
MEMORANDUM

TO: TRIBAL COUNCIL
FROM: MIKE SCANLON
SUBJECT: UPDATE
DATE: AUGUST 4, 2003

As per the phone conversation between Vice Chairman Gonzales-Lyons and Chris Cathcart on Friday, August 1, 2003, I wanted to provide you with this brief update and answer to your questions regarding section 10.8 of the compact. As you know, section 10.8 addresses the environmental provisions of the compact.

The council has expressed some concerns about the Governor's possible course of action concerning the environmental provisions that include some binding arbitration or other legal action. Given the activities to date, the efforts made on behalf of the tribe and the Governor's lack of attention on this matter, a court would be very hard pressed to find that the Tribe has not acted in good faith. As a result, we believe that the likelihood of the Governor taking any action such as those described above is very slim. The section does, however, provide an avenue for the Tribe to sue the Governor after 1/1/04 if it feels he has not acted in good faith. The court must consider the actions of both parties in making its ruling.

There is a danger in 10.8, however. The section states that if the sides have not resolved their differences with regard to the environmental provisions, the Tribe would be forced to cease all construction as of 1/1/05. For example, if the new casino in Palm Springs were not finished by January 2005, the Tribe would be forced to stop work on the facility if an agreement has not been reached by then.

The surest defense against this kind of action is a formal letter to the Governor expressing your opinion that he has not properly opened the negotiations under 10.8. That is, the Governor did not properly invoke 10.8 since he has not identified how that section has been inadequate with respect to the Agua Caliente's projects specifically. As you know, we have drafted a letter expressing that position officially and have attached it for your review. The council has several options in this regard. The first is to send the letter immediately to the Governor and go on record with its position. The risk in sending a letter like that now is that it may anger the state and its negotiators at a time when they are not tremendously focused on the issue anyway. The second option is to wait until the state is ready to negotiate again, probably sometime after the recall election, and go on record at that time.

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We are happy to discuss the issue at anytime, but in summary, it is very clear that the Tribe has acted in good faith and the concern about any repercussions or law suits from the Governor should be assuaged.

Additionally, I would like to remind the council that we are closely monitoring the electoral situation in California. As we mentioned to you in our updates last month, the council has several options with regard to the upcoming election and its ideological support of a particular candidate(s). We are happy to provide you with any counsel on the matter as we approach the filing deadlines this week.

As always, please feel free to contact me or Chris Cathcart at [REDACTED].