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BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE ACCUSATION AGAINST:) FILE: 47-423392
Bear River Casino)
11 Bear Paws Way) REG: 08070211
Loleta, CA 95551-9684)
ON-SALE GENERAL PUBLIC EATING PLACE) NOTICE OF APPEAL
LICENSE)

NOTICE IS HEREBY GIVEN that the Appellant, Bear River Casino, appeals the Proposed Decision and Order and Certificate of Decision Dated June 15, 2009 in the above-entitled matter. The Appellant requests a stay of the August 6, 2009 operative date of the Decision and Order for one year or to the maximum extent permissible by law, whichever is longer. The Appellant also formally requests preparation of the full transcript of the hearing heard by the Honorable Judge John W. Lewis on April 29, 2009 in this matter, and further requests preparation of the full transcript of the hearing heard by the Honorable Sonny Lo on or about July 26, 2009. The Appellant requests that each transcript, when respectively prepared in full, be transmitted to the Appellant Board of the Department of Alcoholic Beverage Control. The

The reasons for the appeal are as follows:

1) The Construction of the term "shall" in Condition #8 in the future-tense was intended by all parties, was not asserted by the accuser to have been "at issue" for this hearing, would not place the ABC in the position of having entered into a settlement that immediately places the licensee in violation, and is consistent with cannons of judicial construction.

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1 The ALJ's construction of laws with respect to the term "shall" in the present-
2 tense is prejudicial error, as opposed to the future-tense, which was clearly intended
3 and understood by all parties the finding of fact based on said construction rendered
4 the Order of stayed revocation flawed, inappropriate, and unjust. More specifically,
5 the Administrative Law Judge found in paragraph 12 of said decision that "Respondent
6 is not now, nor have they ever been, in compliance with Condition #8." By this
7 combination of finding of fact and construction of laws, the ALJ clearly infers that
8 the ABC issued a license to the licensee with at least one condition that placed the
9 licensee in violation of the license's terms immediately. All parties intended that
10 the term shall be constructed to mean future-tense, and the July 2006 record should
11 indicate that the parties intended to enter into a side agreement for the timeliness
12 of implementation. In fact, the accusation itself does not state that a similar
13 condition, requiring the completion of road widening, had been violated, demonstrating
14 that even the accuser interpreted the term "shall" to mean "will", and within a
15 reasonable although unspecified timeline.

16 2) The Lack of Jurisdiction over the federal government holds true regardless of
17 whether a condition of the license was achieved by order after hearing or by
18 settlement.

19 The ALJ opines in the decision that the protestants did not get what they
20 bargained for in the original settlement agreement, namely Condition #8 of the
21 license, and settled in lieu of a full blown evidentiary hearing. However the ALJ
22 then finds in paragraph 5 of the "Penalty Considerations" section of the decision
23 that:

24 "The problem here is the Bureau of Indian Affairs. The Department
25 of Alcoholic Beverage Control has no authority over that entity. Nor
26 does Humboldt County, Bear River Casino or the Singley Hill Homeowners
27 Association."

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