

Stand Up For California!
“Citizens making a difference”

www.standupca.org

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Jan. 5, 2012

Jacob Appelsmith
Senior Advisor to the Governor
Office of the Governor
State Capitol
Sacramento, CA. 95814
Jacob.appelsmith@gov.ca.gov

RE: CEQA and Gubernatorial Concurrence

Dear Mr. Appelsmith:

Stand Up For California! writes today concerning the lack of environmental review and analysis in accordance with state standards for both the Enterprise Rancheria and North Fork Rancheria gaming facility proposals. This lack of environmental review and analysis in accordance with state law raises an interesting question concerning the gubernatorial concurrence function under IGRA. The question for the Governor is, what environmental documents that meet a state standard will a governor have to rely upon to protect the integrity of his decision-making process to concur, not concur or take no action.

The Secretary of the Interior has relied upon a National Environmental Impact Act review (NEPA). However, our experience with a NEPA review is that it is only a process that identifies affected parties and many of the potential significant impacts. It has been our experience that the Pacific Regional Office of the Bureau of Indian Affairs (BIA) ignores the potential impacts and harm to the surrounding community. Rather, the focus of the BIA is on the impacts to the land within the boundaries of the proposed fee-to-trust acquisition and its benefits to the tribe, not on the off-reservation impacts or *harm to the surrounding community*, the subject of the Secretary’s required finding and of the gubernatorial concurrence. The Governor has witnessed in recent time that the BIA will even issue a Finding of No Significant Impact (FONSI) in total disregard of the NEPA statute.¹

¹ *State of California v Pacific Regional Director Bureau of Indian Affairs* (Tule River Indian Tribe fee to trust – off reservation)

Additionally, there is a serious concern about the quality of the NEPA review conducted and the role these two Tribes and their gaming investors may have played in the environmental review process. It was brought to my attention that Analytical Environmental Services (AES) has performed a number of EIS's for tribes seeking to develop casinos in California. AES is responsible for both the Enterprise and North Fork casino EIS's. Attorney Guy Martin of Perkins and Coie Law Firm in Washington D.C., working for clients involved in the opposition to the Cowlitz Tribe's off-reservation casino in La Center, Washington State wrote recently to Assistant Secretary Larry Echo Hawk regarding the information he has received from his Freedom of Information Act (FOIA) request. This request required that he litigate in order to get the BIA response:

"The correspondence indicates that the Tribe was very actively, and inappropriately, involved in the preparation of the EIS by AES, far beyond the role legally permissible for a cooperating agency. The documents also clearly reveal that BIA has largely abdicated its supervisory role over the review process, leaving all of the drafting and the vast majority of the major decision-making to the Tribe and AES. BIA's failure to control the process has enabled the Tribe to impermissibly influence the FEIS such that the document cannot be used for federal decision-making and violated the requirements of the NEPA and the Obama Administration policy for open, transparent and fair decision-making."

Stand Up For California! is currently waiting on a reply to a FOIA request sent on November 15, 2011. The Washington, D.C. office responded immediately and directed the Pacific Regional office to provide the requested information, although the January 3 due date has already passed.

The Secretary of the Interior in his letters dated September 2, 2011 to the Governor requesting his concurrence referenced the local Memorandums of Understanding (MOU's) between the Tribes and county governments of Yuba² and Madera.³ However, neither county processed a California Environmental Quality Act (CEQA) review of the proposed projects. Both counties⁴ entered into negotiation, approval and legislative

² *Yuba County* Supervisors remain divided on the terms of the MOU as evidence by recent letters, op-eds and comment during Board of Supervisor meetings.

³ The *Madera County* North Fork MOU contemplates all aspects of a potential CEQA challenge and openly denies that the proposed casino is a "*project that will change the human environment*". Clearly, the development of a gaming facility of the size and scope proposed by North Fork and Station Casinos will create a significant change in the human environment. It will accelerate commercial growth in an area that is currently agricultural. It will impact state and local transportation systems, the water supply, air quality, night sky, county and city services and a plethora of local and state social programs. Without doubt, the MOU does provide significant funding to the County to mitigate impacts. But there was never a CEQA review to identify the impacts or the actual cost of the required mitigations. This MOU is written with the intent to exempt the County from a CEQA review. The MOU is written with the intent of being a political tool to expedite a fee to trust process for an off reservation casino. But can any county or city or state agency simply recite time and again in a document that CEQA does not apply in order to overcome state law?

⁴ The counties of Yuba and Madera are a "local agency," as defined in Government Code section 54951, and the Board of Supervisors is a "legislative body" within the meaning of Government Code section

actions for MOU's *without* a CEQA review. The State of California participated in the NEPA review of the Enterprise Rancheria but made no comment in the North Fork NEPA review, why?

The Secretary of the Interior's determination must reflect the process for land acquisition specific for gaming and verify completion of the requirements to consult with the state, state agencies, other local political subdivisions and affected tribal governments of the proposed off-reservation casino. However, *the nature of a governor's concurrence* is very different. The governor of a state has a constitutional obligation to ensure that state laws are enforced and that gambling policy ensures the welfare of the public and the good operation of government free from corruption.

- Is the proposed off reservation casino consistent with state gaming policy?
- Has California environmental law been adhered too?
- Have the local governments entered into intergovernmental agreements in a manner that is consistent with state environmental law, is fair, objective and transparent?

This year the State Legislature passed and Governor Brown signed legislation to ratify two tribal state compacts.⁵ Both Assembly Bills cite the existing environmental law; CEQA which requires... "a lead agency to prepare or cause to be prepared and certify completion of an environmental impact report on a project as defined, that it proposes to carry out or approve that may have a significant effect on the environment as defined, or to adopt a negative declaration of its finds that the project will not have that effect."

Both bills then exempted from CEQA the execution of an intergovernmental agreement"between a tribe and a county or city government negotiated pursuant to the express authority of, or as expressly referenced in the tribal state gaming compact ratified by this section" (Emphasis added)

It is thus clear the State Legislature and the Governor believe the law requires that county and city governments must abide by CEQA when negotiating MOU's with tribal governments outside of a tribal state compact. The legislation only provides an exemption from CEQA when a tribal state compact incorporates a CEQA-like environmental review process, in deference to tribal sovereignty.

The question remains for the Governor: "What environmental documents meeting "state standards" are there to rely upon to protect the integrity of his decision-making process to concur, not concur or take no action?" The Indian Gaming

54952. A tribal government is not defined in Government Code, rather tribal governments are domestic dependent sovereigns recognized under the plenary power of Congress.

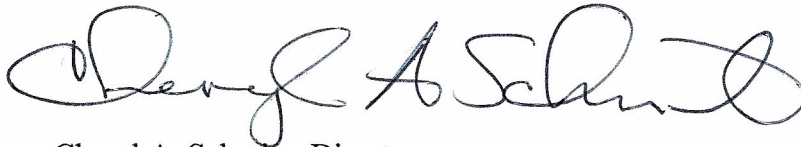
⁵ On June 13, 2011, Assembly Bill 1020 authored by Assembly Member Chesbro to ratify the Upper Lake Rancheria tribal state compact and on October 2, 2011, Assembly Bill 1418 authored by Assembly Member Hall to ratify the Pinoleville Rancheria tribal state compact.

Regulatory Act (IGRA) places no standards on the governor of a state in the exercise of his executive authority. Nevertheless, Governor Brown is faced with two very controversial proposals that create new sovereign authority over land that has been under the authority of the State of California since 1850. Without doubt, this creates a significant change in the human environment - including impacts in areas affecting social well-being, law enforcement, air quality, surface water resources, groundwater resources, water quality, sewage, traffic, urbanization, jurisdiction, and lost tax revenue - for the sole purpose of a casino that will undermine our State's current gaming policy.

The Governor may wish to consider and request from the California Environmental Protection Agency or from California Transportation Agency a full CEQA review - or request a study of the environmental impacts from these affected state agencies. The Governor further may wish to consider a request that the Legal Affairs Secretary seek an environmental study of the impacts surrounding each proposed project and a review of the adequacy of the local MOU's. Finally, and far from least, the Governor may wish to conduct his own polling of local widespread support for off reservation casinos or the impact of the nature of the development of new sovereign territory out of the regulatory authority of the State as well as the potential outcome of a Proposition 1A challenge.

I hope you find this helpful and useful information regarding the lack of environmental documents addressing state standards, and I look forward to discussing this with you at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl A. Schmit". The signature is fluid and cursive, with a large initial "C" and "S".

Cheryl A. Schmit - Director

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