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

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IN THE MATTER OF THE ACCUSATION AGAINST:) FILE: 47-423392 Bear River Casino REG: 08070211 11 Bear Paws Way 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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The ALJ's construction of laws with respect to the term "shall" in the presenttense is prejudicial error, as opposed to the future-tense, which was clearly intended and understood by all parties the finding of fact based on said construction rendered the Order of stayed revocation flawed, inappropriate, and unjust. More specifically, the Administrative Law Judge found in paragraph 12 of said decision that "Respondent is not now, nor have they ever been, in compliance with Condition #8." By this combination of finding of fact and construction of laws, the ALJ clearly infers that the ABC issued a license to the licensee with at least one condition that placed the licensee in violation of the license's terms immediately. All parties intended that the term shall be constructed to mean future-tense, and the July 2006 record should indicate that the parties intended to enter into a side agreement for the timeliness of implementation. In fact, the accusation itself does not state that a similar condition, requiring the completion of road widening, had been violated, demonstrating that even the accuser interpreted the term "shall" to mean "will", and within a reasonble although unspecified timeline. 2) The Lack of Jurisdiction over the federal government holds true regardless of whether a condition of the license was achieved by order after hearing or by

settlement.

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

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

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Thus, the ALJ acknowledges that even if the case had been tried by the accuser, it was beyond the jurisdiction of the ABC to order Condition #8 as worded, since ther ABC lacks jurisdiction over the Bureau of Indian Affairs, which is an agency of the federal government.

Further reasons for appeal, being more procedural are:

- 3) The petitioner in the accusation lacked standing to represent the purported organization the Singley Hill Homeowner's Association, as no documentation was provided as to the existence, bylaws, nor representative designation or resolution of said purported organization.
- 4) Numerous objections were made to hearsay evidence, unsworn testimony, relevance, and lack of foundation and authentication. The appellants appeals each of those rulings respectively and independently.

Wherefore, the Appellant prays that the Decision and Order be stayed for at least one year pending appeal, and that said Decision and Order be vacated and remanded for further consideration consistent with the Board of Appeals ruling(s). Dated this 14th day of July 2009

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Notice of Appeal

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