

Stand Up For California!

“Citizens making a difference”

www.standupca.org

P. O. Box 355
Penryn, CA. 95663

August 4, 2013

Honorable Sally Jewell
Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Re: North Fork Compact’s Violation of the Clean Air Act

Dear Secretary Jewell,

Stand Up for California is a statewide organization with a focus on gambling issues affecting California, including tribal gaming. We understand that either the State of California or the North Fork Rancheria of Mono Indians has recently submitted a tribal-state gaming compact to the Secretary of the Department of Interior for approval pursuant to 25 U.S.C. §2710(d)(8)(A). The compact authorizes the North Fork Tribe to conduct class III gaming on a 305-acre parcel in Madera County, California, which the Secretary transferred into trust for the benefit of the North Fork Tribe in February 2013. The Secretary agreed to transfer the land into trust based on the proposed project’s compliance with all federal laws and regulations. Recently, however, the Bureau of Indian Affairs has admitted to violating the requirements of the federal Clean Air Act in the development and approval process. Consequently, Stand Up for California! urges that the Secretary disapprove the compact.

Under the Indian Regulatory Gaming Act, the Secretary can respond to the submission of a compact in one of three ways: approve the compact, disapprove the compact, or take no action on the compact. 25 U.S.C. §2710(d)(8)(A)-(B). If the Secretary takes no action, the compact is deemed approved by operation of law 45 days after submission. 25 U.S.C. §2710(d)(8)(C). “The Secretary may disapprove a compact . . . if such compact violates any . . . provision of Federal law that does not relate to jurisdiction over gaming on Indian lands.” 25 U.S.C. §2710(d)(8)(B)(ii).

Section 176 of the federal Clean Air Act, 42 U.S.C. §7506, provides that “[n]o department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan after it has been approved or promulgated under section 7410 of this title. . . . *The assurance of conformity to such an implementation plan shall be an affirmative responsibility of the head of such*

department, agency, or instrumentality.” 42 U.S.C. §7506(c)(1) (emphasis added). Regulations adopted by the U.S. Environmental Protection Agency (“EPA”) require that when a federal agency makes a conformity determination, it must provide a 30-day notice to the EPA Regional Office, State and local air quality agencies, any federally-recognized Indian tribal government in the nonattainment or maintenance area, and affected federal land managers. The notice must describe the proposed action and the federal agency’s draft conformity determination. 40 C.F.R. §93.155(a). Within 30 days of making the final conformity determination, the Federal agency must also provide notice to the same designated parties. 40 C.F.R. §93.155(b).

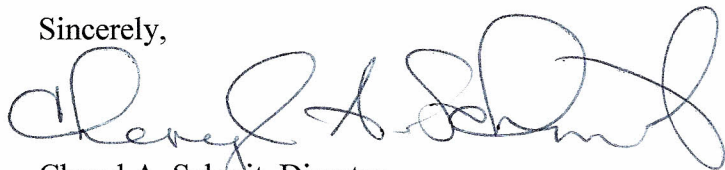
On Wednesday, July 31, 2013, the Department of Justice informed attorneys for Stand Up! that the BIA cannot demonstrate that it complied with these notice requirements. I enclose for your information a copy of the Declaration of Kevin Bearquiver, Deputy Regional Director for the BIA – Pacific Regional Office, attesting to this fact. In his declaration made under penalty of perjury, Mr. Bearquiver states that after an exhaustive search “[t]he BIA-PRO has been unable to locate the required notices for the Draft and Final Conformity Determinations under 40 C.F.R. § 93.155(a) and (b).” [Exhibit A, ¶ 11.] Further, Mr. Bearquiver concedes that “it is impossible for the BIA-PRO to determine whether the documents were sent to the required parties . . .” [Exhibit A, ¶13.] Yet the fee-to-trust transfer of the land for the purpose of developing a class III gaming facility was approved despite the violations.

Class III gaming must be disapproved unless and until the Department complies with the Clean Air Act. As the head of the department, you have the “**affirmative responsibility**” to ensure compliance with the Clean Air Act’s conformity determination before Class III gaming is allowed at the Madera site. 42 U.S.C. §7506(c)(1). Thus, we urge you to take the only appropriate and lawful action, which is to deny the compact submitted to you by the North Fork Tribe and the State of California.

Finally, approving the compact at this time or allowing the 45 days to expire is premature. While the Secretary can disapprove only for violations of federal law, which have clearly occurred in this case, other factors should also guide the Secretary in deciding to exercise such discretion. Legal challenges against the proposed casino are currently pending in both federal and state court. *Stand Up for California et al. v. United States Dept. of Interior*, United States District Court for the District of Columbia, Case No. 1:12-cv-02039-BAH; *Stand Up for California! and Barbara Leach v. Brown*, Superior Court of the State of California, County of Madera, Case No. MCV062850. In the state case, the question of whether the Governor of California had the authority under California law to concur in the Secretary’s two-part determination to take the land into trust has already been through one round of briefing and oral argument. Should the court determine that the Governor’s concurrence was invalid, a provision in the compact itself provides that the compact will be null and void. Stand Up for California is also in the process of submitting the compact to a state-wide referendum to invalidate the compact because it violates the California Constitution.

Approving the compact will only put the Secretary's imprimatur on a process accomplished in violation of federal law. The Secretary has the duty under the Clean Air Act to correct this problem rather than further exacerbate it. Stand Up for California!, therefore, urges the Secretary to disapprove the compact.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cheryl A. Schmit". The signature is fluid and cursive, with a large loop at the end.

Cheryl A. Schmit, Director

Stand Up For California

916 663 3207

cherylschmit@att.net

www.standup.org

Cc: United States Senator Diane Feinstein