

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

In re:)
Buena Vista Rancheria) Appeal Nos. 10-05, 10-06, 10-07 & 10-13
Wastewater Treatment Plant)
NPDES Permit No. 0049675)

)

**BUENA VISTA RANCHERIA OF ME-WUK INDIANS' SUPPLEMENTAL
STATEMENT IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE**

Pursuant to the Environmental Appeals Board's order dated July 26, 2011, the Buena Vista Rancheria of Me-Wuk Indians ("Buena Vista") respectfully submits this Supplemental Statement in Support of its Motion for Leave to Intervene. Currently pending before the Board are four petitions seeking review of a Clean Water Act ("CWA") National Pollutant Discharge Elimination System ("NPDES") permit issued by U.S. EPA Region 9 ("Region"). The NPDES permit authorizes discharge from a wastewater treatment plant to be constructed in connection with Buena Vista's proposed casino project in Amador County, California.

On July 5, 2011, the Region gave the Board notice that it planned to issue a Notice to Proceed authorizing Buena Vista to commence construction of the project facilities, but not to commence any treatment or discharge of wastewater until these appeals are resolved by the Board. *See* Dkt. No. 18. In response, Petitioners filed motions or letters asking the Board to stay the Region's action. Dkt. Nos. 21, 22, 23, 24. On July 21, 2011, the Region filed a motion for an extension of time to respond to Petitioners' motions to stay. Dkt. No. 29. On July 22, 2011, Buena Vista filed a Motion for Leave to Intervene and Oppose the Motions to Stay. Dkt. Nos. 30, 31. The Board subsequently granted the Region's motion for an extension of time, until

August 15, to respond to Petitioners' motions to stay. Order, Dkt. 33 (July 26, 2011). The Board also instructed Buena Vista to "contact the parties to these appeals and file a supplemental statement . . . indicating whether the parties oppose or do not oppose Buena Vista's motion to intervene." *Id.* at 4.

Counsel for Buena Vista has contacted each of the parties seeking their position on Buena Vista's motion to intervene. The parties responded as follows:

U.S. EPA Region 9 ("Region") does not oppose Buena Vista's motion. Email from Jo Ann Asami (July 26, 2011) (Ex. A).

Petitioner Ione Band of Miwok Indians "is not opposed to [Buena Vista's] intervening, so long as the [Ione] Tribe has the same opportunity to reply to [Buena Vista's] proposed opposition as to the EPA's response which is due August 15 – and to do so on the same time schedule –as the [Ione] Tribe does oppose the substance of [Buena Vista's] papers. Thus the Ione Band's non-opposition to [Buena Vista's] intervening is conditioned on the [Ione] Tribe's being able to reply at the same time to [Buena Vista's] proposed opposition to and the EPA's response to the [Ione] Tribe's motion to stay issuance of the proposed notice to proceed." Email from William Wood (July 29, 2011) (Ex. B).

Petitioner Amador County opposes Buena Vista's motion to intervene unless the County is given the opportunity to reply to both Buena Vista's Opposition to the motions to stay and also the Region's response to the motions to stay at the same time, after the Region responds on or before August 15. Telephone Call from Cathy Christian (July 29, 2011).

Petitioner Friends of Amador County does not consent to Buena Vista's motion and stated: "It is our contention that the Tribe was erroneously given federal recognition. . . . We

have addressed this issue in our pending lawsuit.” Email from Jerry Cassesi (July 27, 2011) (Ex. C).

Petitioner Glen Villa, Jr. opposes Buena Vista’s motion and stated: “Region IX made a decision to [issue the] Notice To Proceed, not the Buena Vista Rancheria. It is the responsibility of the US EPA Region IX to defend their actions, not the Buena Vista Rancheria.” Email From Glen Villa, Jr. (July 28, 2011) (Ex. D).

* * *

For the reasons stated in Buena Vista’s Motion for Leave to Intervene and its Opposition to the Petitioners’ motions to stay, further delay poses a substantial risk of impairing Buena Vista’s interests in pursuing the casino project. Buena Vista therefore respectfully urges the Board to resolve the outstanding motions and petitions for review expeditiously.

Respectfully submitted,

/s/ David T. Buente, Jr.
David T. Buente, Jr.
Roger Martella, Jr.
Peter R. Steenland
Matthew D. Krueger
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, DC 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711
Email: dbuente@sidley.com
rmartella@sidley.com
psteenland@sidley.com
mkrueger@sidley.com

Counsel for the Buena Vista Rancheria of Me-Wuk Indians

Date: July 29, 2011

Exhibit A

From: Joann Asami [Asami.Joann@epamail.epa.gov]
Sent: Tuesday, July 26, 2011 5:09 PM
To: Krueger, Matthew
Cc: Dawn Messier; Buente Jr., David T.; Krueger, Matthew; Steenland, Peter R.; Martella, Roger; Tod Siegal; Steve Sweeney
Subject: Re: In re Buena Vista Rancheria - Motion to Intervene
Attachments: 2011.07.26 EAB Order.pdf

dear mr. krueger:

region ix does not oppose the buena vista rancheria of me-wuk indians' motion to intervene in the permit appeal.

best,
jo ann

From: "Krueger, Matthew" <mkrueger@sidley.com>
To: Joann Asami/R9/USEPA/US@EPA
Cc: Tod Siegal/DC/USEPA/US@EPA, Dawn Messier/DC/USEPA/US@EPA, "Martella, Roger" <rmartella@sidley.com>, "Steenland, Peter R." <psteenland@sidley.com>, "Buente Jr., David T." <dbuente@Sidley.com>, "Krueger, Matthew" <mkrueger@sidley.com>
Date: 07/26/2011 12:12 PM
Subject: In re Buena Vista Rancheria - Motion to Intervene

Ms. Asami:

I am one of the attorneys representing the Buena Vista Rancheria of Me-Wuk Indians in connection with the EAB's review of NPDES Permit No. 49675. Pursuant to the Board's order dated today (attached), the Tribe seeks Region 9's consent to the Tribe's July 22 motion to intervene in the permit appeal. Could you please let us know the Region's position regarding the Tribe's participation?

Thanks,
Matt

Matthew Krueger | Sidley Austin LLP
1501 K Street NW, Washington, DC 20005
202.736.8057 | mkrueger@sidley.com

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Exhibit B

From: william.wood@hklaw.com
Sent: Friday, July 29, 2011 2:31 PM
To: Krueger, Matthew
Cc: Buente Jr., David T.; Steenland, Peter R.; Martella, Roger;
william.wood@hklaw.com
Subject: Re: In re Buena Vista Rancheria - Motion to Intervene

Counsel,

As we discussed earlier, the Ione Band of Miwok Indians is not opposed to BVR's intervening, so long as the Tribe has the same opportunity to reply to BVR's proposed opposition as to the EPA's response which is due August 15 -- and to do so on the same time schedule -- as the Tribe does oppose the substance of BVR's papers. Thus the Ione Band's non-opposition to BVR's intervening is conditioned on the Tribe's being able to reply at the same time to BVR's proposed opposition to and the EPA's response to the Tribe's motion to stay issuance of the proposed notice to proceed.

Respectfully,
Bill

William Wood | Holland & Knight LLP
400 South Hope Street, 8th Floor | Los Angeles CA 90071
Direct 213.896.2511 | Main 213.896.2400 | Fax 213.896.2450

-----Original Message-----

From: Krueger, Matthew [mailto:mkrueger@sidley.com]
Sent: Friday, July 29, 2011 7:16 AM
To: Wood, William (LAX - X52511)
Cc: Buente Jr., David T.; Steenland, Peter R.; Martella, Roger
Subject: RE: In re Buena Vista Rancheria - Motion to Intervene

Bill: Thanks for your message. We could speak at 12:45 pm Eastern, 9:45 am Pacific. Would that work for you? Hoping so, here is call-in information:

Dial-in: 877-589-6971
Participant code: 320984

Regards,
Matt

-----Original Message-----

From: william.wood@hklaw.com [mailto:william.wood@hklaw.com]
Sent: Friday, July 29, 2011 5:22 AM
To: Krueger, Matthew
Cc: Buente Jr., David T.; Steenland, Peter R.; Martella, Roger;
william.wood@hklaw.com
Subject: Re: In re Buena Vista Rancheria - Motion to Intervene

Matt,

I apologize for the delay in getting back to you. I've been out of the

office on vacation.

Would you be available to talk tomorrow, mid-day or early afternoon DC time? I'm in Hawai'i (6 hour time difference) but plan to be up early here for another call I have at 10am California time. Perhaps we could speak before that call, leaving you ample time to file the supplemental statement with the EAB per the July 26 order.

Respectfully,
Bill

William Wood | Holland & Knight
400 South Hope Street, 8th Floor | Los Angeles CA 90071
Phone 213.896.2511 | Fax 213.896.2450

From: Krueger, Matthew [mkrueger@sidley.com]
Sent: Tuesday, July 26, 2011 12:35 PM
To: Wood, William (LAX - X52511)
Cc: Buente Jr., David T.; Steenland, Peter R.; Martella, Roger
Subject: In re Buena Vista Rancheria - Motion to Intervene

Mr. Wood:

I am one of the attorneys representing the Buena Vista Rancheria of Me-Wuk Indians in connection with the EAB's review of NPDES Permit No. 49675. Pursuant to the Board's order dated today (attached), Buena Vista seeks the Ione Band of Miwok Indians' consent to its July 22 motion to intervene in the permit appeal. Could you please inform us of the Ione Band's position regarding Buena Vista's participation?

Thanks,
Matt

Matthew Krueger | Sidley Austin LLP
1501 K Street NW, Washington, DC 20005
202.736.8057 | mkrueger@sidley.com<mailto:mkrueger@sidley.com>

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Exhibit C

From: jerry cassesi [lucydog@wildblue.net]
Sent: Wednesday, July 27, 2011 11:47 AM
To: Krueger, Matthew
Subject: Re: In re Buena Vista Rancheria - Motion to Intervene

Mr. Kruger,

The Friends of Amador County does not consent to the Tribe's Motion to Intervene. It is our contention that the Tribe was erroneously given federal recognition. Even though the Tribe was federally recognized in 1995, that recognition was in error because the Tribe failed to meet the seven federal mandates required for Tribal recognition along with other issues. We have addressed this issue in our pending lawsuit.

Sincerely,
Jerry Cassesi

----- Original Message -----

From: [Krueger, Matthew](#)
To: lucydog@wildblue.net
Cc: [Buente Jr., David T.](#) ; [Steenland, Peter R.](#) ; [Martella, Roger](#) ; [Krueger, Matthew](#)
Sent: Tuesday, July 26, 2011 12:37 PM
Subject: In re Buena Vista Rancheria - Motion to Intervene

Mr. Cassesi:

I am one of the attorneys representing the Buena Vista Rancheria of Me-Wuk Indians in connection with the EAB's review of NPDES Permit No. 49675. Pursuant to the Board's order dated today (attached), the Tribe seeks the Friends of Amador County's consent to the Tribe's July 22 motion to intervene in the permit appeal. Could you please inform us of the Friends of Amador County's position regarding the Tribe's participation?

Thanks,
Matt

Matthew Krueger | Sidley Austin LLP
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Information from ESET NOD32 Antivirus, version of virus signature database 6327 (20110726)

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

Exhibit D

From: Glen Villa [glenvilla@sbcglobal.net]
Sent: Thursday, July 28, 2011 11:55 PM
To: Krueger, Matthew
Subject: Re: In re Buena Vista Rancheria - Motion to Intervene

Mr. Krueger,

I oppose the Buena Vista Rancheria from intervening in the motion to stay. The US EPA Region IX made a decision to Notice To Proceed, not the Buena Vista Rancheria. It is the responsibility of the US EPA Region IX to defend their actions, not the Buena Vista Rancheria.

Sincerely,
Glen Villa Jr.

On 7/26/2011 12:42 PM, Krueger, Matthew wrote:

Mr. Villa:

I am one of the attorneys representing the Buena Vista Rancheria of Me-Wuk Indians in connection with the EAB's review of NPDES Permit No. 49675. Pursuant to the Board's order dated today (attached), the Tribe seeks your consent to the Tribe's July 22 motion to intervene in the permit appeal. Could you please inform us of your position regarding the Tribe's participation?

Thanks,
Matt

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202.736.8057 | mkrueger@sidley.com

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CERTIFICATE OF SERVICE

I certify that on the 29nd day of July, 2011, I caused a copy of **BUENA VISTA
RANCHERIA OF ME-WUK INDIANS' SUPPLEMENTAL STATEMENT IN SUPPORT
OF MOTION FOR LEAVE TO INTERVENE** to be served electronically on:

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/s/ Matthew D. Krueger
By: Matthew D. Krueger