

## List of Exhibits to Complaint

Big Sandy Rancheria of Western Mono Indians, et al. v. Brownstone, LLC

<u>Exhibit</u>	<u>Description</u>	<u>Date</u>
A	Constitution of the Big Sandy Band of Western Mono Indians	February 21, 2000
B	2004 Approval of the Constitution of the Big Sandy Band of Western Mono Indians by BIA/Dept. of the Interior	April 1, 2004
C	2005 Amendment to the Constitution of the Big Sandy Band of Western Mono Indians	March 28, 2005
D	Tribal Resolution Creating the Big Sandy Rancheria Entertainment Authority	August 20, 2004
E	Tribal State Gaming Compact Between the Big Sandy Band of Western Mono Indians and the State of California	September 10, 1999
F	Approval of Tribal State Gaming Compact by Dept. of the Interior	May 5, 2000
G	Big Sandy Rancheria Tribal Gaming Ordinance	May 1, 2002
H	Big Sandy Rancheria Tribal Gaming Regulations	May 1, 2002
I	NIGC Letter Approving Tribal Gaming Ordinance & Regulations	November 27, 2002
J	Memorandum of Understanding (MOU) Between Tribe and Brownstone	January 16, 2007
K	Development Agreement Between Tribe and Brownstone	March 25, 2007
L	Credit Agreement Between Tribe and Brownstone	March 25, 2007
M	Letter from Gaming Commission to Brownstone	December 10, 2009
N	Letter from Brownstone to Gaming Commission	January 21, 2010
O	Letter from Gaming Commission to Brownstone	February 9, 2010
P	Letter from Tribal Council to Brownstone	February 11, 2010
Q	Letter from Gaming Commission to NIGC	March 9, 2010

R	Letter from NIGC to Gaming Commission	July 2, 2010
S	Gaming Commission's "Findings of Regulatory Review of Brownstone"	July 13, 2010
T	Letter from Tribe to Brownstone	July 16, 2010 (sic June 16, 2010)
U	Letter from Brownstone's Counsel, Glenn Feldman, to Tribe	July 22, 2010
V	Letter from Tribe to Brownstone	September 7, 2010

# **EXHIBIT A**

**Constitution  
of the  
Big Sandy Band of Western Mono Indians**

PREAMBLE

We, the adult members of the Big Sandy Band of Western Mono Indians, also known as the San Joaquin Band of Indians, hereinafter referred to as the tribe, in order to establish tribal governmental powers and privileges, do hereby ordain and establish this constitution.

**ARTICLE I - TERRITORY**

The jurisdiction of the tribe shall extend to all those lands as shown on the map of Fresno County Tract No. 2060 recorded at pages 89, 90, and 91 in volume 22 of plats, Fresno County Records, and to all Indian country (as now defined by 18 U.S.C. § 1151) held by or for the benefit of the Tribe or any member of the Tribe, wherever located.

(as amended by Amendment No. II, Resolution No. 0405-01G)

**ARTICLE II - MEMBERSHIP**

Section 1. The membership of the tribe shall consist of the following:

- (a) All persons of California Indian descent who were listed as distributees or as dependent members of distributees in the Plan for the Distribution of the Assets of the Big Sandy (Auberry) Rancheria as approved by the Under Secretary of the Interior on February 17, 1965, and amended on January 24, 1967.
- (b) Direct lineal descendants or individuals who qualify under (a) of this section.

Section 2. No person who is enrolled with the Big Sandy Band of Western Mono Indians shall also be a member of another tribe, band or community of Indians. Any persons so dually enrolled shall relinquish membership in the other tribe or be disenrolled, provided nothing in this provision shall be construed in any way to require the relinquishment of any property acquired by purchase, allotment, bequest, inheritance, assignment, or other manner of acquisition.

Section 3. The general council shall have the power to adopt ordinances consistent with this constitution governing future membership, loss of membership and the adoption of members into the tribe.

### ARTICLE III - GOVERNING BODY

Section 1. The governing body of the Big Sandy Band of Western Mono Indians shall be a five (5) member tribal council. The tribal council shall consist of a chairperson, vice-chairperson, secretary, treasurer and one (1) member each elected by a majority vote of the qualified voters of the tribe in an election in which at least thirty percent (30%) of the qualified voters have voted. In the event that no candidate receives a majority of the votes cast or in the event that thirty percent (30%) of the voters fail to participate in the election, a subsequent election shall be held within thirty (30) days. Should it be necessary to hold a subsequent election, the two (2) candidates receiving the highest number of votes for each position shall be the only candidates for that office at such election.

Section 2. The general council shall consist of all members of the Big Sandy Band of Western Mono Indians eighteen (18) years of age or older.

Section 3. Other officials or committees may be appointed by the tribal council when deemed necessary.

### ARTICLE IV - NOMINATIONS AND ELECTIONS

Section 1. The officers of the Big Sandy Band of Western Mono Indians in office at the time of approval of this constitution shall, hold office until their successors are duly elected and installed. The first election under this constitution shall be held on the second Wednesday in September of 1986 and the officials elected shall hold office for two (2) years. Thereafter, elections shall be held every two (2) years on the second Wednesday in September.

Section 2. Any enrolled member of the tribe who is at least eighteen (18) years of age at the time of the election shall be entitled to vote and hold office regardless of residency. Absentee voting shall be permitted.

Section 3. Any qualified voter of the general council shall announce his/her candidacy for the tribal council no later than thirty (30) days prior to an election. The list of candidates shall be posted at the tribal office. In the event an insufficient number announce their candidacy, a general council meeting shall be called and convened to accept nominations.

Section 4. The candidate receiving the highest number of votes for a particular office shall hold that office.

Section 5. The general council shall adopt an election ordinance within six (6) months following the effective date of this constitution. The ordinance shall include secret balloting, voter registration, maintenance at all times of a current list of qualified voters and a procedure for handling election disputes and appeals. Procedures shall also be included regarding the conduct of recall and referendum elections and a uniform procedure and format for submitting and validating petitions. Elections to amend this constitution shall be conducted in accordance with Article XIV.

#### ARTICLE V - VACANCIES AND REMOVAL

Section 1. If a member of the tribal council shall die, resign or be absent from regular council meetings two (2) successive unexcused times or three (3) unexcused times in any twelve (12) month period, the council shall declare the position vacant, if a member of the tribal council shall be convicted by a court of competent jurisdiction of a felony while in office, the council shall declare the position vacant by a majority vote of the council members. If less than twelve (12) months of a term remains, the council shall fill the vacancy by appointment of a tribal member who qualifies for candidacy. A special election shall be called to fill vacated positions when more than twelve (12) months remain in the unexpired term.

Section 2. The tribal council may, by three affirmative votes, expel any officer or tribal council member who is proven guilty of improper conduct or of gross neglect of duty, provided the accused official is given written notification of charges at least ten (10) days prior to the designated tribal council meeting. Before any vote for expulsion is taken in the matter, such officer or member shall be given an opportunity to answer all written charges at a designated tribal council meeting called for that purpose. The decisions of the tribal council shall be final. Voting shall be by secret ballot and the chairman is eligible to vote.

#### ARTICLE VI - POWERS OF THE TRIBAL COUNCIL

Section 1. Enumerated Powers. The tribal council shall exercise the following powers and responsibilities subject only to those limitations imposed by this constitution and the laws of the United States;

- (a) To consult and negotiate with Federal, State, local and tribal governments and other agencies on behalf of the tribe on all matters which may affect the Big Sandy Band of Western Mono Indians or the Big Sandy Rancheria; and to advise the Secretary of the Interior on all federal projects for the benefit of the tribe or the Rancheria.
- (b) To promote the health, education and general welfare of the members of the tribe and to administer charity and other services as may contribute to the social and economic advancement of the tribe and its members.
- (c) To encourage and foster arts, crafts, traditions and culture of the tribe.
- (d) To promulgate and enforce resolutions or ordinances, providing for the manner of making, holding and revoking assignments of Big Sandy Rancheria land; providing for the levying of taxes and the appropriation of available tribal funds for public purposes; providing for the licensing of non tribal members, and for the exclusion of persons who are not so licensed or are otherwise undesirable, from the Big Sandy Rancheria or other tribal lands.
- (e) To promulgate and enforce ordinances on such subjects as the activity of the tribe may require as are not inconsistent with this constitution.
- (f) To borrow money and provide for the repayment thereof, manage all economic affairs and enterprises, negotiate and contract on behalf of the tribe, and create tribally-owned corporations.
- (g) To initiate, approve, grant or reject any acquisition, disposition, lease, or encumbrance of tribal lands or property; to manage, protect and preserve all lands,

- minerals, wildlife and other natural resources of the Big Sandy Rancheria; to initiate and administer land development projects for the entire Rancheria.
- (h) To create and maintain a reasonable tribal fund for administrative expenses of the tribe and to provide for remuneration of tribal council members and tribal officials as may be required, to administer any funds or property within the control of the tribe for the benefit of the tribe and its members, officers or employees; and to allocate tribal funds as loans or grants and to transfer tribal property and other assets to tribal organizations for such use as the tribal council may determine.
  - (i) To employ legal counsel on behalf of the tribe, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior or his authored representative so long as such approval is required by Federal law.
  - (j) To sue and be sued on behalf of the tribe provided such suit is consented to by waiver of sovereign immunity; provided, no waiver of sovereign immunity shall be made by the tribal council without the express prior approval by a majority of the general council, voting thereon at a meeting duly called and noticed for that express purpose, or at a regularly scheduled meeting.
  - (k) Employ consultants for the protection and advancement of the interest of the tribe and its members.
  - (l) To form or join existing tribal courts, consortiums or Indian organizations dealing with Indian Child Welfare Act of 1978 (25 U.S.C. 1901 *et seq.*) and to reassume jurisdiction over Indian child custody proceedings as authorized by the Indian Child Welfare Act (25 U.S.C. 1918).
  - (m) To establish a tribal judicial system, define its jurisdiction and promulgate tribal court rules.
  - (n) To create and regulate subordinate organizations; and to delegate to such organizations, or to any subordinate boards or officials of the Auberry Big Sandy Rancheria, any of the foregoing powers, reserving the right to review and rescind any action taken by virtue of such delegated powers.
  - (o) To form or join an existing housing authority.

Section 2. The tribal council shall have all of the appropriate powers necessary to implement specific provisions of this constitution and to effectively govern tribal affairs. All powers heretofore vested in the tribe, but not specifically referred to in this Constitution, shall not be abridged, but shall be reserved to the people of the tribe and may be exercised through appropriate amendment to this constitution.

#### ARTICLE VII - DUTIES OF OFFICERS

Section 1. The chairperson of the tribal council shall preside at all meetings of the general council and of the tribal council, and shall execute on behalf of the tribe all contracts, leases or other documents approved by the tribal council. He/she shall have general supervision of all other officers, employees and committees of the tribe and see that their duties are properly performed. When neither the general council nor the tribal council is in session, he/she shall be the official representative of the Big Sandy Band of Western Mono Indians.

Section 2. The vice-chairperson of the tribal council shall assist the chairperson when called upon to do so, and in the absence of the chairperson, he/she shall preside. When presiding,

he/she, shall have all the rights, privileges, and duties as well as responsibilities of the chairperson.

Section 3. The secretary of the tribal council shall conduct all tribal correspondence, keep a complete and accurate record of all matters transacted at council meetings and attest to the enactment of all resolutions and ordinances. At the expiration of his/her term of office, all records and papers in his/her possession shall be turned over to his/her successor or the tribal council.

Section 4. It shall be the duty of the treasurer of the tribal council to accept, receive, receipt for, preserve and safeguard all funds in the custody of the council. As directed by the tribal council, he/she shall deposit all such funds in such banks or elsewhere, where depositor's funds are insured by the Federal Deposit Insurance Corporation. He/she shall not pay out nor authorize disbursement of any funds in his/her possession or custody or in the possession or custody of the council, except when properly authorized to do so by a majority vote of the tribal council. The books and records of the treasurer shall be audited at least once a year by a competent auditor. The treasurer shall be required to give bond satisfactory to the council. The premium for such bond shall be paid from tribal funds.

Section 5. The duties of all appointive committees or officials of the band shall be clearly defined by the tribal council at the time of their creation or appointment. Such committees and officers shall report on their activities and decisions from time to time as required by the tribal council. Their actions and decision shall be subject to review by the tribal council.

Section 6. Newly-elected members who have been duly certified shall be installed at the first regular meeting of the tribal council following certification.

#### ARTICLE VIII - MEETINGS

Section 1. Regular meetings of the tribal council shall be held on the last Saturday of each month, or at such other times as the tribal council may by resolution provide, on a day to be determined by the tribal council. Special meetings may be called by written notice signed by the chairperson, and shall be called by him upon receipt of a petition signed by at least three (3) tribal council members, and when so called the tribal council shall have the power to transact business as in the regular meetings, provided a quorum is present.

Section 2. The general council shall meet quarterly on the last Sunday of each third month. Special meetings of the general council may be called by the chairperson and/or shall be called by him upon receipt of a petition signed by at least thirty percent (30%) of the members of the general council.

Section 3. No tribal business shall be transacted at regular or special meetings unless a quorum is present. A quorum of the tribal council is three (3) members. For general council meetings a quorum is fifteen percent (15%) of the qualified voters.

Section 4. Order of Business

- (a) Call to Order by Chairperson
- (b) Roll Call



- (c) Reading of Minutes of Last Meeting
- (d) Unfinished Business
- (e) Reports
- (f) New Business
- (g) Adjournment

#### ARTICLE IX - REFERENDUM AND INITIATIVE

Section 1. Referendum. The tribal council shall, upon receipt of a petition signed by not less than thirty percent (30%) of the qualified voters, submit any enacted or proposed tribal legislation to a referendum of the eligible voters. The decision of a majority of the voters voting in the referendum shall be final and binding on the tribal council provided that at least thirty percent (30%) of the qualified voters have voted in such election. The tribal council shall call the referendum within thirty (30) days from the date of the receipt of a valid petition. The vote shall be by secret ballot.

Section 2. Initiative. The qualified voters of the tribe reserve the power to independently propose tribal legislation. Any proposed initiative measure shall be presented to the tribal council accompanied by a petition signed by not less than thirty percent (30%) of the eligible voters of the general council. Upon receipt of such a petition, the tribal council shall call a special election for the purpose of allowing the members of the tribe to vote on the initiative measure. The election shall be held within thirty (30) days from the date a valid petition is presented. The initiative shall be final and binding provided that at least thirty percent (30%) of the qualified voters have voted in such an election.

#### ARTICLE X - RECALL

Section 1. Recall. Upon receipt of a petition signed by at least thirty percent (30%) of the qualified voters of the tribe demanding a recall of any member of the tribal council, it shall be the duty of the tribal council to call a special election on the question of the recall within thirty (30) days from the date of the filing of the valid petition. The elections shall be held in the manner prescribed in an election ordinance in accordance with Article IV, Section 5. Should the tribal council fail to call an election within thirty (30) days, the office shall automatically be vacant and shall be filled in accordance with Article V, Section I. The decision of a majority of the voters voting in the recall shall be final provided at least thirty percent (30%) of the qualified voters voted. Once an individual has been subjected to recall proceedings, he/she shall not again be subject to such action during the balance of his/her term of office.

#### ARTICLE XI - ORDINANCES AND RESOLUTIONS

Section 1. All final decisions of the tribal council on matters of general and permanent interest (such as action on the tribal budget for a single year, or petitions to Congress or the Secretary of the Interior), or relating especially to particular individuals or officials (such as adoption of members, instructions for tribal employees, or rules of order for the council) shall be embodied in resolutions or ordinances.

Section 2. All questions of procedure (such as acceptance of committee reports, or invitations to outsiders to speak) shall be decided by action of the tribal council, or by the ruling

of the chairperson, if no objection is heard. On all ordinance, resolutions, or motions the tribal council may act by a majority of those present.

Section 3. All ordinances and resolutions shall be dated and numbered and shall include certification showing the presence of a quorum and the number of members voting for or against the proposed enactment. No action of the tribal council shall have any validity or effect in the absence of a quorum.

#### ARTICLE XII - BILL OF RIGHTS

Section 1. All members of the tribe shall enjoy without hindrance, freedom of worship, conscience, speech, press, assembly and association.

Section 2. This constitution shall not in any way alter, abridge, or otherwise jeopardize the rights and privileges of the members of the tribe as citizens of the State of California or the United States.

Section 3. The individual property rights of any member of the Big Sandy Band of Western Mono Indians shall not be altered, abridged or otherwise affected by the provisions of this constitution.

Section 4. Tribal members shall have the right to review all tribal records, including financial records, at any reasonable time in accordance with procedures established by the tribal council.

Section 5. In accordance with Title II of the Indian Civil Rights Act of 1968 (82 Stat. 77), the Big Sandy Band of Western Mono Indians in exercising its powers of self-government shall not:

- (a) Make or enforce any law prohibiting the full exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for redress of grievances;
- (b) Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizure, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (c) Subject any person for the same offense to be twice put in jeopardy;
- (d) Compel any person in any criminal case to be a witness against himself;
- (e) Take any private property for a public use without just compensation;
- (f) Deny to any person in a criminal proceeding the right to a speedy trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, at his own expense, to have the assistance of counsel for his defense;
- (g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six (6) months or a fine of \$500 or both;

- (h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of laws;
- (i) Pass any bill of attainder or ex post facto law;
- (j) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

#### ARTICLE XIII - SEVERABILITY

If any provision of this constitution shall, in the future, be declared invalid by a court of competent jurisdiction, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

#### ARTICLE XIV - AMENDMENTS

Section 1. This constitution may be amended by a majority vote of the qualified voters of the Big Sandy Band of Western Mono Indians, voting in an election called for that purpose by the Tribal Council, provided that at least thirty percent (30%) of those entitled to vote shall vote in such election.

Section 2. It shall be the duty of the Tribal Council to call an election on any proposed amendment at the request of the General Council or upon receipt of a petition signed by at least thirty percent (30%) of the qualified voters of the Big Sandy Band of Western Mono Indians.

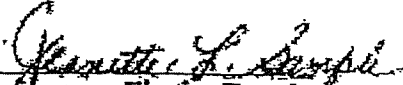
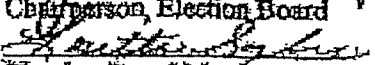
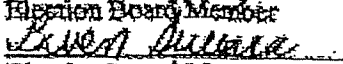
#### ARTICLE XV - ADOPTION

Section 1. This Constitution when adopted by a majority vote of the qualified voters of the Big Sandy Band of Western Mono Indians, voting at an election called for that purpose by the tribal council in which at least thirty percent (30%) of those entitled to vote shall vote, and shall be effective from the date of its approval.

(as amended by Amendment No. I, Resolution No. 0603-03)

#### ARTICLE XVI - CERTIFICATE OF RESULTS OF ELECTION

Pursuant to an order issued February 11, 2000, by Loren Baty, Chairperson, Big Sandy Band of Western Mono Indians, the Constitution of the Big Sandy Band of Western Mono Indians of the Big Sandy Rancheria of California was submitted to the qualified voters of the tribe, and was on February 21, 2000 duly adopted/rejected by a vote of 44 for, and 0 against, in an election in which at least thirty percent (30%) of the 169 entitled to vote cast their ballots in accordance with Article XIV of this constitution.

  
Chairperson, Election Board  
  
Election Board Member  
  
Election Board Member

ARTICLE XVII - CERTIFICATE OF APPROVAL

We, the Big Sandy Rancheria Tribal Council, do hereby approve this Constitution of the Big Sandy Band of Western Mono Indians in accordance with Article XV of this constitution. It is effective as of this date, provided that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

  
Chairman, Tribal Council

3/21/00  
Date

  
Vice-Chair, Tribal Council

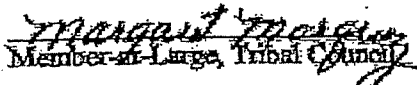
2/21/00  
Date

  
Secretary, Tribal Council

2/21/00  
Date

  
Treasurer, Tribal Council

3/21/00  
Date

  
Member-at-Large, Tribal Council

2/21/00  
Date

# **EXHIBIT B**



## United States Department of the Interior

### BUREAU OF INDIAN AFFAIRS

Central California Agency  
650 Capitol Mall, Suite 8-500  
Sacramento, CA 95814

IN REPLY REFER TO

APR 1 2004

Ms. Connle Lewis, Chairperson  
Big Sandy Rancheria  
P.O. Box 337  
Auberry, California 93602

Dear Ms. Lewis:

The purpose of this correspondence is to acknowledge receipt of and respond to a letter dated October 28, 2003 from Ms. Regina Baty, Chairperson of the Election Board of Big Sandy Rancheria. Ms. Baty reported the adoption of the Constitution of Big Sandy Band of Western Mono Indians (Constitution) by a vote of 54 for, and 15 against.

The Tribe's adoption of the Constitution appears to be consistent with the requirements set forth at Article XV – Adoption, which states:

Section 1. This Constitution when adopted by a majority vote of the qualified voters of the Big Sandy Band of Western Mono Indians, voting at an election called for that purpose by the tribal council in which at least thirty percent (30%) of those entitled to vote shall vote, and shall be effective from the date of its approval.

In order to determine whether the Constitution was adopted in an election "in which at least thirty percent (30%) of those entitled to vote shall vote," I considered the facts as presented by Ms. Baty which states that 216 voters were entitled to vote. Further, by multiplying 216 by 0.3, I conclude that 64.8 or sixty-five voters represents "at least thirty percent of those entitled to vote." Ms. Baty reported that 69 individuals participated in this election.

Congratulations are extended to the Tribe in the adoption of the Tribe's Constitution

Please contact Raymond Fry, Tribal Operations Officer, at (916) 930-3794 should you require additional information with regard to this matter.

Sincerely,

Dale Risling, Sr.  
Superintendent

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# **EXHIBIT C**



**BIG SANDY RANCHERIA**

**GENERAL COUNCIL RESOLUTION**

**RESOLUTION NO. 0405-01 G  
OF THE BIG SANDY BAND OF WESTERN MONO INDIANS  
GENERAL COUNCIL**

**Constitutional Amendment  
Amendment II**

**RECITALS**

WHEREAS, the Big Sandy Band of Western Mono Indians is a federally recognized Indian tribe (the "Tribe") and possesses all rights, powers and privileges attendant thereto; and

WHEREAS, the governing body of the Tribe is a five-member Tribal Council (the "Tribal Council") pursuant to the Constitution of the Big Sandy Band of Western Mono Indians, adopted on February 11, 2000, as amended (the "Constitution"); and

WHEREAS, the Constitution was properly amended, as stated in the June 12, 2003, Resolution No. 0603-03, to eliminate the Secretary of the Interior's mandatory review and approval of the Constitution and any amendments thereto; and

WHEREAS, Article XIV, Sections 1 and 2 of the Constitution permits amendments if a majority of the General Council votes in favor of such amendment at an election called for that purpose by the Tribal Council, provided at least thirty per cent (30%) of eligible voters participate in such election; and

WHEREAS, a duly called General Council meeting was convened to consider a second amendment to the tribal Constitution, at Article I, to clarify the extent of the Tribe's governmental power and jurisdiction and ability to provide tribal governmental and federally-funded tribal services to no less than the fullest extent permitted under federal law; and

WHEREAS, the General Council has considered the proposed amendment authorized herein and has determined that it is in the best interest of the Tribe and will assist in



improving the social, economic and health conditions of tribal members while strengthening the Tribe's overall political self-determination and economic self-sufficiency.

**NOW THEREFORE, BE IT RESOLVED THAT** The Constitution of the Big Sandy Band of Western Mono Indians, adopted on February 11, 2000, as amended, stands amended as follows (which amendment shall hereinafter be referred to as "Amendment II"):

The territorial jurisdiction of the tribe shall extend to all those lands as shown on the map of Fresno County Tract No. 2060 recorded at pages 89, 90, and 91 in volume 22 of plats, Fresno County Records, and to ~~such other lands as may be hereafter acquired by or for the tribe~~ all Indian country (as now defined by 18 U.S.C. § 1151) held by or for the benefit of the Tribe or any member of the Tribe, wherever located.

**AND BE IT FURTHER RESOLVED THAT** the Constitutional amendment acknowledged and ratified in Resolution No. 0603-03 on June 12, 2003, to eliminate the need for review and approval of the Constitution by the Secretary of the Interior, shall hereinafter be referred to as "Amendment I"

#### CERTIFICATION

We, the undersigned Tribal Council members, do hereby certify that the foregoing resolution was adopted by the General Council of the Big Sandy Band of Western Mono Indians of California, by a vote of 41 for, 28 against, \_\_\_\_\_ with 3 abstaining, at a duly called meeting held on March 28, 2005, where a quorum was present.

Connie Lewis  
Connie Lewis, Tribal Chairperson

Pearl A. Hutchins  
Pearl Hutchins, Vice Chairperson

Regina Riley  
Regina Riley, Secretary

Phyllis Lewis  
Phyllis Lewis, Treasurer

# **EXHIBIT D**

**BIG SANDY BAND OF WESTERN MONO INDIANS**

**Tribal Council Resolution**

Resolution No. 0804-06

Adopted as of August 20, 2004

(1) AUTHORIZING AND APPROVING ENACTMENT OF AN ORDINANCE TO BE KNOWN AS "THE BIG SANDY ENTERTAINMENT AUTHORITY ACT OF 2004";

(2) AUTHORIZING AND APPROVING CREATION OF THE BIG SANDY ENTERTAINMENT AUTHORITY PURSUANT TO THE BIG SANDY ENTERTAINMENT AUTHORITY ACT OF 2004; AND

(3) AUTHORIZING AND APPROVING ENACTMENT OF ORDINANCES RELATING TO ARBITRATION AND SECURED TRANSACTIONS INVOLVING THE TRIBE OR THE BIG SANDY ENTERTAINMENT AUTHORITY.

**WHEREAS**, the Big Sandy Band of Western Mono Indians (the "Tribe") is a federally recognized Indian tribe organized under the Tribe's Constitution (the "Constitution"), and maintains powers inherent in tribal sovereignty and those delegated by the United States of America;

**WHEREAS**, the Tribe occupies the Big Sandy Rancheria located in Fresno County, California (the "Reservation"), and exercises tribal governmental authority over all land within its jurisdiction;

**WHEREAS**, pursuant to the Constitution, the governing body of the Tribe is the Tribal Council, which is empowered by the Constitution to promulgate and enforce ordinances on such subjects as the activity of the Tribe may require, to manage all economic affairs of the Tribe, to create and regulate subordinate instrumentalities and to delegate to such instrumentalities any powers granted to the Tribal Council through the Constitution, and shall have all powers necessary to implement specific provisions of the Constitution and to effectively govern Tribal affairs;

**WHEREAS**, pursuant to General Council Resolution No. 0207-03, the Tribal Council is further authorized to promulgate and enforce resolutions necessary or desirable to effectuate certain Project Documents (as defined below) and to grant limited waivers of sovereign immunity in the Project Documents;

**WHEREAS**, the Tribe currently operates an on-reservation tribal governmental casino known as the Mono Wind Casino, whose revenues and the revenues of other tribal economic development projects assist the Tribe in funding essential tribal governmental services, such as education, housing, welfare, and other services;

**WHEREAS**, the Tribe has entered into a valid and binding tribal-state compact with the State of California (the "Compact"), which Compact entitles the Tribe, among other things, to own and operate two tribal governmental gaming facilities;

**WHEREAS**, the Tribal Council has considered and believes that additional tribal economic development projects will better enable the Tribe to continue to fund essential tribal governmental services and to further its goals of economic self-sufficiency and, to that end, the Tribe has been involved in negotiating certain agreements with QBS, LLC, a Nevada corporation and wholly owned subsidiary of Caesars Entertainment, Inc., a Delaware corporation (the "Project Documents") related to the development, operation and management of a new upscale tribal governmental gaming facility with internationally recognized branding (the "Project");

**WHEREAS**, in order to facilitate the Tribe's goals in furtherance of the Project and in execution and administration of the Project Documents, the Tribe desires to create an unincorporated tribal governmental instrumentality, to be known as the "Big Sandy Entertainment Authority" (the "Entertainment Authority" or the "Authority") to own and operate the Project, pursuant to this Resolution and in accordance with an ordinance to be enacted through this Resolution (the "Big Sandy Entertainment Authority Act of 2004," or sometimes, the "Entertainment Authority Ordinance"), and to enact certain other ordinances through this Resolution to regulate secured transactions on the Reservation or involving the Tribe or Authority (the "Secured Transactions Ordinance") and to govern the arbitration of commercial disputes arising on the Reservation or involving the Tribe or the Authority (the "Arbitration Ordinance");

**WHEREAS**, the Tribal Council has determined that enacting the Entertainment Authority Act of 2004, enacting the Secured Transactions Ordinance and the Arbitration Ordinance and creating the Entertainment Authority are in the best interests of the Tribe;

**WHEREAS**, the Tribal Council wishes to approve the following actions, which approval shall be effective as of the date of set out below.

**NOW, THEREFORE BE IT RESOLVED** by the Tribal Council as follows:

**1. ENACTMENT OF THE BIG SANDY ENTERTAINMENT AUTHORITY ACT OF 2004 AND AUTHORIZATION AND APPROVAL OF CREATION OF THE BIG SANDY ENTERTAINMENT AUTHORITY.**

1.1. The Tribal Council has considered and determined that it is in the best interests of the Tribe and its members and of the planned development, operation and management of the new upscale Tribal governmental gaming facility (referred to above as the "Project")

to adopt and does hereby authorize, approve and enact an ordinance to be known as the Big Sandy Entertainment Act of 2004;

1.2. The Tribal Council has considered and determined that it is in the best interests of the Tribe and its members and of the planned development, operation and management of the new upscale Tribal governmental gaming facility (referred to above as the "Project") to create and does hereby authorize and approve establishment of the Big Sandy Entertainment Authority as an instrumentality of the Tribe, as created in and governed by the Big Sandy Entertainment Authority Act of 2004.

2. ENACTMENT OF ARBITRATION ORDINANCE.

The Tribal Council has considered and determined that it is in the best interests of the Tribe and its members, of the Entertainment Authority and of the various Tribal economic development projects, to adopt and does here authorize and approve an ordinance relating to the resolution of certain disputes (as set forth therein), to be known as the "Big Sandy Arbitration Ordinance," which is hereby adopted and enacted as the law of the Tribe.

3. ENACTMENT OF SECURED TRANSACTIONS ORDINANCE.

The Tribal Council has considered and determined that it is in the best interests of the Tribe and its members, of the Entertainment Authority and of the various Tribal economic development projects, to adopt and does here authorize and approve an ordinance relating to the creation and perfection of security interests on the Tribe's Reservation or involving the Tribe or Authority (as set forth therein), to be known as the "Big Sandy Secured Transactions Ordinance," which is hereby adopted and enacted as the law of the Tribe.

4. GENERAL RATIFICATION AND AUTHORIZATION.

Confirmation of Authority. The Tribal Council has considered and determined that it is in the best interests of the Tribe and its members, of the Entertainment Authority and of the various Tribal economic development projects to, and does hereby grant, acknowledge and confirm, all authority necessary to the Chairperson of the Tribe or of the Entertainment Authority ("Authorized Persons"), or either of them, in the name and on behalf of the Tribe or the Entertainment Authority, as applicable, under the foregoing resolutions, to perform such further acts and deeds as may be necessary, convenient or appropriate, in the judgment of such persons, to carry out the transactions contemplated by, and the purposes and intent of, the foregoing resolutions.

5. REPEALER.


Any resolutions or other actions by the Tribe or any of its officers, employees, or agents, whether written or established by custom or tradition, that are in conflict with or inconsistent with the terms of this Resolution (other than any provision of the Constitution) are hereby to such extent repealed and annulled. This Resolution shall supersede any prior or currently existing resolutions or other actions of the Tribe (other

than any provision of the Constitution) that are contrary to the actions authorized or contemplated herein.

### CERTIFICATION

We, the undersigned members of the Tribal Council, do hereby certify that the foregoing Resolution was adopted at a special meeting duly called at which a quorum was present, noticed for and conducted on August 20, 2004, by a vote of 5 in favor 0 opposed and 0 abstaining.

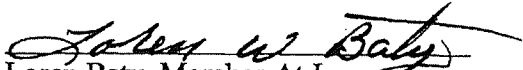
Executed on August 20, 2004.

  
\_\_\_\_\_  
Connie Lewis, Tribal Chairperson

  
\_\_\_\_\_  
Pearl Hutchins, Vice Chair

  
\_\_\_\_\_  
Karla Sylyas, Secretary

  
\_\_\_\_\_  
Phyllis Lewis, Treasurer

  
\_\_\_\_\_  
Loren Baty, Member At Large

# 2184993\_v4



BIG SANDY BAND OF WESTERN MONO INDIANS

Ordinance No. 0804-2

The Big Sandy Entertainment Authority Act of 2004

Article 1. Short Title

This Ordinance shall be known as the "Big Sandy Entertainment Authority Act of 2004."

Article 2. Purpose

The purpose of this Ordinance is to create a tribal governmental instrumentality of the Big Sandy Band of Western Mono Indians, a federally recognized Indian tribe (the "Tribe"). The instrumentality shall be known as the "Big Sandy Entertainment Authority" (the "Authority"), whose purpose is to exercise the Tribe's ownership and management of a tribal governmental casino and entertainment complex (the "Enterprise").

Article 3. Recitals

3.1 Unless otherwise stated or expressed, capitalized terms used herein are defined in Article 7.

3.2 The Tribe is a federally recognized Indian tribe, as recognized by the United States Department of the Interior.

3.3 The Tribe occupies the Big Sandy Rancheria (the "Rancheria") located in Fresno county, California, and exercises tribal governmental jurisdiction over all land within the exterior limits of the Rancheria and over off-reservation allotments held in trust by the United States Department of the Interior for the benefit of the Tribe or individual members of the Tribe.

3.4 The Tribe owns, manages and supervises its on-reservation Mono Wind Casino (the "Mono Wind"); a governmental casino operated pursuant to the federal Indian Gaming Regulatory Act (the "IGRA") and its tribal-state compact with the State of California (the "Compact").

3.5 The Tribe desires to develop a second tribal governmental casino and related facility, referred to herein as the "Enterprise." The Enterprise is intended to be an upscale tribal governmental casino, casino facility and entertainment complex, including a hotel, live-entertainment venue, restaurants, parking structures and related facilities and amenities.



3.6 The Tribe's governing body is the five member Tribal Council, formed pursuant to Article II of the Constitution of the Big Sandy Band of Western Mono Indians (the "Constitution").

Article 4. Findings and Declarations

4.1 Development of tribal governmental enterprises is vitally important to the economic self-sufficiency of the Tribe's government and governmental programs and to the general welfare of its members.

4.2 The creation of a tribal instrumentality will enhance the Tribe's ability to effectively and efficiently own, finance, develop, construct, operate and maintain the Enterprise. The Authority created by this Ordinance is intended to perform those and similar functions with regard to the Enterprise.

Article 5. Creation of the Authority; Allocation and Assignment

5.1 The Authority is hereby created as an unincorporated governmental instrumentality of the Tribe to own and operate the Enterprise on behalf of the Tribe. The Authority shall be subordinate to the Tribe and Tribal Council and governed in accordance with this Ordinance.

5.2 The Authority and its assets and activities shall possess and be entitled to all of the privileges and immunities of the Tribe, including the sovereign immunity of the Tribe, to the same extent as the Tribe itself.

5.3 The Authority and its assets and activities shall have the same privileges and immunities from federal, state, and local government taxation as the Tribe and its assets and activities. The Authority is not an entity separate from the Tribe for any federal or state taxing purposes.

5.4 The Authority shall exercise the Tribe's ownership and supervision of the Enterprise, including (i) owning and holding in the Authority's name all Enterprise Assets, (ii) directing Enterprise powers and activities, and (iii) limiting the liability of the Enterprise and recourse to the Enterprise Assets with respect to any obligations of the Tribe not associated with the Enterprise or authorized by the Authority Board to be incurred by the Tribe on behalf or for the benefit of the Enterprise.

5.5 On and after the Effective Date, the Tribal Council is directed to do all things necessary to allocate and assign to the Authority or to cause the Authority to take ownership of: (i) all Enterprise Assets constituting personal property; and (ii) all Enterprise Tribal Rights, which assets and rights shall be deemed owned by the Authority, subject to the powers of the Authority and the Authority Board as herein provided.

5.6 As between the Tribe and the Authority, all Enterprise Assets not constituting real property shall be held in the name of the Authority; provided that to the extent it shall be legally or otherwise necessary to do so the Tribe may hold such assets in the Tribe's name for the benefit of the Authority, in which case the Authority shall have the same rights of use and enjoyment of the asset as though the same were held in the name of the Authority, and no liens or other obligations, including any liens, obligations, attachments, expectations, judgments or the like of the Tribe, shall be imposed on or restrict or impair such assets without the Authority's consent.

5.7 On and after the Effective Date, except as the Authority Board may otherwise determine: (a) any and all employees, consultants, agents and attorneys of the Tribe providing service with respect to the Enterprise ("Providers") under any terms and conditions shall become Providers of the Authority upon the same terms and conditions. To the extent any of such Providers also provide services other than for the benefit of the Enterprise, such persons shall also be deemed to such extent to be employed by the Tribe, with a fair and reasonable allocation of costs of such persons (both direct and indirect) being made as between the Authority and the Tribe; (b) any and all obligations and responsibilities of the Tribe to perform under any Enterprise Obligations shall be deemed delegated to and assumed by the Authority, and the Authority shall be obligated to perform any obligations of the Tribe thereunder; and (c) all right, title and interest in and to any Enterprise Contract shall be allocated and owned by the Authority, and the Authority shall be obligated to perform any obligations of the Tribe thereunder.

5.8 Subject to any contrary requirement of federal law or the Compact, all Enterprise Contracts entered into after the Effective Date in the Tribe's interest shall be entered into in the name of the Authority, provided that to the extent it shall be legally impossible or impracticable for such Enterprise Contract to be entered into in the name of the Authority, it may be entered into solely in the name of the Tribe, or by both the Tribe and Authority, so long as the Tribe and all other parties to the contract shall in writing acknowledge that the contract inures to the benefit of and may enforced by and in the name of the Authority, to the same extent as though the Enterprise Contract were entered into in the name of the Authority.

5.9 Notwithstanding any other contract, term or agreement of the Tribe or Authority, no waiver of sovereign immunity by any Tribal Party with respect to any matter, dispute or claim shall ever permit or allow or be construed or interpreted to permit or allow any enforcement or recourse as against the Authority, the Enterprise or Enterprise Assets, and no obligation, whether arising from contract, agreement, tort or otherwise, of any Tribal Party shall ever constitute an obligation of the Authority, unless in each case the Authority shall by Official Action (as defined in 9.7) consent to such waiver or obligation in writing and such consent complies with all Applicable Law, including this Ordinance and the tribal Constitution. For purposes of this Section 5.10, the term "Tribal Party" shall mean

the Authority, the Tribe and any agency, division, subdivision, branch, authority, enterprise, board, department or similar instrumentality or entity of the Tribe.

Article 6. Rights, Powers and Immunities of the Authority

6.1 Any exercise by the Authority of any rights, powers, immunities or authority in accordance with this Ordinance shall constitute the exercise of a governmental function of the Tribe.

6.2 The Authority shall have the right to enjoy and exercise all Enterprise Tribal Rights.

6.3 Pursuant to Section 5.7 above and other applicable provisions of this Ordinance, the Authority shall have the right to enter into Enterprise Contracts and to incur Enterprise Obligations.

6.4 The Authority is hereby authorized to do any and all things necessary or desirable in connection with the financing, development, construction, ownership, lease, operation, management, maintenance and promotion of the Enterprise so as to further the governmental interests of the Tribe.

6.5 In order to further its goals, the Authority shall have the power in its own name, with respect to the Enterprise and Enterprise Assets, and the administrative needs of the Authority, and subject to the limits set forth herein to:

6.5.1 purchase, take, receive, lease, obtain by gift or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated;

6.5.2 sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets, including Enterprise Assets not constituting real property;

6.5.3 purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States, or of any other government, tribe, state, territory, governmental district or municipality, or of any instrumentality thereof;

6.5.4 make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the Authority may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income;

6.5.5 employ contractors, consultants, attorneys and accountants;

6.5.6 lend money for its purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

6.5.7 conduct its affairs, carry on its operations, hold property, have offices and exercise the powers granted by this Ordinance, within or without the Reservation boundaries;

6.5.8 hire, supervise and terminate employees, and appoint agents, of the Authority and define their duties and fix their compensation, provided that all employees shall be governed by the personnel policies of the Tribe;

6.5.9 make and alter by-laws, not inconsistent with this Ordinance, or with the laws, ordinances, and regulations of the Tribe and the United States, for the administration and regulation of the affairs of the Authority;

6.5.10 be an owner, promoter, partner, member, associate or manager of any partnership, joint venture, trust or other enterprise;

6.5.11 establish committees of the Authority Board, elect or appoint persons to the committees, and define their duties and fix their compensation in accordance with the personnel policies of the Tribe;

6.5.12 indemnify to the extent deemed necessary any director or officer or former director or officer, or employee or agent of the Authority; and have the power to indemnify any such person made a party to any proceeding by or in the right of the Authority by reason of the fact the person is or was a director, officer, employee or agent of the Authority against reasonable expenses actually incurred in connection with such proceeding if the person's conduct was in good faith and the person reasonably believed their conduct to be in the Authority's best interests or reasonably believed their conduct to be not opposed to the Authority's best interests. In the case of any criminal proceeding, the person must have had no reasonable cause to believe their conduct was unlawful. No indemnification shall be made pursuant to this provision in respect to any proceeding in which the person was adjudged to be liable to the Authority, or in respect to any proceeding, whether or not involving action in the person's official capacity, in which the person was adjudged to be liable on the basis that they personally received a benefit in money, property or services to which they were not legally entitled;

6.5.13 purchase and maintain insurance, including insurance on behalf of the Authority, the Tribe, any business or enterprise in which the Authority has any interest or participation, and of any person who is or was a director, officer, employee or agent of the Authority or serving at the request of the Authority in such a capacity against any liability asserted against the person and incurred in any such capacity or arising out of the person's status as such, whether or not the

Authority would have the power to otherwise indemnify the person against such liability under the provisions of this Ordinance;

6.5.14 open and maintain such deposit and securities accounts with banks, securities intermediaries and other financial institutions, whether located within or without of the State of California, and to deposit therein any or all revenues of the Enterprise; and

6.5.15 have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Authority is organized.

6.6 The Authority shall have no power to exercise any regulatory or legislative power.

6.7 Except for Enterprise Assets or with the consent of the Tribal Council, no activity of the Authority nor any indebtedness incurred by the Authority shall encumber, implicate or in any way involve any Tribal Asset, unless such Tribal Asset has been expressly assigned or leased in writing to the Authority along with a delegation of power necessary to so encumber or implicate it by Authority action, *provided* that assets acquired by the Authority pursuant to this Ordinance, although remaining assets of the Tribe, may be pledged, leased, transferred, assigned, encumbered or otherwise administered by the Authority in the ordinary course of Authority business unless the Authority is prohibited or restricted from doing so by this Ordinance or other Applicable Law.

Article 7. Definitions.

For purposes of this Ordinance, certain terms are defined in the subsections that follow. When not inconsistent with the context, words used in the present tense include the future, words in the singular include the plural, words in the plural include the singular, and words in one gender include the other gender. The word "shall" is always mandatory and not merely directory.

7.1 "Applicable Law" means, as applicable to any person and the particular matter in question, the Big Sandy Gaming Ordinance, the tribal-state compact entered into between the Tribe and the State of California and any other tribal, federal or state law, ordinance, rule, regulation, permit, license or certificate, and any and all present and future orders of courts and administrative bodies of competent jurisdiction, applicable to the Enterprise or this Agreement.

7.2 "Authority" when capitalized, means the Big Sandy Entertainment Authority created by this Ordinance.

7.3 "Authority Board" shall mean the board of directors of the Authority.

7.4 "Authority Project" shall mean any enterprise, business or other activity undertaken by the Authority under this Ordinance to further its purposes.

7.5 "Effective Date" means August 20, 2004.

7.6 "Enterprise" shall mean the new upscale Indian casino, casino facility, and gaming business and entertainment complex associated therewith, including any class II and class III gaming (as such terms are defined in IGRA) business and any activity or business incidental, related, complementary or similar thereto, or any business or activity that is a reasonable extension, development or expansion thereof or ancillary thereto, including without limitation any hotel, parking structure or parking related facility, or entertainment, transportation, recreation or other activity or business designed to promote, market, support, develop, construct or enhance the casino gaming business operated by or on behalf of a Tribal Party. "Enterprise" does not include the Mono Wind Casino or any business or activity incidental, related, complementary or similar thereto, as may be expanded, modified or relocated.

7.7 "Enterprise Assets" shall mean:

7.7.1 the Enterprise;

7.7.2 any and all real, mixed and personal property that is reflected on the balance sheet of the Enterprise; and

7.7.3 all tangible and intangible property owned by or on behalf of any Tribal Party that is associated with, or reasonably related and beneficial to, the Gaming Enterprise, including without limitation (i) all gaming, entertainment, restaurant and related equipment, (ii) all intellectual property, (iii) the books and records thereof and all office equipment and receptacles associated therewith, and (iv) all revenues of any Tribal Party derived from the Enterprise, exclusive of revenues distributed by the Authority to another Tribal Party for application to non-Enterprise purposes, *provided* that Enterprise Assets shall not include property that is not used in a trade, business or other commercial undertaking unless reported as an asset of the Authority in accordance with generally accepted accounting principles, and shall not include the Mono Wind Casino or any asset, business or activity incidental, related, complementary or similar thereto, as may be expanded, modified or relocated.

7.8 "Enterprise Contracts" shall mean all contracts or agreements entered into by any Tribal Party in connection with the Enterprise or the ownership of Enterprise Assets. Enterprise Contracts shall not include any Tribal-State gaming compact entered into between the Tribe and the State of California in accordance with IGRA or any guarantee of performance by the Authority of any Enterprise Contract.

7.9 "Enterprise Obligations" shall mean any obligation incurred by any Tribal Party in connection with the Enterprise, including any Obligations related thereto.

7.10 "Enterprise Tribal Rights" shall mean all rights of the Tribe or any affiliate to engage in gaming, as limited by the Big Sandy Gaming Ordinance and rules and regulations of the Big Sandy Gaming Commission, and the unrestricted right and license to have access to use and enjoy all real property, improvements to real property and interests in real property held by or in trust for any Tribal Party that constitute Enterprise Assets or which are necessary or useful for the ownership, operation and enjoyment by the Authority of the Enterprise.

7.11 "General Council" shall mean the General Council of the Tribe, as defined in the Constitution.

7.12 "Including" means including but not limited to.

7.13 "Licensed Gaming Establishment" means any business or establishment offering gaming on the Reservation, which is licensed to so operate by the Tribal Gaming Commission.

7.14 "Mono Wind Casino" means the Indian casino presently located on the Big Sandy Rancheria and which is owned, managed and supervised by the Tribe, and shall include any asset, equipment, business or activity incidental, related, complementary or similar thereto, as may be expanded, modified or relocated.

7.15 "Obligations" means any notes, bonds, interim certificates, debentures, mortgages or other evidences of indebtedness issued by the Authority under this Ordinance.

7.16 "Obligee" includes any holder of an Obligation, agent or trustee for any holder of any Obligation.

7.17 "Other Business" means any business, enterprise or activity that the Authority Board determines should be conducted by the Authority, which is related to or associated with a Licensed Gaming Establishment.

7.18 "Tribal Asset" means any tangible or intangible asset, thing, value, right, title or interest owned, held, controlled or possessed by the Tribe, and shall include but is not limited to the Mono Wind Casino as defined herein, any Tribal Entity, or Tribal member.

7.19 "Tribal Entity" means any entity created or owned by the Tribe for economic or governmental purposes and any entity which is controlled by the Tribal Council. An entity shall be deemed controlled by the Tribal Council if a majority of

persons serving on the body which governs the entity are chosen by or are required to be members of the Tribal Council.

7.20 "Tribal Gaming Commission" shall mean the gaming commission of the Tribe.

7.21 "Tribal Party" shall mean the Tribe and any person directly or indirectly controlled by the General Council, Tribal Council or Authority Board; "control," as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of that person, whether through the ownership of voting securities, by agreement or otherwise; *provided* that beneficial ownership of 10% or more of the voting securities of a person will be deemed to be control.

7.22 "Tribe" means the Big Sandy Band of Western Mono Indians.

#### Article 8. Authority Assets

The Authority's assets shall consist of all Enterprise Assets and all Enterprise Tribal Rights, together with whatever other assets it develops or acquires by other means as provided in this Ordinance, *provided* that such term does not include the Mono Wind Casino or Tribal Assets, unless such Tribal Asset has been specifically and expressly assigned, leased or granted to the Authority as provided hereunder.

#### Article 9. Authority Board

9.1 There is hereby established an Authority Board, the purpose of which is to carry out the duties and powers of the Authority as set forth in this Ordinance.

9.2 The Authority Board shall consist of five (5) members, except as it may be expanded in accordance with or by a majority vote of the Tribal Council: a chairperson, a vice-chairperson, a secretary, a treasurer, and one (1) member-at-large.

9.3 Initial Term. Upon the Effective Date hereof, the current five members of the Tribal Council (whose terms expire coincident with the Tribal Council elections of September 2004, unless re-elected) shall automatically be appointed as the five members of the Authority Board, and shall serve in such positions until and coincident with the September 2008 elections (the "Initial Term").



9.4 Regular Term. Upon expiration of the Initial Term (i.e., September 2008), Authority Board officers and members shall serve four (4) year terms, shall be appointed coincident with the results of the Tribal Council elections of that year, and shall retain their positions on the Authority Board even if the composition of the Tribal Council shall change at the subsequent Tribal Council elections. Officers and members may be appointed to successive terms.

9.5 No member of the Authority Board shall be liable to any creditor of the Authority by reason of his or her status as an Authority Board member, or by reason of acts done in the course of his or her official Authority Board duties.

9.6 A majority of the Authority Board shall constitute a quorum and may act for the Authority through resolutions ("Official Action"), provided all members of the board shall have received due notice of the meeting at which any Official Action took place. For these purposes 24 hours actual notice of a meeting to take place within a 25-mile radius of the Reservation shall be deemed reasonable notice and opportunity to attend. Any two members of the Authority Board, or the Board Chairperson, may call a special meeting, which may be in person or by telephonic conference.

9.7 Regular meetings of the Authority Board shall be held at least once per month. Meeting dates, times and places shall be set by Official Action. Notices of meetings shall be promptly filed with the board's secretary-treasurer and with the Tribal Council's secretary-treasurer, who shall post such notices in the same manner as notices are posted regarding Tribal Council meetings. Meetings at which Official Actions are taken shall be held on five days' written notice to each member of the Authority Board, provided that emergency meetings, so determined by Official Action, may be held on reasonable notice.

9.8 Meetings of the Authority Board shall be conducted in accordance with Robert's Rules of Order, provided that the Chairperson of the Authority Board shall be permitted to vote on any matter except where disqualified for a conflict of interest.

9.9 The Authority Board shall keep complete and accurate minutes of all meetings and records of all actions taken.

9.10 Members of the General Council may attend any meeting of the Authority Board, except those held in executive session. Executive sessions may be held with respect to consideration of legal advice and strategies, personnel matters, and any other matter in which debate or consideration could be detrimental to the best interests of the Tribe, provided that all Official Actions taken shall be in open session only.

Article 10. Operation of the Authority Board

10.1 The Authority Board shall keep full and accurate financial records, make written periodic reports and provide such reports to the Tribal Council, and shall submit a complete annual report, in written form, to the Tribal Council as required by the provisions of this Ordinance.

10.2 The members of the Authority Board may receive compensation for their services as set by the Tribal Council. Members of the Authority Board shall be reimbursed for actual expenses incurred in the discharge of their duties, including necessary travel expenses.

Article 11. Perpetual Succession

11.1 The Authority shall have perpetual succession in its name.

Article 12. Ability to Sue and Be Sued

12.1 The Authority, as a tribal governmental instrumentality, is immune from suit. Notwithstanding such immunity, the Authority is authorized, through Official Action and subject to the limitations herein, including Section 5.9, to agree by contract to sue and to be sued in its name, or to submit to arbitration or alternative dispute resolution regarding any controversy arising under, or upon, any contract, claim or obligation arising out of its activities under this Ordinance, and the Authority is further authorized, through Official Action, to agree by contract to waive any of its immunity from suit or other legal process and any or all rights it may have, on any terms or limitations agreed to by the Authority, to resolve disputes in a court or other forum of the Tribe, with enforcement arising from such waivers being permitted as against any Authority assets or Enterprise Assets to the extent not constituting real property and not in contravention of federal law. The Tribe shall not be liable for the debts or obligations of the Authority, and the Authority shall have no power to pledge or encumber the assets of the Tribe other than assets of the Authority not constituting real property. This action does not constitute a waiver of any immunity of the Tribe or a delegation to the Authority of the power to make any waiver of the immunity of the Tribe, except with respect to assets of the Authority and Gaming Enterprise Assets not constituting real property. The Authority's ability to sue and be sued and to waive its immunity from suit or other legal process shall at all times remain with the Authority Board to be granted by duly adopted resolution. Notwithstanding anything herein to the contrary, the grant of power herein to sue and to be sued shall not in and of itself constitute a waiver of immunity whatsoever. Any waiver of immunity by the Authority shall be in writing only, limited in scope to the express matters with which to which it is given, and as to the remedies and other conditions set forth therein.

12.2 Consistent with the foregoing and subject to its limitations, the Authority, by Official Action, shall have the authority to consent (i) to the exercise of jurisdiction over any suit or over the Authority by the state courts of the State of California or any other state, the federal courts sitting in any state, the tribal courts of the Tribe or any other Indian tribe, or the courts of any United States territory or foreign jurisdiction, and (ii) to arbitration or alternative dispute resolution. Such authority shall at all times remain with the Authority Board to be granted by Official Action.

12.3 Except as expressly provided in this Section 12.3, the Tribe by the adoption of this Ordinance and the establishment of the Authority is not waiving its sovereign immunity in any respect or consenting to the jurisdiction of any court, except to permit enforcement as against assets of the Authority and Gaming Enterprise Assets not constituting real property as permitted by this Ordinance. This section shall be strictly construed with a view toward protecting Tribal Assets from the reach of creditors and others, other than assets of the Authority and Gaming Enterprise Assets not constituting real property.

Article 13. Obligations

13.1 The Authority may obtain financing and issue Obligations from time to time in its discretion for any of its purposes and may also refinance and issue refunding obligations for the purpose of paying or retiring Obligations as it may determine, including Obligations on which the principal, interest and premium, if any, are payable:

13.1.1 exclusively from the income and revenues of Authority Projects financed with the proceeds of such Obligations, or with such income and revenues together with a grant or subsidy from the Federal, State or Tribal government in aid of such establishment or development;

13.1.2 exclusively from the income and revenues of certain designated Authority Projects, as designated in writing, whether or not they were financed in whole or in part with the proceeds of such Obligations; or

13.1.3 from its revenues generally.

13.2 Any Obligation issued in accordance with Section 13.1, may be additionally secured by a pledge of any revenues of or any other property of the Authority, including Enterprise Assets not constituting real property.

13.3 Neither the members of the Authority Board nor any person executing the Obligations shall be liable personally on the Obligations by reason of issuance thereof.

13.4 The Obligations of the Authority shall not be a debt of the Tribe and the Obligations shall so state on their face, except that the Obligations may be enforceable against Enterprise Assets not constituting real property.

13.5 Obligations shall be issued and sold in the following manner:

13.5.1 Obligations of the Authority shall be authorized by a resolution adopted by the vote of a majority of all of the members of the Authority Board ("Authorizing Resolution") and may be issued in one or more series.

13.5.2 The Obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either couponed or registered, carry such conversion and registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption, with or without premium, as the Authorizing Resolution may provide.

13.5.3 The Obligations may be sold at public or private sale at such price or prices as the Authorizing Resolution may provide.

13.5.4 In the case of members of the Authority Board whose signatures appear on any of the Obligations cease to be members before the delivery of such Obligations, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the members had remained in office until delivery.

13.5.5 Obligations of the Authority may be in negotiable form.

13.5.6 In connection with the issuance of Obligations and to secure the payment of such Obligations, the Authority, subject to the limitations in this Ordinance, may:

a. to which its rights then pledge all or any part of the gross fees or revenues of the Authority exist or may thereafter come into existence;

b. provide for the powers and duties of Obligees and limit their liabilities, and provide the terms and conditions on which such Obligees may enforce any covenant or rights securing or relating to the Obligations;

c. subject to exception with respect to revenues of the Authority used for governmental programs, covenant against pledging all or any part of the fees and revenues of the Authority or against mortgaging or encumbering any or all of the real or personal property of the Authority to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property;

d. covenant with respect to limitations on the right of the Authority to sell, lease or otherwise dispose of any Authority Project or any part thereof;

e. covenant as to what other or additional debts or obligations may be incurred by it;

f. covenant as to the Obligations to be issued and as to the issuance of such Obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof;

g. provide for the replacement of lost, destroyed or mutilated Obligations;

h. covenant against extending time for the payment of its Obligations or interest thereon;

i. redeem the Obligations and covenant for their redemption and provide for the terms and conditions thereof;

j. covenant concerning any fees to be charged in the operation of the Enterprise or any Enterprise Assets or Other Businesses, the amount to be raised each year or other period of time by such fees and other revenues, and as to the use and disposition to be made thereof;

k. create or authorize the creation of special funds for monies held for construction, development or operating costs, debt service, reserve or other purposes, and covenant as to the use and disposition of the monies held in such funds;

l. prescribe the procedure, if any, by which the terms of any contract with holders of Obligations may be amended or abrogated, the proportion of outstanding Obligations the holders of which must consent thereto, and the manner in which such consent may be given;

m. covenant as to the use, maintenance and replacement of the real and personal property of the Authority, the insurance to be carried thereon and the use and disposition of insurance proceeds;

n. covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation;

o. covenant and prescribe as to events of default and terms and conditions upon which any or all of its Obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;

p. vest in any Obligees or any proportion of them the right to enforce the payment of Obligations or any covenant securing or relating to the Obligations;

q. exercise all or a part or a combination of the powers granted in this section;

r. make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character;

s. make any covenants and do any acts and things necessary or convenient or desirable in order to secure its Obligations, or, in the absolute discretion of the Authority, tending to make the Obligations more marketable although the covenants, acts or things are not enumerated in this section; and

t. pledge, mortgage or grant a security interest in all or any part of the assets of the Authority and all Enterprise Assets not constituting real property.

Article 14. Reports of the Authority Board

14.1 The Authority Board shall prepare and submit to the Tribal Council, and shall submit for the records of the Tribe, within thirty (30) days after the close of each quarter a quarterly report, signed by the Authority Board Chairperson, showing:

14.1.1 a summary of the quarter's activities;

14.1.2 the financial condition of the Authority and of each Authority Project and Other Business;

14.1.3 any significant problems and accomplishments;

14.1.4 plans for the following quarter; and

14.1.5 such other information as the Authority Board or the Tribal Council deems pertinent.

14.2 The Authority Board shall prepare and submit to the General Tribal, and shall submit for the records of the Tribe, within forty-five (45) days after the close of each fiscal year an annual report, signed by the Authority Board Chairperson, showing:

14.2.1 a summary of the year's activities;

14.2.2 the complete financial condition of the Authority and of each Authority Project including a detailed report outlining the operations of the Authority and of each Authority Project;

14.2.3 any significant problems and accomplishments;

14.2.4 plans for the following year; and

14.2.5 such other information as the Authority Board or the Tribal Council deems pertinent.

Article 15. Finances and Accounting

15.1 The fiscal year of the Authority shall be the fiscal year of the Tribe.

15.2 The quarters for Authority reporting purposes shall be as follows: October 1 through December 31; January 1 through March 31; April 1 through June 30; and July 1 through September 30.

15.3 The Authority Board shall establish and install as to the Authority and each Authority Project in which it has any control, an accounting system that is (i) in conformity with generally accepted accounting principles applicable to the Authority or project, and (ii) necessary and advisable, in the reasonable discretion of the Authority Board in order to manage the assets of the Authority. Such accounting system shall insure the availability of information as may be necessary to comply with federal, state and Tribal regulatory requirements.

15.4 The accounts and records of the Authority and each of its Authority Projects shall be audited at the close of each fiscal year and as otherwise required by law. Copies of such audit reports shall be furnished to the Tribal Council.

15.5 The books, records and property of the Authority shall be available for inspection at all reasonable times by authorized representatives of the Tribe.

Article 16. Indemnification of Officers, Employees and Board Members of the Authority

16.1 The Authority shall indemnify any present or former officer or employee of the Authority or member of the Authority Board, and any person who may have served at its request as an officer or employee of the Authority or member of the Authority Board, against reasonable expenses actually and necessarily incurred by that person in connection with the defense of any action, suit or proceeding in which that person is made a party by reason of being or having been such officer or employee of the Authority or member of the Authority Board except in relation to matters as to which that person shall be adjudged in such action, suit or proceeding to be liable for gross negligence or intentional misconduct in the

performance of duty, or except in relation to matters in which that person was acting beyond the scope of their employment. The Authority shall also reimburse any officer or employee of the Authority or member of the Authority Board reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the Authority Board other than the members of the Authority Board involved in the matter in controversy (whether or not a quorum exists), that it is in the best interest of the Authority and the Tribe that such settlement be made and that such officer or employee of the Authority or member of the Authority Board was not guilty of gross negligence or intentional misconduct, or acting beyond the scope of their employment. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such officer or employee of the Authority or member of the Authority Board may be entitled to receive.

Article 17. Personal Interest

17.1 During his or her tenure and for one year thereafter, no officer or employee of the Authority, or any member of the Authority Board, or any other public official who exercises any responsibilities or functions with respect to an Authority Project or Other Business, shall voluntarily acquire any interest, direct or indirect, in any Authority Project or in any property included or planned to be included in an Authority Project or in any contract or proposed contract relating to any Authority Project. If any member of the Authority Board or officer or employee of the Authority involuntarily acquires any such interest, or voluntarily or involuntarily, acquired any such interest prior to appointment or employment as a board member, officer or employee, the board member, officer or employee, in any such event, shall immediately disclose his or her interest in writing to the Authority, such disclosure shall be entered in the minutes of the Authority, and such board member, officer or employee shall have sixty (60) days to dispose of such interest. In the interim, the member, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he or she has any such interest. This section shall not be applicable to the acquisition of any interest in Obligations of the Authority issued in connection with any Authority Project or Other Business, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with any Authority Project or Other Business or to act as trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a governmental agency, or to membership on the Authority Board as provided in this Ordinance. The Authority Board may, by resolution, waive any of the provisions of this Section.

Article 18. Bond

18.1 The Authority Board, on behalf of and in the name of the Authority, shall obtain or provide for the obtaining of adequate fidelity bond coverage of its officers, agents or employees handling cash or authorized to sign checks or certify vouchers.