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September 19, 2001

VIA FACSIMILE AND FIRST CLASS MAIL

Gary Qualset, C.P.A.
Acting Chief Fiscal Officer
California Gambling Control Commission
300 Capitol Mall - Suite 300
Sacramento, California 95825-6013

Re: Commission Meeting of September 19, 2001 -
Agenda Item No. 4 (Chicken Ranch Rancheria)

Dear Mr. Qualset:

This letter is respectfully submitted on behalf of the County of Tuolumne with a request that it be accepted as formal comment to the Commission concerning Agenda Item No. 4 at the Commission meeting set for September 19, 2001. The agenda item is identified as follows:

Revenue Sharing Trust Fund Additional Supplemental Report to the Legislature:

Discuss technical adjustment to allow for distribution to an additional eligible Non-Compact Tribe (Chicken Ranch Rancheria).

The Chicken Ranch Rancheria of Me-Wuk Indians is located within Tuolumne County and we feel that this tribe's past conduct raises serious questions as to whether there should be any consideration of its request for a distribution until, and unless, the tribe has addressed serious issues which have long existed between the tribe and the County.

First, we would note that the tribe in fact has a Compact with the State of California, which was developed, negotiated and approved pursuant to the requirements of the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.* It may be that the tribe does not have the number of gaming devices which would exempt it from distribution under the revenue sharing trust fund, but the classification of the Chicken Ranch Rancheria as a Non-Compact Tribe is simply not correct.

This tribe has a history of failing to comply with applicable regulatory and statutory requirements. Indeed, the current technical adjustment is proposed because of tribal failure to respond to reasonable

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requests for information from the Commission. Specifically, as of July 31, 2001, the tribe affirmatively had failed to reply to the Commission's March 22, 2001, letter seeking information confirming its eligibility to participate in the revenue share distribution. This was a simple request which could have easily been answered, but the tribe did not respond. And now, the tribe apparently decided to comply only after learning that it would not receive a distribution until -- and unless -- it did so.

This constitutes an arrogant refusal to respond, and we have seen the same stubbornness in the County's attempts to deal with the Rancheria's governing body. For example, Section 10.8.2 of the Compact to which the Tribe is a party provides as follows:

Sec. 10.8.2. (a) Prior to commencement of a Project, the Tribe will:

- (1) Inform the public of the planned Project;
- (2) Take appropriate actions to determine whether the project will have any significant adverse impacts on the off-Reservation environment;
- (3) For the purpose of receiving and responding to comments, submit all environmental impact reports concerning the proposed Project to the State Clearinghouse in the Office of Planning and Research and the county board of supervisors, for distribution to the public;
- (4) Consult with the board of supervisors of the county or counties within which the Tribe's Gaming Facility is located, or is to be located, and, if the Gaming Facility is within a city, with the city council, and if requested by the board or council, as the case may be, meet with them to discuss mitigation of significant adverse off-Reservation environmental impacts;
- (5) Meet with and provide an opportunity for comment by those members of the public residing off-Reservation within the vicinity of the Gaming Facility such as might be adversely affected by proposed Project.

(b) During the conduct of a Project, the Tribe shall:

- (1) Keep the board or council, as the case may be, and potentially affected members of the public apprized of the project's progress, and
- (2) Make good faith efforts to mitigate any and all such significant adverse off-Reservation environmental impacts.

(c) As used in Section 10.8.1 and this Section 10.8.2, the term "Project" means any expansion or any significant renovation or modification of an existing Gaming Facility, or any significant excavation, construction, or development associated with the Tribe's Gaming Facility or proposed Gaming Facility and the term "environmental impact reports" means any environmental assessment, environmental impact report, or environmental impact statement, as the case may be.

[Emphasis supplied.]

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The County has sought discussions with the tribe pursuant to these provisions, and the response has been a refusal to confer on any of the matters outlined therein. The only response has been that "there is no obligation to talk to the County." Yet, many of the tribal activities over the past year clearly are "projects" as that term is defined in the Compact.

We see compliance with the Compact as a fundamental requirement imposed on both the State and the tribe. *And the Commission is charged with insuring that there is compliance.*

With this, we propose that the Commission delay any disbursement of trust fund money to the Chicken Ranch Rancheria until it has complied with both the letter and the spirit of the Compact. This would include the development of a working relationship with the County which would be similar to that currently enjoyed between Tuolumne County and the Tuolumne Rancheria Band of Me-Wuk Indians. As you probably are aware, this relationship is memorialized in a Memorandum of Understanding dated January 16, 2001. We should note that the Tuolumne Rancheria MOU has been described by gaming industry observers as memorializing a model working relationship between a tribe and local government. Pursuant to that MOU, the County today works closely with the Tuolumne Rancheria to insure that the parties' mutual interests are addressed and protected at all times.

Williamson Act Avoidance. The County has no relationship with the Chicken Ranch Rancheria similar to that which exists with the Tuolumne Rancheria since, as noted above, this tribe has refused to even meet with the County on issues arising under Compact Section 10.8.2. Illustrative of this is the situation which arose earlier this year when the tribe acquired land adjacent to the Rancheria and immediately proposed the development of a septic system with numerous sewage lines into the newly-acquired property. Since the adjacent lands are not in trust, the tribe's actions on the septic project were subject to the Williamson Act (California Government Code §§ 51230-51239), but it refused to comply with that law.

Compact "Project" Without Confering. During the year 2000, in total derogation of Compact Section 10.8.2, the tribe ignored all requirements to confer with local government and interested parties and installed a new roof on its gaming facility -- an activity which unquestionably was a "project" under the Compact. In essence, the tribe arrogated to itself the right to act outside of the requirements of a document it *entered into* without regard to the requirements thereof.

Ignoring Other Issues of Legitimate Concern. There are many other problems which have arisen at the Rancheria and which the Tribe has failed to address in a responsible manner, including issues arising under the California Environmental Quality Act ("CEQA"). For these reasons, we feel that (a) this tribe has not met even the lowest threshold requirements of the Compact and (b) the Commission should not sanction the tribe's past and current conduct by approving a technical adjustment which would authorize trust fund payments to it.

Finally, we close with a reminder that the County of Tuolumne has a history of working fairly and honorably with its Native American population, as is reflected in the Tuolumne Rancheria MOU and close

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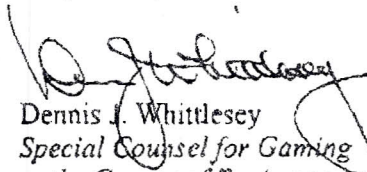
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relationship enjoyed between the County and the tribe. The County of Tuolumne is prepared to do the same with the Chicken Ranch Rancheria Band of Me-Wuk Indians, when and if the tribe is willing to accept its obligations imposed by both the Compact and state law. To date it has not done so, and its continuing lawlessness should not be rewarded with any special consideration from this Commission. Again, we urge that no action be taken on Agenda Item No. 4 until, and unless, the tribe has corrected its past deficiencies and resolved its problems with the County and other local interests.

The issues are important for all of California, and we believe that our comments are important for the future of Indian gaming within the state. For this reason, we appreciate the Commission's consideration of these comments and it is emphasized that we are available to respond to any requests for further information on this matter.

Respectfully submitted,



Dennis J. Whittlesey
*Special Counsel for Gaming
to the County of Tuolumne*

cc (via facsimile and first class mail)
Gregory J. Oliver, Esquire
County Counsel
County of Tuolumne, California

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