure compliance with federal water quality and safe drinking water standards. Nothing

herein shall be construed as submission of the Tribe to the jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(c) Comply with the building and safety standards set forth in Section 6.4.

(d) Carry no less than five million dollars ($5,000,000) in public liability insurance for patron claims, and that the Tribe provide reasonable assurance that those claims will be promptly and fairly adjudicated, and that legitimate claims will be paid; provided that nothing herein requires the Tribe to agree to liability for punitive damages or attorneys' fees. On or before the effective date of this Compact or not less than 30 days prior to the commencement of Gaming Activities under this Compact, whichever is later, the Tribe shall adopt and make available to patrons a tort liability ordinance setting forth the terms and conditions, if any, under which the Tribe waives immunity to suit for money damages resulting from intentional or negligent injuries to person or property at the Gaming Facility or in connection with the Tribe's Gaming Operation, including procedures for processing any claims for such money damages; provided that nothing in this Section shall require the Tribe to waive its immunity to suit except to the extent of the policy limits set out above.

(e) Adopt and comply with standards no less stringent than federal workplace and occupational health and safety standards; the Gaming Operation will allow for inspection of Gaming Facility workplaces by state inspectors, during normal hours of operation, to assess compliance with these standards, unless inspections are regularly made by an agency of the United States government to ensure compliance with federal workplace and occupational health and safety standards. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(f) Comply with tribal codes and other applicable federal law regarding public health and safety.

(g) Adopt and comply with standards no less stringent than federal laws and state laws forbidding employers generally from discriminating in the employment of persons to work for the Gaming Operation or in the Gaming Facility on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability; provided that nothing herein shall preclude the tribe from giving a preference in employment to Indians, pursuant to a duly adopted tribal ordinance.

(h) Adopt and comply with standards that are no less stringent than state laws prohibiting a gaming enterprise from cashing any check drawn against a federal, state,

county, or city fund, including but not limited to, Social Security, unemployment insurance, disability payments, or public assistance payments.

(i) Adopt and comply with standards that are no less stringent than state laws, if any, prohibiting a gaming enterprise from providing, allowing, contracting to provide, or arranging to provide alcoholic beverages, or food or lodging for no charge or at reduced prices at a gambling establishment or lodging facility as an incentive or enticement.

(j) Adopt and comply with standards that are no less stringent than state laws, if any, prohibiting extensions of credit.

(k) Provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. Sec. 5311-5314, as amended, and all reporting requirements of the Internal Revenue Service, insofar as such provisions and reporting requirements are applicable to casinos.

Sec. 10.2.1. The Tribe shall adopt and, not later than 30 days after the effective date of this Compact, shall make available on request the standards described in subdivisions (a)-(c) and (e)-(k) of Section 10.2 to which the Gaming Operation is held. In the absence of a promulgated tribal standard in respect to a matter identified in those subdivisions, or the express adoption of an applicable federal statute or regulation in lieu of a tribal standard in respect to any such matter, the applicable state statute or regulation shall be deemed to have been adopted by the Tribe as the applicable standard.

Sec. 10.3 Participation in state statutory programs related to employment. (a) In lieu of permitting the Gaming Operation to participate in the state statutory workers' compensation system, the Tribe may create and maintain a system that provides redress for employee work-related injuries through requiring insurance or self-insurance, which system must include a scope of coverage, availability of an independent medical examination, right to notice, hearings before an independent tribunal, a means of enforcement against the employer, and benefits comparable to those mandated for comparable employees under state law. Not later than the effective date of this Compact, or 60 days prior to the commencement of Gaming Activities under this Compact, the Tribe will advise the State of its election to participate in the statutory workers' compensation system or, alternatively, will forward to the State all relevant ordinances that have been adopted and all other documents establishing the system and demonstrating that the system is fully operational and compliant with the comparability standard set forth above. The parties

agree that independent contractors doing business with the Tribe must comply with all state workers' compensation laws and obligations.

(b) The Tribe agrees that its Gaming Operation will participate in the State's program for providing unemployment compensation benefits and unemployment compensation disability benefits with respect to employees employed at the Gaming Facility, including compliance with the provisions of the California Unemployment Insurance Code, and the Tribe consents to the jurisdiction of the state agencies charged with the enforcement of that Code and of the courts of the State of California for purposes of enforcement.

(c) As a matter of comity, with respect to persons employed at the Gaming Facility, other than members of the Tribe, the Tribal Gaming Operation shall withhold all taxes due to the State as provided in the California Unemployment Insurance Code and the Revenue and Taxation Code, and shall forward such amounts as provided in said Codes to the State.

Sec. 10.4. Emergency Service Accessibility. The Tribe shall make reasonable provisions for adequate emergency fire, medical, and related relief and disaster services for patrons and employees of the Gaming Facility.

Sec. 10.5. Alcoholic Beverage Service. Standards for alcohol service shall be subject to applicable law.

Sec. 10.6. Possession of firearms shall be prohibited at all times in the Gaming Facility except for state, local, or tribal security or law enforcement personnel authorized by tribal law and by federal or state law to possess fire arms at the Facility.

Sec. 10.7. Labor Relations.

Notwithstanding any other provision of this Compact, this Compact shall be null and void if, on or before October 13, 1999, the Tribe has not provided an agreement or other procedure acceptable to the State for addressing organizational and representational rights of Class III Gaming Employees and other employees associated with the Tribe's Class III gaming enterprise, such as food and beverage, housekeeping, cleaning, bell and door services, and laundry employees at the Gaming Facility or any related facility, the only significant purpose of which is to facilitate patronage at the Gaming Facility.

Sec. 10.8. Off-Reservation Environmental Impacts.

Sec. 10.8.1. On or before the effective date of this Compact, or not less than 90 days prior to the commencement of a Project, as defined herein, the Tribe shall adopt an ordinance providing for the preparation, circulation, and consideration by the Tribe of environmental impact reports concerning potential off-Reservation environmental

impacts of any and all Projects to be commenced on or after the effective date of this Compact. In fashioning the environmental protection ordinance, the Tribe will make a good faith effort to incorporate the policies and purposes of the National Environmental Policy Act and the California Environmental Quality Act consistent with the Tribe's governmental interests.

Sec. 10.8.2. (a) Prior to commencement of a Project, the Tribe will:

(1) Inform the public of the planned Project;

(2) Take appropriate actions to determine whether the project will have any significant adverse impacts on the off-Reservation environment;

(3) For the purpose of receiving and responding to comments, submit all environmental impact reports concerning the proposed Project to the State Clearinghouse in the Office of Planning and Research and the county board of supervisors, for distribution to the public.

(4) Consult with the board of supervisors of the county or counties within which the Tribe's Gaming Facility is located, or is to be located, and, if the Gaming Facility is within a city, with the city council, and if requested by the board or council, as the case may be, meet with them to discuss mitigation of significant adverse off-Reservation environmental impacts;

(5) Meet with and provide an opportunity for comment by those members of the public residing off-Reservation within the vicinity of the Gaming Facility such as might be adversely affected by proposed Project.

(b) During the conduct of a Project, the Tribe shall:

(1) Keep the board or council, as the case may be, and potentially affected members of the public apprized of the project's progress; and

(2) Make good faith efforts to mitigate any and all such significant adverse off-Reservation environmental impacts.

(c) As used in Section 10.8.1 and this Section 10.8.2, the term "Project" means any expansion or any significant renovation or modification of an existing Gaming Facility, or any significant excavation, construction, or development associated with the Tribe's Gaming Facility or proposed Gaming Facility and the term "environmental impact reports" means any environmental assessment, environmental impact report, or environmental impact statement, as the case may be.

Sec. 10.8.3. (a) The Tribe and the State shall, from time to time, meet to review the adequacy of this Section 10.8, the Tribe's ordinance adopted pursuant thereto, and the Tribe's compliance with its obligations under Section 10.8.2, to ensure that

significant adverse impacts to the off-Reservation environment resulting from projects undertaken by the Tribe may be avoided or mitigated.

(b) At any time after January 1, 2003, but not later than March 1, 2003, the State may request negotiations for an amendment to this Section 10.8 on the ground that, as it presently reads, the Section has proven to be inadequate to protect the off-Reservation environment from significant adverse impacts resulting from Projects undertaken by the Tribe or to ensure adequate mitigation by the Tribe of significant adverse off-Reservation environmental impacts and, upon such a request, the Tribe will enter into such negotiations in good faith.

(c) On or after January 1, 2004, the Tribe may bring an action in federal court under 25 U.S.C. Sec. 2710(d)(7)(A)(i) on the ground that the State has failed to negotiate in good faith, provided that the Tribe's good faith in the negotiations shall also be in issue. In any such action, the court may consider whether the State's invocation of its rights under subdivision (b) of this Section 10.8.3 was in good faith. If the State has requested negotiations pursuant to subdivision (b) but, as of January 1, 2005, there is neither an agreement nor an order against the State under 25 U.S.C. Sec. 2710(d)(7)(B)(iii), then, on that date, the Tribe shall immediately cease construction and other activities on all projects then in progress that have the potential to cause adverse off-Reservation impacts, unless and until an agreement to amend this Section 10.8 has been concluded between the Tribe and the State.

Sec. 11.0. EFFECTIVE DATE AND TERM OF COMPACT.

Sec. 11.1. Effective Date. This Gaming Compact shall not be effective unless and until all of the following have occurred:

(a) The Compact is ratified by statute in accordance with state law;

(b) Notice of approval or constructive approval is published in the Federal Register as provided in 25 U.S.C. 2710(d)(3)(B); and

(c) SCA 11 is approved by the California voters in the March 2000 general election.

Sec. 11.2. Term of Compact; Termination.

Sec. 11.2.1. Effective. (a) Once effective this Compact shall be in full force and effect for state law purposes until December 31, 2020.

(b) Once ratified, this Compact shall constitute a binding and determinative agreement between the Tribe and the State, without regard to voter approval of any constitutional amendment, other than SCA 11, that authorizes a gaming compact.

(c) Either party may bring an action in federal court, after providing a sixty (60) day written notice of an opportunity to cure any alleged breach of this Compact, for

a declaration that the other party has materially breached this Compact. Upon issuance of such a declaration, the complaining party may unilaterally terminate this Compact upon service of written notice on the other party. In the event a federal court determines that it lacks jurisdiction over such an action, the action may be brought in the superior court for the county in which the Tribe's Gaming Facility is located. The parties expressly waive their immunity to suit for purposes of an action under this subdivision, subject to the qualifications stated in Section 9.4(a).

Sec. 12.0. AMENDMENTS; RENEGOTIATIONS.

Sec. 12.1. The terms and conditions of this Gaming Compact may be amended at any time by the mutual and written agreement of both parties.

Sec. 12.2. This Gaming Compact is subject to renegotiation in the event the Tribe wishes to engage in forms of Class III gaming other than those games authorized herein and requests renegotiation for that purpose, provided that no such renegotiation may be sought for 12 months following the effective date of this Gaming Compact.

Sec. 12.3. Process and Negotiation Standards. All requests to amend or renegotiate this Gaming Compact shall be in writing, addressed to the Tribal Chairperson or the Governor, as the case may be, and shall include the activities or circumstances to be negotiated, together with a statement of the basis supporting the request. If the request meets the requirements of this Section, the parties shall confer promptly and determine a schedule for commencing negotiations within 30 days of the request. Unless expressly provided otherwise herein, all matters involving negotiations or other amendatory processes under Section 4.3.3(b) and this Section 12.0 shall be governed, controlled, and conducted in conformity with the provisions and requirements of IGRA, including those provisions regarding the obligation of the State to negotiate in good faith and the enforcement of that obligation in federal court. The Chairperson of the Tribe and the Governor of the State are hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary to do so.

Sec. 12.4. The Tribe shall have the right to terminate this Compact in the event the exclusive right of Indian tribes to operate Gaming Devices in California is abrogated by the enactment, amendment, or repeal of a state statute or constitutional provision, or the conclusive and dispositive judicial construction of a statute or the state Constitution by a California appellate court after the effective date of this Compact, that Gaming Devices may lawfully be operated by another person, organization, or entity (other than an Indian tribe pursuant to a compact) within California.

Sec. 13.0 NOTICES.

Unless otherwise indicated by this Gaming Compact, all notices required or authorized to be served shall be served by first-class mail at the following addresses:

Governor	Tribal Chairperson
State Capitol	Dry Creek Rancheria
Sacramento, California 95814	P.O. Box 607
	Geyersville, California 95441

Sec. 14.0. CHANGES IN IGRA. This Gaming Compact is intended to meet the requirements of IGRA as it reads on the effective date of this Gaming Compact, and when reference is made to the Indian Gaming Regulatory Act or to an implementing regulation thereof, the referenced provision is deemed to have been incorporated into this Compact as if set out in full. Subsequent changes to IGRA that diminish the rights of the State or the Tribe may not be applied retroactively to alter the terms of this Gaming Compact, except to the extent that federal law validly mandates that retroactive application without the State's or the Tribe's respective consent

Sec. 15.0. MISCELLANEOUS.

Sec. 15.1. Third Party Beneficiaries. Except to the extent expressly provided under this Gaming Compact, this Gaming Compact is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

Sec. 15.2. Complete agreement; revocation of prior requests to negotiate. This Gaming Compact, together with all addenda and approved amendments, sets forth the full and complete agreement of the parties and supersedes any prior agreements or understandings with respect to the subject matter hereof.

Sec. 15.3. Construction. Neither the presence in another tribal-state compact of language that is not included in this Compact, nor the absence in this Compact of language that is present in another tribal-state compact shall be a factor in construing the terms of this Compact.

Sec. 15.4. Most Favored Tribe. If, after the effective date of this Compact, the State enters into a Compact with any other tribe that contains more favorable provisions with respect to any provisions of this Compact, the State shall, at the Tribe's request, enter into the preferred compact with the Tribe as a superseding substitute for this Compact; provided that the duration of the substitute compact shall not exceed the duration of this Compact.

Sec. 15.6. Representations.

By entering into this Compact, the Tribe expressly represents that, as of the date of the Tribe's execution of this Compact: (a) the undersigned has the authority to execute this Compact on behalf of his or her tribe and will provide written proof of such authority and ratification of this Compact by the tribal governing body no later than October 9, 1999; (b) the Tribe is (i) recognized as eligible by the Secretary of the Interior for special programs and services provided by the United States to Indians because of their status as Indians, and (ii) recognized by the Secretary of the Interior as possessing powers of self-government. In entering into this Compact, the State expressly relies upon the foregoing representations by the Tribe, and the State's entry into the Compact is expressly made contingent upon the truth of those representations as of the date of the Tribe's execution of this Compact. Failure to provide written proof of authority to execute this Compact or failure to provide written proof of ratification by the Tribe's governing body will give the State the opportunity to declare this Compact null and void.

IN WITNESS WHEREOF, the undersigned sign this Compact on behalf of the State of California and the Dry Creek Rancheria.

Done at Sacramento, California, this 10th day of September 1999.

STATE OF CALIFORNIA

Gray Davis

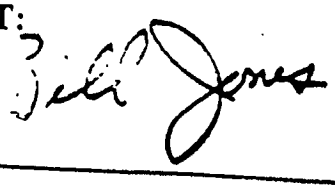
By Gray Davis
Governor of the State of California

DRY CREEK RANCHERIA

Gregg Cordova

By Gregg Cordova
Chairperson of the Dry Creek Rancheria

ATTEST:



By Bill Jones
Secretary of State, State of California

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Consistent with 25 U.S.C.A. Sec. 2710 (d)(8), the Compact between the Sovereign Nation of the Dry Creek Rancheria of Pomo Indians of California and the Sovereign State of California dated September 10, 1999, is hereby approved on this 5th day of May, 2000, by the Assistant Secretary - Indian Affairs, United States Department of the Interior.

UNITED STATES DEPARTMENT OF THE INTERIOR

Kevin Gover
Assistant Secretary - Indian Affairs

ADDENDUM "A" TO TRIBAL-STATE GAMING COMPACT BETWEEN THE DRY CREEK RANCHERIA OF POMO INDIANS AND THE STATE OF CALIFORNIA

Modification No. 1

Section 6.4.4(d) is modified to read as follows:

Section 6.4.4(d) is modified to read as follows:

(d) (1) Notwithstanding subdivision (a), the Tribe may employ or retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if the person is an enrolled member of the Tribe, as defined in this subdivision, and if ~~(i)~~ (A) the person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially; ~~(ii)~~ (B) the denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate the filing of the person's initial application to the State Gaming Agency for a determination of suitability; and ~~(iii)~~ (C) the person is not an employee or agent of any other gaming operation.

(2) For purposes of this subdivision, "enrolled member" means a person who is either: ~~(a)~~ (A) a person certified by the Tribe as having been a member of the Tribe for at least five (5) years; ~~or (b)~~ (B) a holder of confirmation of membership issued by the Bureau of Indian Affairs; or (C), if the Tribe has 100 or more enrolled members as of the date of execution of this Compact, a person certified by the Tribe as being a member pursuant to criteria and standards specified in a tribal Constitution that has been approved by the Secretary of the Interior.

Modification No. 2

Section 8.4.1(e) is modified to read as follows:

(e) The Tribe may object to a State Gaming Agency regulation on the ground that it is unnecessary, unduly burdensome, conflicts with a published final regulation of the NIGC, or is unfairly discriminatory, and may seek repeal or amendment of the regulation through the dispute resolution process of Section 9.0; provided that, if the regulation of the State Gaming Agency conflicts with a final published regulation of the NIGC, the NIGC regulation shall govern pending conclusion of the dispute resolution process.

Modification No. 3

Section 12.2 is modified to read as follows:

Sec. 12.2. (a) This Gaming Compact is subject to renegotiation in the event the Tribe wishes to engage in forms of Class III gaming other than those games authorized herein and requests renegotiation for that purpose, provided that no such renegotiation may be sought for 12 months following the effective date of this Gaming Compact.

(b) Nothing herein shall be construed to constitute a waiver of any rights under IGRA in the event of an expansion of the scope of permissible gaming resulting from a change in state law.

Modification No. 4

Section 11.2.1(a) is modified to read:

Sec. 11.2.1. Effective. (a) Once effective this Compact shall be in full force and effect for state law purposes until December 31, 2020. No sooner than eighteen (18) months prior to the aforementioned termination date, either party may request the other party to enter into negotiations to extend this Compact or to enter into a new compact. If the parties have not agreed to extend the date of this Compact or entered into a new compact by the termination date, this Compact will automatically be extended to June 30, 2022, unless the parties have agreed to an earlier termination date.

Modification No. 5

Section 12.4 is modified to read as follows:

Sec. 12.4. ~~The Tribe shall have the right to terminate this Compact.~~ In the event the exclusive right of Indian tribes to operate Gaming Devices in California is abrogated by the enactment, amendment, or repeal of a state statute or constitutional provision, or the conclusive and dispositive judicial construction of a statute or the state Constitution by a California appellate court after the effective date of this Compact, that Gaming Devices may lawfully be operated by another person, organization, or entity (other than an Indian tribe pursuant to a compact) within California, the Tribe shall have the right to: (i) termination of this Compact, in which case the Tribe will lose the right to operate Gaming Devices and other Class III gaming, or (ii) continue under the Compact with an entitlement to a reduction of

the rates specified in Section 5.1(a) following conclusion of negotiations, to provide for (a) compensation to the State for actual and reasonable costs of regulation, as determined by the state Department of Finance; (b) reasonable payments to local governments impacted by tribal government gaming; (c) grants for programs designed to address gambling addiction; (d) and such assessments as may be permissible at such time under federal law.

Modification No. 6

Section 10.2(d) is modified to read as follows:

(d) Carry no less than five million dollars ($5,000,000) in public liability insurance for patron claims, and ~~that~~ the Tribe shall request its insurer to ~~provide reasonable assurance that those claims will be~~ promptly and fairly ~~adjudicated, and that legitimate claims will be paid~~ settle all valid claims; provided that nothing herein requires the Tribe to agree to liability for punitive damages, any intentional acts not covered by the insurance policy, or attorneys' fees. On or before the effective date of this Compact or not less than 30 days prior to the commencement of Gaming Activities under this Compact, whichever is later, the Tribe shall adopt and make available to patrons a tort liability ordinance setting forth the terms and conditions, if any, under which the Tribe waives immunity to suit for money damages resulting from intentional or negligent injuries to person or property at the Gaming Facility or in connection with the Tribe's Gaming Operation, including procedures for processing any claims for such money damages; provided that nothing in this Section shall require the Tribe to waive its immunity to suit except to the extent of the policy limits and insurance coverage set out above.

Modification No. 7

Section 10.2(k) is modified to read as follows:

(k) Comply with provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. Sec. 5311-5314, as amended, and all reporting requirements of the Internal Revenue Service, insofar as such provisions and reporting requirements are applicable to casinos.

IN WITNESS WHEREOF, the undersigned sign this Addendum on behalf of the State of California and the Dry Creek Rancheria of Pomo Indians.

STATE OF CALIFORNIA

By Gray Davis
Governor of the State of California

Executed this 8th day of October, 1999, at Sacramento, California.

DRY CREEK RANCHERIA OF POMO INDIANS

Lorilie Fakhouri Vice Chairperson
By Gregg Cordova
Chairperson of the Dry Creek Rancheria of Pomo Indians

Executed this 26th day of September, 1999, at Geyserville, California.

ATTEST: 

By Bill Jones
Secretary of State, State of California

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ADDENDUM "B" TO TRIBAL-STATE GAMING COMPACT BETWEEN THE DRY CREEK RANCHERIA OF POMO INDIANS AND THE STATE OF CALIFORNIA

In compliance with Section 10.7 of the Compact, the Tribe agrees to adopt an ordinance identical to the Model Tribal Labor Relations Ordinance attached hereto, and to notify the State of that adoption no later than October 12, 1999. If such notice has not been received by the State by October 13, 1999, this Compact shall be null and void. Failure of the Tribe to maintain the Ordinance in effect during the term of this Compact shall constitute a material breach entitling the State to terminate this Compact. No amendment of the Ordinance shall be effective unless approved by the State.

Attachment: Model Tribal Labor Relations Ordinance.

IN WITNESS WHEREOF, the undersigned sign this Addendum on behalf of the State of California and the Dry Creek Rancheria of Pomo Indians.

STATE OF CALIFORNIA

Gray Davis

By Gray Davis
Governor of the State of California

Executed this 8th day of October, 1999, at Sacramento, California.

DRY CREEK RANCHERIA OF POMO INDIANS

By Gregg Cordova
Chairperson of the Dry Creek Rancheria of Pomo Indians

Lorilie Fakhouri Vice Chairperson

Executed this 26th day of September, 1999, at Geyserville, California.

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October 4, 1999

The Honorable Gray Davis
Governor, State of California
State Capitol Building
Sacramento, California 95814

RE: Notice of Adoption of Model Tribal Labor Relations Ordinance

Dear Governor Davis:

This will certify that on September 26, 1999, the Dry Creek Rancheria of Pomo Indians, at a duly called meeting of the General Membership, passed Resolution No. 99-09-024, adopting the Model Tribal Labor Relations Ordinance dated September 14, 1999, (per Addendum "B"), to become effective as of the effective date of the Compact and adopted in accordance with the terms set forth in Section 1 of said Ordinance.

Unless we hear from your office immediately, we will assume that this is in full compliance with Section 10.7 of the Compact.

Sincerely,

Gregg Cordova
Tribal Chairman
Dry Creek Rancheria of Pomo Indians

ATTEST: Bill Jones

By Bill Jones
Secretary of State, State of California

ATTACHMENT TO ADDENDUM B

TRIBAL LABOR RELATIONS ORDINANCE
September 14, 1999

Section 1: Threshold of applicability

(a) Any tribe with 250 or more persons employed in a tribal casino and related facility shall adopt this Tribal Labor Relations Ordinance (TLRO or Ordinance). For purposes of this ordinance, a "tribal casino" is one in which class III gaming is conducted pursuant to a tribal-state compact. A "related facility" is one for which the only significant purpose is to facilitate patronage of the class III gaming operations.

(b) Any tribe which does not operate such a tribal casino as of September 10, 1999, but which subsequently opens a tribal casino, may delay adoption of this ordinance until one year from the date the number of employees in the tribal casino or related facility as defined in 1(a) above exceeds 250.

(c) Upon the request of a labor union, the Tribal Gaming Commission shall certify the number of employees in a tribal casino or other related facility as defined in 1(a) above. Either party may dispute the certification of the Tribal Gaming Commission to the Tribal Labor Panel.

Section 2: Definition of Eligible Employees

(a) The provisions of this ordinance shall apply to any person (hereinafter "Eligible Employee") who is employed within a tribal casino in which Class III gaming is conducted pursuant to a tribal-state compact or other related facility, the only significant purpose of which is to facilitate patronage of the Class III gaming operations, except for any of the following:

(1) any employee who is a supervisor, defined as any individual having authority, in the interest of the tribe and/or employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(2) any employee of the Tribal Gaming Commission;

(3) any employee of the security or surveillance department, other than those who are responsible for the technical repair and maintenance of equipment;

(4) any cash operations employee who is a "cage" employee or money counter; or

(5) any dealer.

Section 3: Non-interference with regulatory or security activities

Operation of this Ordinance shall not interfere in any way with the duty of the Tribal Gaming Commission to regulate the gaming operation in accordance with the Tribe's National Indian Gaming Commission-approved gaming ordinance. Furthermore, the exercise of rights hereunder shall in no way interfere with the tribal casino's surveillance/security systems, or any other internal controls system designed to protect the integrity of the tribe's gaming operations. The Tribal Gaming Commission is specifically excluded from the definition of tribe and its agents.

Section 4: Eligible Employees free to engage in or refrain from concerted activity

Eligible Employees shall have the right to self-organization, to form, to join, or assist employee organizations, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

Section 5: Unfair Labor Practices for the tribe

It shall be an unfair labor practice for the tribe and/or employer or their agents:

(1) to interfere with, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it, but this does not restrict the tribe and/or employer and a certified union from agreeing to union security or dues checkoff;

(3) to discharge or otherwise discriminate against an Eligible Employee because s/he has filed charges or given testimony under this Ordinance;

(4) to refuse to bargain collectively with the representatives of Eligible Employees.

Section 6: Unfair Labor Practices for the union

It shall be an unfair labor practice for a labor organization or its agents:

(1) to interfere, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

(2) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a primary or secondary boycott or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce or other terms and conditions of employment. This section does not apply to section 11;

(3) to force or require the tribe and/or employer to recognize or bargain with a particular labor organization as the representative of Eligible Employees if another labor organization has been certified as the representative of such Eligible Employees under the provisions of this TLRO;

(4) to refuse to bargain collectively with the tribe and/or employer, provided it is the representative of Eligible Employees subject to the provisions herein;

(5) to attempt to influence the outcome of a tribal governmental election, provided, however, that this section does not apply to tribal members.

Section 7: Tribe and union right to free speech

The tribe's and union's expression of any view, argument or opinion or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of interference with, restraint or coercion if such expression contains no threat of reprisal or force or promise of benefit.

Section 8: Access to Eligible Employees

(a) Access shall be granted to the union for the purposes of organizing Eligible Employees, provided that such organizing activity shall not interfere with patronage of the casino or related facility or with the normal work routine of the Eligible Employees and shall be done on non-work time in non-work areas that are designated as employee break rooms or locker rooms that are not open to the public. The tribe may require the union and or union organizers to be subject to the same licensing rules applied to individuals or entities with similar levels of access to the casino or related facility, provided that such licensing shall not be unreasonable, discriminatory, or designed to impede access.

(b) The Tribe, in its discretion, may also designate additional voluntary access to the Union in such areas as employee parking lots and non-Casino facilities located on tribal lands.

(c) In determining whether organizing activities potentially interfere with normal tribal work routines, the union's activities shall not be permitted if the Tribal Labor Panel determines that they compromise the operation of the casino:

(1) security and surveillance systems throughout the casino, and reservation;

(2) access limitations designed to ensure security;

(3) internal controls designed to ensure security;

(4) other systems designed to protect the integrity of the tribe's gaming operations, tribal property and/or safety of casino personnel, patrons, employees or tribal members, residents, guests or invitees.

(d) The tribe shall provide to the union, upon a thirty percent (30%) showing of interest to the Tribal Labor Panel, an election eligibility list containing the full first and last name of the Eligible Employees within the sought after bargaining unit and the Eligible Employees' last known address within ten (10) working days. Nothing herein shall preclude a tribe from voluntarily providing an election eligibility list at an earlier point of a union organizing campaign.

(e) The tribe agrees to facilitate the dissemination of information from the union to Eligible Employees at the tribal casino by allowing posters, leaflets and other written materials to be posted in non-public employee break areas where the tribe already posts announcements

pertaining to Eligible Employees. Actual posting of such posters, notices, and other materials, shall be by employees desiring to post such materials.

Section 9: Indian preference explicitly permitted

Nothing herein shall preclude the tribe from giving Indian preference in employment, promotion, seniority, lay-offs or retention to members of any federally recognized Indian tribe or shall in any way affect the tribe's right to follow tribal law, ordinances, personnel policies or the tribe's customs or traditions regarding Indian preference in employment, promotion, seniority, lay-offs or retention. Moreover, in the event of a conflict between tribal law, tribal ordinance or the tribe's customs and traditions regarding Indian preference and this Ordinance, the tribal law, tribal ordinance or the tribe's customs and traditions shall govern.

Section 10: Secret ballot elections required

(a) Dated and signed authorized cards from thirty percent (30%) or more of the Eligible Employees within the bargaining unit verified by the elections officer will result in a secret ballot election to be held within 30 days from presentation to the elections officer.

(b) The election shall be conducted by the election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning representation of the tribe and/or Employer's Eligible Employees by a labor organization shall be resolved by the election officer. The election officer shall be chosen upon notification by the labor organization to the tribe of its intention to present authorization cards, and the same election officer shall preside thereafter for all proceedings under the request for recognition; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

(c) The election officer shall certify the labor organization as the exclusive collective bargaining representative of a unit of employees if the labor organization has received the majority of votes by employees voting in a secret ballot election that the election officer determines to have been conducted fairly. If the election officer determines that the election was

conducted unfairly due to misconduct by the tribe and/or employer or union, the election officer may order a re-run election. If the election officer determines that there was the commission of serious Unfair Labor Practices by the tribe that interfere with the election process and preclude the holding of a fair election, and the labor organization is able to demonstrate that it had the support of a majority of the employees in the unit at any point before or during the course of the tribe's misconduct, the election officer shall certify the labor organization.

(d) The tribe or the union may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

(e) A union which loses an election and has exhausted all dispute remedies related to the election may not invoke any provisions of this labor ordinance at that particular casino or related facility until one year after the election was lost.

Section 11: Collective bargaining impasse

Upon recognition, the tribe and the union will negotiate in good faith for a collective bargaining agreement covering bargaining unit employees represented by the union. If collective bargaining negotiations result in impasse, and the matter has not been resolved by the tribal forum procedures sets forth in Section 13 (b) governing resolution of impasse within sixty (60) working days or such other time as mutually agreed to by the parties, the union shall have the right to strike. Strike-related picketing shall not be conducted on Indian lands as defined in 25 U.S.C. Sec. 2703 (4).

Section 12: Decertification of bargaining agent

(a) The filing of a petition signed by thirty percent (30%) or more of the Eligible Employees in a bargaining unit seeking the decertification of a certified union, will result in a secret ballot election to be held 30 days from the presentation of the petition.

(b) The election shall be conducted by an election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning the decertification of the labor organization shall be resolved by an election

officer. The election officer shall be chosen upon notification to the tribe and the union of the intent of the employees to present a decertification petition, and the same election officer shall preside thereafter for all proceedings under the request for decertification; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

(c) The election officer shall order the labor organization decertified as the exclusive collective bargaining representative if a majority of the employees voting in a secret ballot election that the election officer determines to have been conducted fairly vote to decertify the labor organization. If the election officer determines that the election was conducted unfairly due to misconduct by the tribe and/or employer or the union the election officer may order a re-run election or dismiss the decertification petition.

(d) A decertification proceeding may not begin until one (1) year after the certification of a labor union if there is no collective bargaining agreement. Where there is a collective bargaining agreement, a decertification petition may only be filed no more than 90 days and no less than 60 days prior to the expiration of a collective bargaining agreement. A decertification petition may be filed anytime after the expiration of a collective bargaining agreement.

(e) The tribe or the union may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

Section 13: Binding dispute resolution mechanism

(a) All issues shall be resolved exclusively through the binding dispute resolution mechanisms herein, with the exception of a collective bargaining negotiation impasse, which shall only go through the first level of binding dispute resolution.

(b) The first level of binding dispute resolution for all matters related to organizing, election procedures, alleged unfair labor practices, and discharge of Eligible Employees shall be an appeal to a designated tribal forum such as a Tribal Council, Business Committee, or Grievance Board.

The parties agree to pursue in good faith the expeditious resolution of these matters within strict time limits. The time limits may not be extended without the agreement of both parties. In the absence of a mutually satisfactory resolution, either party may proceed to the independent binding dispute resolution set forth below. The agreed upon time limits are set forth as follows:

(1) All matters related to organizing, election procedures and alleged unfair labor practices prior to the union becoming certified as the collective bargaining representative of bargaining unit employees, shall be resolved by the designated tribal forum within thirty (30) working days.

(2) All matters after the union has become certified as the collective bargaining representative and relate specifically to impasse during negotiations, shall be resolved by the designated tribal forum within sixty (60) working days;

(c) The second level of binding dispute resolution shall be a resolution by the Tribal Labor Panel, consisting of ten (10) arbitrators appointed by mutual selection of the parties which panel shall serve all tribes that have adopted this ordinance. The Tribal Labor Panel shall have authority to hire staff and take other actions necessary to conduct elections, determine units, determine scope of negotiations, hold hearings, subpoena witnesses, take testimony, and conduct all other activities needed to fulfill its obligations under this Tribal Labor Relations Ordinance.

(1) Each member of the Tribal Labor Panel shall have relevant experience in federal labor law and/or federal Indian law with preference given to those with experience in both. Names of individuals may be provided by such sources as, but not limited to, Indian Dispute Services, Federal Mediation and Conciliation Service, and the American Academy of Arbitrators.

(2) Unless either party objects, one arbitrator from the Tribal Labor Panel will render a binding decision on the dispute under the Ordinance. If either party objects, the dispute will be decided by a three-member panel of the Tribal Labor Panel, which will render a binding decision. In the event there is one arbitrator, five (5) Tribal Labor Panel names shall be submitted to the parties and each party may strike no more that two (2) names. In the event there is a three (3) member panel, seven (7) TLP names shall be submitted to the parties and each party may strike no more than two (2) names. A coin toss shall determine which party may

strike the first name. The arbitrator will generally follow the American Arbitration Association's procedural rules relating to labor dispute resolution. The arbitrator or panel must render a written, binding decision that complies in all respects with the provisions of this Ordinance.

(d) Under the third level of binding dispute resolution, either party may seek a motion to compel arbitration or a motion to confirm an arbitration award in Tribal Court, which may be appealed to federal court. If the Tribal Court does not render its decision within 90 days, or in the event there is no Tribal Court, the matter may proceed directly to federal court. In the event the federal court declines jurisdiction, the tribe agrees to a limited waiver of its sovereign immunity for the sole purpose of compelling arbitration or confirming an arbitration award issued pursuant to the Ordinance in the appropriate state superior court. The parties are free to put at issue whether or not the arbitration award exceeds the authority of the Tribal Labor Panel.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **DRY CREEK RANCHERIA BAND OF POMO INDIANS 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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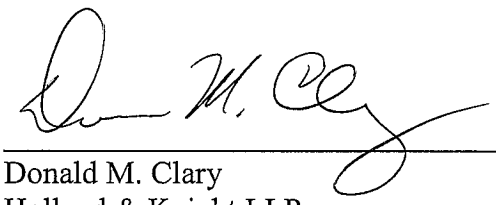

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