



CALIFORNIA COASTAL PROTECTION NETWORK
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Mr. Vince Armenta, Chairman
Santa Ynez Band of Chumash Indians
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Subject: Comments on Environmental Evaluation for the Proposed Casino Expansion

The California Coastal Protection Network (CCPN) is a 501c3 dedicated to coastal protection issues, with a particular focus on adverse precedents that have the potential for statewide significance. It is with this in mind that CCPN submits these comments on the Environmental Evaluation (EE) for the Proposed Casino Expansion.

While there are many flaws within this ill-prepared document, CCPN's comments will focus on water supply issues and the dramatic inconsistencies between this document, the Environmental Assessment (EA) for Camp 4, the Santa Ynez Water Conservation District's Assessment of the existing overdraft condition of the Upland Basin, as well as the Summer 2013 Hastings Law Review article entitled '*Reservation and Quantification of Indian Groundwater Rights in California*' authored by Joanna Meldrum.

The Environmental Evaluation asserts that the Santa Ynez Upland Groundwater Basin is in surplus, when it is well documented that the Upland Basin is in *overdraft* and has been for many years.

The EE states that the Upland Basin will be the source of groundwater for the project, and on page 3-2-10, goes on to state that the Upland Basin is in a condition of surplus. It is truly difficult to comprehend how the Band included this statement in the EE based on the following:

- The 2013 EA prepared for the Fee-to-Trust application the Band has submitted for Camp 4, a 1433-acre parcel that completely overlies the Upland Basin and which intends to obtain its additional water supply by pumping from the Upland Water Basin, clearly states that the Upland Basin is in ***overdraft*** condition (EA-pp. 3-11, 4-5.) Despite this assessment, the EA wrongly concluded that the significant additional pumping anticipated for Camp 4 Alternatives

A or B would not adversely affect the overdraft condition of the basin.

- An October 7, 2013 comment letter on the Camp 4 EA sent on behalf of the Santa Ynez River Conservation District, Improvement District #1 by Brownstein, Hyatt, Farber and Schreck verified that the Uplands Basin was in a state of **overdraft** and refuted the EA's conclusion that the Upland Basin can sustain additional pumping to the degree proposed by the stated and anticipated development for Camp 4. The letter also explains that the purchase of supplemental imported water to counteract the overdraft condition of the Basin cannot be used to argue that the Upland Basin is in a state of surplus; it is not. The District even points to evidence in the EA's own studies showing a steady decline in water levels in Well 32R1.
- A 2013 Hastings Law Review Journal article, entitled '*Reservation and Quantification of Indian Groundwater Rights in California*', which laid out a theoretical strategy for the Santa Ynez Band of Mission Indians to attempt to expand their groundwater rights in the Santa Ynez Valley, unequivocally stated that the Upland Basin was in a condition of overdraft and cited as evidence a Santa Barbara LAFCO exhibit from 2011 that confirmed that the Upland Basin was in overdraft:
http://www.sblafco.org/docs/2011/02/Item10_Exhibit-B.pdf.
The Hastings article also concluded that any attempt by the Band to expand its water rights under these conditions is likely to be controversial based on the scarce availability of water in the area.
- The Band's omission of the SB LAFCO reference in the Hastings article is particularly egregious given that the citations the Band chose to include in the EE to justify its conclusion that the Upland Basin is in surplus end in 2009, while the SB LAFCO report was published in 2011 and the Hastings Law Review article was published in 2013. Given that the article was written expressly with the Band in mind and, perhaps, at its behest, it seems particularly odd that that this information was excluded from the EE.
- Further, the studies cited in the Brownstein, et. al. letter for the Santa Ynez Water Conservation District, Improvement District #1, specifically cite data included in the Thirty-Fifth Annual Engineering and Survey Report of Water Supply Conditions of the Santa Ynez River Water Conservation District 2012-2013 (dated

April 19th, 2013) that reports an annual overdraft condition of -2400 acre feet for 2012-2013 and an accumulated overdraft of -41,800 acre-feet from 2001-2013.

The EE inappropriately asserts that the *Winters* doctrine applies to both surface and groundwater rights.

- The EE, at page 3.2-6, refers to the reserved rights to surface and groundwater held by the Chumash under the *Winters* doctrine. Specifically, the EE states: *The Tribe also retains federally reserved or “Winters Rights” to the creek as well as to groundwater under the Reservation. (italics mine)*
- However, there has never been a determination that the waters beneath the reservation are subject to the *Winters* doctrine, nor has a determination been made that use of such water – intended for irrigable fields – is appropriate for a casino and hotel.
- As the Band well knows, and as the Hasting Law Journal article repeatedly points out, the *Winters* doctrine has not been held in California to apply to groundwater, an important consideration in the application of the doctrine. The application of the *Winters* Doctrine to groundwater in CA, especially given the difficult drought conditions the state is currently experiencing, would set an extreme adverse precedent statewide without the proper judicial review. Therefore, this statement should be removed completely absent an adjudication of the Basin rights.

The EE does not account for the potential cumulative impacts of increased groundwater pumping for the Casino Expansion in addition to the possibility of increased groundwater pumping for the proposed development at Camp 4.

- The Band attempts to silo the potential additional pumping of the Upland Basin for the Casino expansion from the additional pumping for the proposed Camp 4 development. Cumulative impacts must be assessed for potential foreseeable developments, thus the impacts on the water supply and the combined impacts of both projects on the Upland Basin must be viewed together and in context.
- Given that the Bureau of Indian Affairs (BIA) has rarely refused to take parcels into Trust in California, it can be reasonably assumed that the BIA may affirm the Band’s Fee-to-Trust application for Camp 4. Given that likelihood, it is incumbent on the Band to

evaluate the cumulative impacts on the Upland Basin for both the Casino Expansion as well as the potential proposed development on Camp 4. In terms of Camp 4, it will also be necessary to include all the additional water uses that were omitted in the EA, including frost protection, water quality, residential outdoor water demand, etc.

Conclusion

This is the first environmental document to be prepared by the Band in many years, and is subject only to the oversight of the Band. It is clear that the Band has the financial resources to produce a credible, balanced document that is thoroughly researched, grounded in fact, and that does not obscure readily available data. This document does everyone who has to review it an injustice by failing to meet that standard.

Sincerely,

A handwritten signature in black ink that reads "Susan Jordan" with a decorative flourish at the end.

Susan Jordan