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 IONE BAND OF MIWOK INDIANS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 ENVIRONMENTAL APPEALS BOARD

IONE BAND OF MIWOK INDIANS,)	
)	NPDES Permit No. CA 0049675 –
Petitioner,)	Buena Vista Casino
)	Wastewater Treatment Plant
v.)	
)	
UNITED STATES ENVIRONMENTAL)	IONE BAND OF MIWOK INDIANS'
PROTECTION AGENCY,)	MOTION FOR LEAVE TO FILE
)	REPLY IN SUPPORT OF MOTION
Respondent.)	TO STAY ISSUANCE OF
)	PROPOSED NOTICE TO PROCEED
)	
)	
)	

Petitioner Ione Band of Miwok Indians respectfully asks the Board for leave to file a reply brief in support of its motion to stay the issuance of the proposed notice to proceed. Respondent EPA Region 9 does not oppose this motion for leave. As their arguments are similar, the attached (proposed) reply brief addresses the arguments in the Region's opposition (docket # 35) and in the opposition filed by the Buena Vista Rancheria (docket # 31), who has moved to intervene in these proceedings and whose intervention the Ione Band did not oppose, on the condition that the Ione Band could

respond to both oppositions at the same time and on the same terms. *See* docket # 34,
p.2.

Dated: August 25, 2011

Respectfully submitted,

s/ William Wood
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I. Introduction

The Ione Band's motion addresses two principal issues regarding the Region's proposed issuance of the Notice to Proceed ("NTP"). First, the Ione Band challenges the substance of the Region's decision, i.e., whether the Region can lawfully issue the NTP given the pending permit appeal which challenges the adequacy of the Region's compliance with the National Historic Preservation Act, and of the Memorandum of Agreement pursuant to which the NTP would issue. The Ione Band also challenges the timing of the Region's decision, arguing that the EPA's decision to issue the NTP "expeditiously" is based on unsubstantiated claims made by the Buena Vista Rancheria ("BVR") and the bank hoping to arrange financing for the proposed casino. As explained in the Ione Band's motion and below, the appropriate course of action is to grant the present motion and postpone issuance of any NTP until the issues raised in the present appeal are resolved.

II. There Is No Valid Basis For Issuing The Notice To Proceed

It is undisputed that the MOA was entered into in order to comply with the NHPA. As the Region acknowledges, the proposed NTP would allow for "construction of the proposed project consistent with the terms of the NHPA MOA" (*see* Region 9 Letter, docket # 18, p.3), and thus is intended to be the result of NHPA compliance. But the Region cannot lawfully issue a NTP based on BVR's supposedly satisfying a condition of an MOA that came out of, and is intended to mitigate impacts (namely, impacts from construction) identified during, the NHPA consultation process that is under challenge.

The Region's opposition is based on the mistaken argument that the Ione Band is asking for an order enjoining construction. *See* EPA Region IX Response to Motions, docket # 35 (hereinafter "Region Opp'n"), at p.7 (suggesting that movants seek an order restraining construction activities). The Ione Band is not asking the Board to prohibit construction. Rather, the Ione Band is asking the Board, acting pursuant to the authority delegated to it by the EPA Administrator, to instruct the Region to wait until the issues in this appeal – which include a challenge to the adequacy of the NHPA consultation and evaluation process leading up to the MOA – are resolved before affirmatively taking action to issue any NTP under the MOA.

According to the Region, the NTP "constitutes EPA's finding that [BVR] has satisfied certain requirements of the NHPA MOA ... designed to provide procedural safeguards to ensure that appropriate historic property surveys were conducted" Region Opp'n p.3.¹ The fact that these surveys were conducted after the permit was issued and after the MOA was executed, however, supports the Ione Band's claims regarding the inadequacy of the NHPA consultation and the efforts regarding site identification and evaluation in particular: proper site evaluation cannot occur without the appropriate studies being done, and these studies should have been done during the course of the actual NHPA consultation. *See* Administrative Record (hereinafter "AR")

¹ *See also* EPA Opp'n p.5: "[T]he parties established a process by which [BVR] agreed to withhold commencement of any construction activities prior to completing certain additional surveys of the project area.... [T]hese conditions were established solely as an additional safeguard to ensure that previously unevaluated historic properties did not exist at the site of, or would not be adversely affected by, construction of the project segment at issue."

pp. 728, 1311; *see also* Ione Band Motion to Stay Issuance of Proposed Notice to Proceed, docket # 24 (hereinafter "Ione Motion"), n.1.

The issue of the late-performed archaeological surveys was just one of the issues raised by the Ione Band regarding the NHPA consultation. The broader issue concerns the Region's failure to identify, and therefore to evaluate the proposed undertaking's effects on, a single property of cultural and religious significance that encompasses the entire Buena Vista Rancheria (and portions of the surrounding area). *See* Ione Motion p.2; *see also* Ione Band Petition for Review, docket # 6, pp.6-7. The Region should wait until the Ione Band's challenge regarding the site identification and evaluation, and overall compliance with the NHPA, is resolved before issuing any NTP. The fact that the Region and BVR have failed to show that BVR is being harmed by a delay in issuing the NTP reinforces the Ione Band's position that postponing the NTP's issuance is the appropriate course of action here.

The Region also claims that although the NTP is a notice to proceed *with construction*, "the NTP itself is not an authorization for construction" Region Opp'n p.3. But if the notice to proceed with "construction of the proposed project consistent with the terms of the NHPA MOA" (*see* Region 9 Letter, docket # 18, p.3) is not an authorization for construction, what is it? And why is it supposedly so important to BVR's obtaining financing in the high-yield bond market? A close look at the documents before the Board reveals that there is no connection between the NTP and BVR's ability to obtain financing or the proposed project's viability, as explained below.

III. The Letter From Credit Suisse Securities Does Not Provide A Basis For Issuing The NTP; There Is No Evidence That The NTP Is Related To Project Financing

According to the Region, "the Buena Vista Tribe urges the Region to issue a NTP so that the Tribe may proceed to secure financing and move forward with its project" Region Opp'n p.18. Just as its July 5, 2011 letter discusses the Region's proposal to issue the NTP "expeditiously" based on information in a letter from Credit Suisse Securities, *see* Region 9 Letter (docket # 18) p.3, the Region's opposition argues that "expeditious issuance of a NTP" is warranted because of BVR's claims regarding its ability to obtain financing.² Region Opp'n p.3. And while the Region believes that "[BVR] has demonstrated that it continues to suffer prejudice from delays in its ability to move forward with its proposed project[,]" *id.*, there is nothing in the letter from Credit Suisse Securities (docket # 19, p.4) or the May 26, 2011 letter from BVR to the Region (docket # 19, pp. 1-3) that shows that the lack of a NTP is in any way affecting BVR's ability to obtain financing for or move forward with its project. Indeed, the Credit Suisse letter that apparently moved the Region to act does not mention a Notice to Proceed or anything about construction. *See* docket # 19, p.4.³

² Although BVR argues that the Ione Band is "mistaken" in pointing to "EPA's reliance on letters from Buena Vista and its bank Credit Suisse Securities," Buena Vista Rancheria Opposition, docket # 31 (hereinafter "BVR Opp'n"), at p.13 n.13, both the Region and BVR continue to cite and rely on the Buena Vista and Credit Suisse letters. *See, e.g.*, Region Opp'n pp. 3, 6, 7-8, 18, and 19; BVR Opp'n pp. 12-13.

³ As noted in the Ione Band's motion, *see* docket # 24 n.3, while the Region's July 5, 2011 letter (docket # 18) references "the information contained in [BVR]'s [May 26] letter," BVR's May 26, 2011 letter to the Region simply repeats (almost verbatim) the statements in the Credit Suisse letter. Similarly, BVR's opposition cites at length the May 26 letter. *See* BVR Opp'n pp. 4, 12-13. *See also* Region Opp'n p.6 (citing May 26 letter and BVR opposition brief).

The Region's opposition brief, like its July 5 letter, simply takes at face value BVR's claims that "[BVR] risks not being able to obtain long-term financing for the proposed project if the NTP is further delayed." Region Opp'n p.6. And BVR's opposition, citing the May 26 letter to the Region, claims without support that "a further delay in obtaining a [NTP] would seriously harm [BVR] [,]" BVR Opp'n (docket # 31) p. 4, and that "[i]ssuance of the [NTP] is a critical step that would make it possible for [BVR] to attract funding from [the high-yield bond] market.... It is therefore imperative to the project's success that the [NTP] issue as soon as possible so that [BVR] can pursue financing now." *Id.* at 11. But there is no evidence, in the Credit Suisse letter or elsewhere, to support these claims. Nor is there any evidence to support the Region's claim that "the project as a whole [is] engendered by the continuing delay in [BVR's] ability to move forward, which at this point appears to hinge on issuance of the NTP by the Region." Region Opp'n p.6.

Put simply, there is no evidence that project financing is related to the issuance of a NTP. Neither the Credit Suisse letter nor the May 26 BVR letter shows any link between the NTP and BVR's ability to obtain financing. Even the vague statement in BVR's May 26 letter that the "EPA's failure to issue the NTP is creating a risk of the Tribe being foreclosed from pursuing this important project [,]" *see* docket # 19, p.3, does not demonstrate that the postponement of any NTP would impact BVR's proposed financing. Rather, as the Credit Suisse letter makes clear, any supposed risks to project financing are the result of conditions in the high-yield bond market – conditions determined by factors subject to great uncertainty and far beyond the Region's influence or area of expertise. The Region should not be allowed to simply take BVR's claims at

face value and rely on them to issue the NTP under the flawed NHPA consultation process that the Ione Band is contesting here.

IV. NHPA Compliance Is A Permit Condition Here, And The Board Must Stay Issuance Of The NTP Under 40 C.F.R. Part 124

The Ione Band is contesting whether the Region properly complied with the NHPA – including whether the Region properly identified and evaluated the site and, based on that evaluation, adopted appropriate mitigation measures in the MOA – and thus, because NHPA compliance is a permit condition, the conditions of the permit here. The fact sheet for the proposed permit states that "[c]onditions applicable to all NPDES permits are included in accordance with 40 CFR, Part 122, *see* docket # 12.02 (AR p.44), and 40 C.F.R. § 122.49(b) mandates compliance with the NHPA. Thus the effect of NHPA compliance, including the effect of the MOA and the issuance of any NTP under it, must be stayed until agency review procedures are exhausted. *See* 40 C.F.R. §§ 124.60(b)(1), 124.19(f).⁴

The Region argues that no aspect of NHPA compliance, including issuance of a NTP under the MOA, is a permit condition subject to EPA's regulatory stay provisions. *See* Region Opp'n p.9. According to the Region, NHPA compliance is required but "does not automatically result in conditions being added to ... permits [or] require that conditions be added to ... permits to address effects on historic properties" *Id.* (citing *Nat'l Mining Ass'n v. Fowler*, 324 F.3d 752, 755 (D.C. Cir. 2003)). BVR similarly argues

⁴ Although the Region suggests that the regulations cited by the Ione Band are somehow "off context," Region Opp'n pp. 8-9, the regulations clearly apply. When, as here, a party petitions for review under 40 C.F.R. § 124.19, the force and effect of the contested conditions of the final permit must be stayed until final agency action. 40 C.F.R. § 160(b)(1).

that "the NHPA ... does not require consideration or adoption of particular permit conditions." BVR Opp'n p.7.

But while NHPA compliance may not automatically result in conditions being added to permits or require that any particular condition be included in a permit, compliance with NHPA is nonetheless a condition of the Buena Vista permit. *See AR* p.44 ("[c]onditions applicable to all NPDES permits are included in accordance with 40 CFR Part 122); 40 C.F.R. § 122.49(b) (mandating compliance with the NHPA). Where, as here, a permit requires compliance with the NHPA, and an MOA is executed as part of that NHPA compliance, the terms of that MOA – and the issuance of a NTP pursuant to those terms – are permit conditions. So long as the NHPA compliance and those permit conditions are under challenge, the issuance of any NTP must be stayed.

Even if the NHPA requirements are only "procedural," *see* Region Opp'n p.10 (citing *Nat'l Mining Ass'n*, 324 F.3d at 755), the Ione Band's challenge is to the adequacy of the Region's compliance with the required NHPA consultation process and to the MOA resulting from that process, which the Ione Band contends was flawed. The conditions imposed in the MOA for mitigating impacts from issuing the permit, including those for the issuance of any NTP, are contested permit conditions. Accepting the Region's argument that no aspect of NHPA compliance (including compliance with the MOA) is a permit condition would mean that the Region could issue a permit without there being an MOA to address the impacts of issuing that permit, or that a permittee could violate the MOA without any consequences for its NPDES permit, even though the MOA was required in order for the permit to issue. *See* 40 C.F.R. § 122.49(b); 36 C.F.R. 800.6(c). The drafters of the NPDES regulations did not contemplate such a result.

V. **The Ione Band Does Not Seek A Construction Ban; The Board Has The Authority To Postpone Issuance Of The Proposed NTP**

Both the Region and BVR mistakenly argue that the Ione Band seeks to prevent BVR, as a would-be permittee, from undertaking construction activities. *See* Region Opp'n pp. 3, 10-11 (citing *Natural Resources Defense Council v. EPA*, 822 F.2d 104, 126-31 (D.C. Cir. 1987)); BVR Opp'n pp. 7-8 (same). The Ione Band, however, is not asking the Board to prohibit construction. The Ione Band is requesting that the Board, acting pursuant to the authority delegated to it by the EPA Administrator, instruct the Region to wait until the issues in this appeal are resolved before affirmatively acting to issue any NTP under the MOA.

Thus the question here is not whether the EPA can prohibit construction. Rather, it is whether the Board may direct the Region to postpone taking affirmative action to issue the NTP while the adequacy of the NHPA consultation process leading up to that NTP (and the MOA pursuant to which it would be issued) is being challenged. Even if the Board were not required to stay the issuance of the NTP based on the regulations at 40 C.F.R. Part 124, the Board, exercising its discretion in order to promote the ends of justice, should nonetheless instruct the Region to postpone issuance of any NTP until the issues raised in the pending appeals are resolved. Allowing the Region to prematurely issue the NTP at this point would violate notions of fundamental fairness, the Ione Band's due process rights, and its right to effective review under the Administrative Procedure Act.

VI. The Region And BVR Seek To Apply The Wrong Criteria To The Ione Band's Request

The Region makes much of the fact that the regulations governing NPDES permit appeals and the Board's guidance do not establish specific criteria for evaluating the Ione Band's motion requesting that the Board stay issuance of the proposed NTP. *See* Region Opp'n pp. 7, 10, 11. The absence of such criteria, however, is perhaps due to the unique nature of the contemplated agency action here. Issuing a Notice to Proceed with construction pursuant to an MOA that is being challenged – and doing so based on unverified, speculative, and irrelevant information about financial markets in a months-old letter from an outside bank – is hardly within the usual course of agency behavior.

As noted, the Ione's Band challenge is to both the substance – whether the NTP can lawfully issue in the first instance – and timing – whether there is any justification for rushing to prematurely issue the NTP while this appeal is pending – of the Region's proposed action. Where, as here, gaps exist in the Board's procedural rules, the Board has broad discretionary authority to rule on motions before it.⁵ The Board should not rely on the criteria for interim injunctive relief or for a stay of an already-issued judicial order, as the Region (*cf.* Region Opp'n at pp. 14-21) and BVR suggest (*cf.* BVR Opp'n at pp.5-13). The Ione Band's request is captioned as a motion to stay the issuance of the NTP, but it is not a motion to stay the effect of an order issued by a court. Nor is the Ione Band asking for an order enjoining construction activities.

⁵ *See In re Peabody Western Coal Co.*, CAA Appeal No. 10-01. slip op. at 8 (Aug. 13, 2010). *See also* EAB Practice Manual p.44 ("[I]t is always within the discretion of ... an administrative agency to ... modify its procedural rules ... when ... the ends of justice require it.") (citation omitted).

The Ione Band is asking the Board to instruct the Region to postpone issuance of the NTP, which is intended to be the end-product of the NHPA consultation process and NHPA MOA under challenge here, until the issues raised in this appeal are resolved. The Region should not be able to skip prematurely to issuing the NTP, especially when its basis for doing so is unverified information in a letter from an outside bank, and where there is no evidence that the NTP has anything to do with project financing or that any delay in issuing the NTP is affecting BVR's ability to obtain financing or the ultimate viability of the proposed project.

A. Even If The Board Were To Apply The Criteria Suggested By The Region And BVR, It Should Still Grant The Ione Band's Request

Even if the Board were to use the criteria suggested by the Region and BVR, their application would weigh in favor of granting the Ione Band's request to delay postpone issuance of the NTP. As explained below, the Ione Band is likely to succeed on the merits and to suffer irreparable harm if the NTP is issued, and both the balance of equities and the public interest favor the Ione Band.⁶

⁶ Although the criteria suggested by the Region and BVR are slightly different, they are similar in that they set out the same basic criteria: (1) likelihood of success on the merits; (2) likelihood of irreparable harm; (3) balancing of the harms and equities; and (4) the public interest. See Region Opp'n p.14 (citing *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 374 (2008) (criteria for preliminary injunctive relief are likelihood of success on the merits, likelihood of irreparable harm absent preliminary relief, balancing of the equities, and the public interest); BVR Opp'n p.5 (citing *Nken v. Holder*, 129 S. Ct. 1749, 1756 (2009) (criteria for stay are whether the applicant has made a showing of success on the merits, whether the applicant will be irreparably harmed absent a stay, whether issuing the stay will substantially injure other interested parties, and where the public interest lies).

1. The Ione Band Is Likely To Succeed On The Merits

Although the Ione Band's motion did not address the likelihood of its success on the merits of its appeal (because it is not relevant to the relief requested), the record shows that the Ione Band is likely to succeed on the merits. Both the Region and BVR's basic argument is that because the Region and other agencies involved think that site identification and evaluation was sufficient – and therefore that the MOA is satisfactory – the Ione Band cannot succeed in its challenge to the adequacy of NHPA compliance here. *See* Region Opp'n pp. 15-16; BVR Opp'n p.11. At the very least, the record and the parties' briefs make clear that archaeological testing regarding the middle area of the Buena Vista site (where construction is proposed) was not performed until after the MOA was signed, thus supporting the Tribe's argument that the Region failed to conduct proper archaeological testing at and evaluation of the site. *See* Ione Motion (docket # 24) n.1; Ione Petition (docket # 6) pp. 6-7. *See also* AR pp. 728, 1311.

Moreover, the record shows that the Region did not give proper weight to the Ione Band's (and others') contentions regarding the Region's failure to properly identify and evaluate the site. In addition to the comment letters from the Ione Band, the record contains correspondence from a member of the Ione Band of Miwok Indians Cultural Committee stating that "[t]he Buena Vista site is my tribe's sacred site" and that "[t]his whole site is where the Miwok people began[,]" AR p.1318 (emphasis added);⁷

⁷ E-mail from Douglas Denton to Louise Brodintz:

The Buena Vista site is my tribe's sacred site. The site which is the location of a historic Miwok Village includes a tribal cemetery, an Indian ball field, three historic roundhouse areas, springs, a rock shelter, and the Buena Vista Peaks. *This whole site* is where the Miwok people began. It is where we were created. We would like to save this site by having it put on the National Register of Historic Places.

correspondence from a member of the Ione Band stating that Buena Vista site is "*one continuous site*" that is "part of the foundation of the entire northern Miwok culture and belief system[,] AR p.1322 (emphasis added);⁸ and from the Advisory Council on Historic Preservation noting that "[t]he Ione contend that the Buena Vista Rancheria site, *in its entirety*, constitutes one of the tribe's four most sacred sites." AR p.1303 (emphasis added).

Had the Region properly acknowledged the special expertise of the Ione Band's Tribal representatives in assessing the National Register of Historic Places eligibility of the site, as is required by the NHPA and its implementing regulations,⁹ 36 C.F.R. § 800.4(c)(1), it would not have concluded that the project site is not part of a single traditional cultural property or historic property of religious and cultural significance to an Indian tribe which is eligible for listing on the National Register. Nor would it have erroneously concluded that "the proposed construction area[] does not have any intact or potentially eligible cultural resources ... and ... for this reason ... was not included within

AR p.1318 (emphasis added).

⁸ Letter from Glen Villa, Jr., to John Tinger, EPA Region 9:

The CA-AMA-411H site is not just a village site eligible for the national register, nor are the Buena Vista Peaks eligible because of the relationship of a mythical story. Both of these sites are part of the foundation of the entire northern Miwok culture and belief system and are *one continuous site*. The aboriginal people at the ... village site used a cave ... [which] is listed and grouped under the Buena Vista Peak site record, yet is contiguous and directly affiliated with the CA-AMA-411H site.... The Buena Vista sites are where the oral history and the ethnographic data document the birth of the Northern Miwok people and the culture.

AR p.1322 (emphasis added).

⁹ See 36 C.F.R. § 800.4(c)(1). See also NHPA § 101(d)(6)(A) (historic properties of religious and cultural significance to Indian tribes may be eligible for listing on the National Register).

the recorded site areas for either the Buena Vista Peaks or Upüsüni Village" and, "[a]ccordingly, ... that ... there are no physical or direct effects from the undertaking on historic properties in the proposed construction area since there are no intact or potentially eligible cultural resources in that area." AR p.88. *See also* AR p.1348 (MOA p.2, ¶ 4).

The Region's failure to properly acknowledge the Ione Band's expertise resulted in a failure to properly identify and evaluate the site, and thus caused the Region to err in determining the impacts of the undertaking – and, in particular, the undertaking's impacts on the middle area of the site where construction is contemplated. The Ione Band is likely to succeed in its challenge to the Region's compliance with NHPA.

2. The Ione Band Will Be Irreparably Harmed By Issuance of the NTP

Issuance of the NTP would allow construction to proceed that would cause irreversible damage to the integrity of the Buena Vista site and cause irreparable harm to the Ione Band. *See, e.g.*, AR p.728. Although the Region argues that the Ione Band is wrong to assume "that issuance of a NTP will necessarily result in the immediate commencement of project construction, and, presumably that such construction will rapidly advance so as to prejudice [its] NHPA claims prior to consideration by the Board," Region Opp'n p.18, the harm the Ione Band is most concerned about is not the harm suffered by being denied the ability to challenge the Region's NHPA compliance. *Cf. id.* pp. 17, 18. Instead, the Ione Band's foremost concern is the irreparable harm that would occur to the integrity of the Buena Vista site were construction to proceed following issuance of the NTP.

And although the Region argues, based on the claim in BVR's opposition brief that "[i]t will take some time following issuance of the [NTP] for [BVR] to pursue financing and begin construction activities," that "it is by no means established that any construction activity" will take place immediately following issuance the NTP, *see* Region Opp'n p.18 (quoting BVR Opp'n p.12), this claim is undermined by BVR's urging in its May 26 letter that "EPA ... issue the NTP so that construction may proceed while the opportunity exists to do so." *See* docket # 19, p.3. Moreover, it is quite possible that BVR could, once a NTP is issued, begin with construction that would irreparably damage the integrity of the site as a whole – even if involved simply moving dirt or building a temporary structure – even without bank financing.

3. The Balance Of Equities Weighs In The Ione Band's Favor

While the Ione Band faces the likelihood of irreparable harm if the NTP is allowed to issue, there is no evidence that any delay in issuing the NTP is affecting BVR's ability to obtain financing or the ultimate viability of the proposed project. The Region points to the alleged "financial harm and potential risk to the overall project that may ensue from continued delay in [BVR's] ability to proceed with financing and development[.]" Region Opp'n p.19. *See also* BVR Opp'n p.12-13 (same). But, as noted above, there is no evidence to support this or any other claim that project's financing or viability would be at all affected by any delay in issuing the NTP. *See supra* pp. 4-5. On the contrary, the documents before the Region – namely, the Credit Suisse letter – show that BVR's ability to obtain financing depend on complex and volatile market conditions that have nothing to do with the NTP or the pending appeal.

Because the Ione Band faces the likelihood of irreparable harm if the NTP were to issue, and because there is no evidence showing that BVR's project financing would be affected by a delay in issuing any NTP, the balance of equities weighs in the Ione Band's favor.

4. The Public Interest Favors Granting The Ione Band's Request

The public interest here lies with preserving a thousands-year-old site of cultural and religious significance to the Ione Band that stands to be irreparably harmed by the proposed construction, *see* AR 1303, 1307, 1318, 1322, and in ensuring proper agency compliance with the NHPA – and ensuring that Indian tribes and their expertise regarding cultural, historic, and religious sites play a proper role in that consultation. The public interest is also served by allowing the pending appeals, and pending lawsuits, to run their course before the Region authorizes construction at the site pursuant to the NHPA MOA. Any claims regarding potential job creation from the proposed casino, *see* Region Opp'n p.20; BVR Opp'n p.13, are undermined by the Region's and BVR's argument that construction will not take place for some time following issuance of the NTP. *See* Region Opp'n p.18.

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VII. Conclusion

For the reasons set forth above and in its motion, the Tribe respectfully requests that the Board direct the Region to postpone issuing the NTP until the issues raised in this appeal have been resolved.

Dated: August 25, 2011

Respectfully submitted,

s/ William Wood

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I am over the age of 18 and not a party to this action. I am counsel for the Ione Band of Miwok Indians ("Tribe") in this action. My business address is 400 South Hope Street, 8th Floor, Los Angeles, California 90071.

On August 25, 2011, I caused the document(s) described as:

IONE BAND OF MIWOK INDIANS' MOTION FOR LEAVE TO FILE REPLY BRIEF IN SUPPORT OF MOTION TO STAY ISSUANCE OF PROPOSED NOTICE TO PROCEED;

IONE BAND OF MIWOK INDIANS' (PROPOSED) REPLY BRIEF IN SUPPORT OF MOTION TO STAY ISSUANCE OF PROPOSED NOTICE TO PROCEED

to be served via electronic mail on the persons listed below.

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I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this 25th day of August, 2011, at Los Angeles, California.

/s William Wood
William Wood

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