No. 15-17189

UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

NO CASINO IN PLYMOUTH
and CITIZENS EQUAL RIGHTS ALLIANCE

Plaintiffs-Appellants

v.

SALLY JEWELL, Secretary; KEVIN WASHBURN, Assistant-Secretary; DONALD LAVERDURE, Acting Assistant-Secretary; BUREAU OF INDIAN AFFAIRS; AMY DUTSCHKE, BIA Reg. Dir.; JOHN RYDZIK, BIA Env. Div.; PAULA HART, OIG Chair; TRACIE STEVENS, NIGC Chair; NATIONAL INDIAN GAMING COMMISSION; and U.S. DEPARTMENT OF INTERIOR

Defendants-Appellees

and

IONE BAND OF MIWOK INDIANS

Intervener-Appellee

On Appeal from the United States District Court
For the Eastern District of California
Case No. 2:12-cv-01748 TLN-CMK

APPELLANTS' PETITION FOR REHEARING OR REHEARING *EN BANC*

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INTRODUCTION AND RULE 35 AND 40 STATEMENT

Pursuant to Federal Rules of Appellate Procedure 35 and 40, Appellants, No Casino in Plymouth and Citizens Equal Rights Alliance (collectively referred to as NCIP), petitions for rehearing or rehearing *en banc* of the panel's October 6, 2017 memorandum disposition remanding this case to the district court with directions to vacate its judgment, including its finding that NCIP has standing, and to dismiss for lack of subject-matter jurisdiction. (Docket Entry (DE) 67; copy attached.)

The Supreme Court in *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561 (1992), held that, in an Administrative Procedure Act (5 U.S.C. §§ 501 et seq.; APA) case, standing can be established "by affidavit or other evidence." The issue presented by this petition is what "other evidence" can be considered by the court.

Consistent with *Lujan*, the district court, held: "In consideration of the arguments made by the parties, the Court finds Plaintiffs have standing to sue." *No Casino in Plymouth v. Jewell*, 136 F.Supp.3d 1166, 1178 n. 7 (ED Ca. 2015). The "other evidence" then before the district court included the administrative record, the allegations in the complaint and the unopposed statement of undisputed facts.

The panel reversed and, contrary to *Lujan,* held only sworn declarations could be considered to evaluate NCIP's standing. For the reasons outlined below, the panel's decision is wrong and should be reheard by either the panel or *en banc*.

Rule 40 request that the panel rehear its memorandum disposition:

NCIP requests that the panel withdraw its memorandum disposition, and:

1. Reevaluate NCIP's standing *de novo* based on all the evidence in the record including the: (a) administrative record, (b) allegations in the complaint, (c) unopposed statements of undisputed facts, and (d) Dueward W. Cranford II's declaration (DE 66; copy attached).
2. Reverse and correct its mistaken conclusion that the administrative record is not admissible to establish NCIP's standing because it does not meet the requirements of Federal Rule of Civil Procedure 56.
3. Reverse its mistaken conclusion that the statement of undisputed facts "cannot be considered for purposes of summary judgement" because they were not "stipulated to by Defendants or sworn under oath."

Rule 35 request that this court rehear this case *en banc* and *de novo*:

Additionally, because the panel's memorandum disposition involves jurisdictional and standing questions of "exceptional importance" and because there is "an overriding need for national uniformity" with respect to these important issues, NCIP requests rehearing *en banc* for the following reasons:

1. The panel's conclusion that only sworn declarations can be used as evidence to establish standing in an APA case is contrary to: (a) the

Supreme Court decision in *Lujan,* that in response to a motion for summary judgment, standing can be established "by affidavit or other evidence" and (b) Rule 56(c) which requires reference to "materials in the record" including documents and admissions as well as affidavits. (See *NW Motorcycle Ass'n v. USDA,* 18 F.3d 1468, 1475-1476 (9th Cir. 1994) (unverified comments in the administrative record are evidence).)

2. The panel's conclusion that only evidence is "sworn to under oath" can be used to establish standing in an APA case is unnecessarily restrictive and contrary to Supreme Court decisions establishing standing under the APA "is not meant to be especially demanding" and "any benefit of the doubt goes to the plaintiff." *Match-E-Be-Nash-She-Wish Band v. Patchak,* 132 S. Ct. 2199, 2210 (2012) (*Patchak*). A more "lenient approach" is appropriate under the APA. *Lexmark International v. Static Control Components,* 134 S.Ct. 1377, 1389 (2014) (*Lexmark*).
3. The panel's conclusion that the administrative record cannot be used as evidence to establish standing conflicts with published opinions of the D.C. Circuit. See *Sierra Club v. EPA,* 292 F.3d 895, 900 (D.C. Cir. 2002) (In most APA cases standing is self-evident; "no evidence outside the administrative record is necessary for the court to be sure of it") See also *Fund for Animals v. Norton,* 322 F.3d 728, 733-734 (D.C. Cir. 2003).

STATEMENT OF THE CASE

The focus of this lawsuit is a Record of Decision (ROD) issued by David Laverdure, an employee of the Department of Interior, in May 2012, which purports to place 228.04 acres of land into trust for the Ione Band. The purpose of the proposed transfer is for the construction of a Las Vegas style Indian casino in Amador County, California. NCIP challenged the ROD under the APA and alleged the Ione Band was not federally recognized in 1934 and therefore not entitled to the proposed fee-to-trust under the Indian Reorganization Act as interpreted by the Supreme Court's majority opinion in *Carcieri v. Salazar*, 129 S.Ct. 1058 (2009).

NCIP filed their First Amended Complaint on October 1, 2012. (ECF 10.) The named Defendants included the Department of Interior, the National Indian Gaming Commission, and employees of those federal agencies – including Mr. Laverdure. NCIP specifically alleged they have standing under the APA and the Supreme Court's decision in *Patchak.* (ECF 10 at 7, ¶ 11.)

On September 30, 2015, in a 34 page published decision on the merits, the district court denied NCIP's motion, for summary judgment. (ECF 100.) But, after considering the arguments of the parties, and over the evidentiary objections of Defendants the district court also held "Plaintiffs have standing to sue." (Id. at 12, n. 7.) NCIP appealed the denial of their dispositive motions. (ECF 102.)

On appeal, NCIP argued the ROD signed by Mr. Laverdure was void because he lacked the authority to take land into trust under the IRA. Only the Secretary of Interior has been authorized by Congress to take land into trust under the IRA. (25 U.S.C. § 5108.) Mr. Laverdure's attempted approval of the ROD violates the Appointments Clause of the Constitution. US Const. Art. II, § 2, cl. 2.

NCIP also argued the Ione Band was not entitled to IRA benefits because it was not recognized in 1934 or pursuant to 25 CFR Part 83. In fact, in 1992, at the request of the federal defendants, the district court in held in *Ione Band v. Burris* (USDC ED Cal. No. CIV-S-90-0993) that the Ione Band had not complied with Part 83 and was never federally recognized. The court entered judgment against the Ione Band. The Ione Band did not appeal and the judgment is final. (See ECF 72-2; copy attached.) Neither Defendants nor the Ione Band can collaterally attack it now. *Big Lagoon Rancheria v. California*, 789 F.3d 947. 953-954 (9th Cir. 2015).

Finally NCIP argued the district court correctly determined that they have standing to sue and challenge the federal approval of the ROD (DE 40 at 29-32.)

Defendants did not file a cross-appeal of the court's denial of their objections and, therefore, waived any objection they may have had to the evidence. *Morley Construction v. Maryland Casualty*, 300 U.S. 185, 191 (1937). However, in their answering brief, Defendants claimed "the district court erred" when it

found NCIP had standing to sue "without individual affidavits." (DE 26 at 27.) The panel agreed with Defendants and held, without a sworn declaration, the evidence was insufficient to support the district court's finding that NCIP have standing.

EVIDENCE DEMONSTRATING NCIP'S STANDING

A. The Administrative Record (2003-2011).

NCIP are two community groups with members who reside and own property or businesses in Amador County that will be directly impacted by the adverse environmental, traffic, and water quantity and quality consequences of the proposed casino. NCIP and its members actively participated in the administrative process and submitted numerous comments outlining their personal interests and community concerns between 2003, the date of the fee-to-trust application, and 2012, the date of the ROD. These comments were included in the administrative record filed by Defendants, without objection, in May, 2013. (ECF 31; DE 41 at SER 1096-1204.) Copies of the pertinent comments are attached. Some of the key comments that demonstrate the standing of NCIP and its members include:

- November 5, 2003 letter to the "Counselor to the Secretary of Interior" from Elida Malick as "a founding member of No Casino in Plymouth, homeowner, parent, small business owner" opposing the fee-to-trust land acquisition in favor of the Ione Band.

- October 19, 2006 letter to the Associate Solicitor from Elida Malick, on behalf of NCIP as a "representational organization" of citizens of Plymouth and the surrounding communities "who will be so deeply affected by his actions," and asking him to withdraw his opinion that the Plymouth site is restored land eligible for gaming under the Indian Gaming Regulatory Act.
- October 2006 letter to the Associate Solicitor from Butch Cranford, a member of both NCIP community groups, questioning his opinion that the land in Plymouth is restored Indian lands eligible for gaming under the Indian Gaming Regulatory Act.
- July 2, 2008 letter to the BIA Regional Director from NCIP commenting on the EIS for the "Proposed 228.04-Acre Fee-to-Trust Land Transfer." At the beginning of the letter, there is a two page detailed "Description of No Casino in Plymouth" outlining the interests of NCIP and its members that will be adversely affected by the casino.
- February 4, 2009 letter to the Secretary of Interior from NCIP, "a grassroots organization bringing the voice of the citizens of Plymouth, the surrounding communities and indeed throughout Amador County," opposing the proposed casino project.

NCIP submits that its standing is "self-evident" from all the attached comments.

B. Allegations in the First Amended Complaint (2012).

NCIP alleged that they are non-profit corporations with members who "reside" and "own homes and businesses near the areas included in the ROD" which will be adversely affected by a casino in Plymouth. (ECF 10; ¶¶13 & 14.) NCIP alleged their "interest in the environmental and economic well-being of Plymouth, Amador County and . . . California are among the interests that must be considered . . . before land is placed into trust" and used for a casino under 25 CFR Part 151. (ECF 10; ¶ 92.) NCIP alleged the casino will threaten their "small, rural community with among other things: increase in traffic congestion and safety on rural roads in the area, increase in air pollution, increase in water pollution, overuse of limited water resources used by all residents in the area for drinking water and irrigation and potential increase in crime." (ECF 10; ¶ 93.) And NCIP alleged the EIS "fails to adequately address the concerns of the local communities." (ECF 10; ¶¶ 97 & 98.)

C. Unopposed Statements of Undisputed Facts (2014-2015).

On February 17, 2015, NCIP filed an opposition to Defendants' cross-motion for summary judgment and, as required by Local Rule (LR) 260(b), NCIP filed a separate Statement of Undisputed Facts (ECF 93-1; copy attached) including:

- NCIP are separate non-profit 501(c)(4) corporations with members who live, own homes and/or operate businesses in and around the fee-to-trust areas in the ROD and the proposed casino. (ECF 93-1, 9 & 10.)
- NCIP and their members have an interest in the environmental and economic well-being of Plymouth, Amador County and California that must be considered before land is placed into trust. (ECF 93-1, 66.)
- The proposed casino will threaten NCIP members' homes, businesses and community with "increase in traffic congestion and safety on rural roads in the area, increase in air pollution, increase in water pollution, overuse of limited water resources used by all residents in the area for drinking water and irrigation and potential increase in crime." (ECF 93-1, 67.)

Defendants did not oppose these statements. Nor did they offer any evidence contesting NCIP's standing. Thus Defendants are "deemed to have admitted the validity of the facts contained in the [movant's (NCIP's)] Statement." *Martinez v. Columbia Sportswear,* 859 F. Supp. 2d 1174, 1178 (ED Cal. 2012).

D. Declaration of Dueward W. Cranford II (2017).

On July 26 NCIP filed the Declaration of Dueward W. Cranford II with this Court. (DE 66.) Mr. Cranford is a leading member of both NCIP groups, a resident of Amador County, and a property owner near Plymouth. (¶ 7.) His declaration

was offered in response to questions from the panel at the July 14, 2017 hearing. Mr. Cranford confirmed NCIP's "comments in the administrative record accurately detail our many concerns related to the Ione Band's proposed casino and fee to trust application from 2003 [when the application was submitted] to 2012 [when the lawsuit was filed] and to the present day." (¶ 1.) And he declared: "A Las Vegas style casino of the magnitude proposed by the unrecognized, never terminated, and not restored Ione Band will destroy the quiet foothill lifestyle enjoyed by the residents of Plymouth and surrounding communities and will adversely impact families and local businesses in and around Plymouth." (¶ 19.)

REASONS FOR GRANTING THE PETITION FOR REHEARING

A. The evidence, when reviewed *de novo*, establishes that NCIP and its members have standing under the APA to challenge the federal approval of the fee-to-trust transfer for an Indian casino in Plymouth.

The evidence in the record demonstrates NCIP, and its members, meet the requirements for both constitutional and prudential standing under the APA to challenge the federal approval of the fee-to-trust transfer of land to build a large Indian casino in their small, rural community in Amador County. *Ass'n of Public Agency Customers v. Bonneville Power Adm.,* 733 F.3d 939, 949-955 (9th Cir. 2013). As outlined below, more than one member of NCIP has "suffered sufficient injury to satisfy the 'case or controversy' requirement of Article III" of the

Constitution. And, as confirmed by the Supreme Court in *Patchak,* the members of NCIP are in the "zone of interests of interests" protected by the Indian Reorganization Act, thereby meeting the requirements for prudential standing.

First, the record establishes at least two members and founders of NCIP, Elida Malick and Dueward W. Cranford, have standing to sue in their own right. Ms. Malick wrote several letters to the Secretary of Interior, as "a founding member of No Casino in Plymouth" and as a "homeowner, parent, small business owner" opposing the fee-to-trust land acquisition in favor of the Ione Band to construct a casino. (SER 1097-1104.) In one letter, written "on behalf of the organization No Casino in Plymouth [and] their many individual members" Ms. Malick concludes "it would be an environmental catastrophe to introduce a loud, bright, late night, traffic generating, water sucking, sewage spewing casino into a rural city like Plymouth." (SER 1168-1169.) Mr. Cranford confirmed these and all NCIP comments in the administrative record in his declaration. (DE 66.) Mr. Cranford is a member of both NCIP groups and a resident and property owner who declared the proposed "Las Vegas style casino" will "destroy" his interests and their community. There is no question Mr. Cranford and Ms. Malick (as well as other members of both NCIP groups) have standing and could sue and challenge the 2012 ROD in their own right.

Second, NCIP's and their members' prudential standing was confirmed by the Supreme Court five years ago in *Patchak*. There the Supreme Court held, based only on allegations in the complaint, residents and property owners (like NCIP and its members) directly affected by the economic, land use and environmental impacts of a federal approval of a fee-to-trust transfers for a casino are within the zone of interests protected by the Indian Reorganization Act. 25 U.S.C. § 5108. Thus NCIP and their members have standing under the APA to challenge the approval of the trust transfer for the construction of a Las Vegas style casino in Amador County, California. This is especially true since the Supreme Court held that establishing standing under the APA "is not meant to be especially demanding" and "the benefit of any doubt goes to the plaintiff." *Patchak,* 132 S. Ct. at 2210.

B. The panel's opinion that only sworn declarations can be used to establish standing is unduly restrictive and is contrary to the "lenient approach" mandated by the Supreme Court in *Lexmark International.*

Under the APA, there is standing when one has suffered a legal wrong because of agency action or has been adversely affected by said action. 5 U.S.C. § 702. Establishing standing under the APA "is not meant to be especially demanding" *Patchak,* 132 S. Ct. at 2210 quoting *Clarke v. Securities Industries Assn.,* 479 U.S. 388, 399 (1987). And any doubt should be resolved in favor of the Plaintiff. Id. After summarizing these "generous review provisions of the APA," the Supreme Court held this "lenient approach is an appropriate means of preserving the

flexibility of the APA's omnibus judicial-review provision, which permits suits for violations of numerous statutes of varying character that do not themselves include causes of action for judicial review." *Lexmark,* 134 S.Ct.at 1389 (emphasis added).

Instead of taking a lenient approach and resolving doubts in favor of NCIP, the panel applied restrictive and inapplicable evidentiary rules to preclude consideration of the administrative record and the statement of undisputed facts. The panel also ignored other evidence that should have been considered.

The panel's conclusion that the administrative record could not be used as evidence of standing because it "does not meet the requirements of Federal Rule of Civil Procedure 56" is incorrect. Rule 56(c) specifically provides, in part, that a motion for summary judgment must may be supported "by citing to particular parts of record." And, although not a perfect fit, the summary judgment procedures outlined in Rule 56 are considered a good vehicle for litigating an APA challenge because they allow references to the administrative record. See *Occidental Engineering Co. v. INS,* 753 F.2d 766, 769-770 (9th Cir. 1985). See also *Northwest Motorcycle Association v. USDA,* 18 F.3d 1468, 1472-1476 (9th Cir. 1994) (unverified comments in the administrative record are evidence). Furthermore, in most APA cases standing is self-evident from the record; "no evidence outside the administrative record is necessary for the court to be sure of it." *Sierra Club v. EPA,* 292 F.3d 895, 900 (D.C. Cir. 2002).

Likewise, the panel's conclusion that NCIP's statements of undisputed facts offered in opposition to Defendants' motion for summary judgment cannot be used as evidence to establish standing because they "were not stipulated to by Defendants or sworn under oath" is not correct. They are undisputed admissions.

There is no requirement that statements of undisputed facts be sworn under oath or comply with 28 U.S.C. § 1746. Instead such statements are signed and certified by counsel before filing. (LR 131 and Fed. R. Civ. Proc. 11(b).). Furthermore, by signing the statement of undisputed facts, counsel certified "to the best of [his] knowledge, information and belief" the "factual contentions [in the statement] have evidentiary support." Rule 11(b)(3). The statement of undisputed facts were properly certified and considered by the district court.

Also Defendants did not oppose NCIP's statement of undisputed facts or offer contrary evidence disputing NCIP's standing. Consequently, Defendants were "deemed to have admitted the validity of the facts contained in the [movant's (NCIP's)] Statement." *Martinez v. Columbia Sportswear,* 859 F. Supp. 2d at 1178 quoting the United States Supreme Court in *Beard v. Banks,* 548 U.S. 521, 527 (2006). See also *Simmons v. Navajo County, Ariz.,* 609 F.3d 1011, 1017 (9th Cir. 2010) (non-moving party had obligation to comply with local rules to list genuine issues). The unopposed statements of fact are "admissions" by Defendants and were properly considered by the district court under Rule 56(c).

Finally the panel did not address the allegations in NCIP's complaint or that, based on similar allegations, the Supreme Court in *Patchak* found standing. Nor did the panel discuss the Cranford declaration which confirmed his and NCIP's comments in the administrative record. NCIP requests that the Court review all the evidence *de novo* and affirm the district court's finding that NCIP have standing.

C. The panel's opinion that the administrative record cannot be used as evidence to establish standing is in direct conflict with published decisions of the District of Columbia Circuit Court of Appeals.

Circuit Rule 35-1 provides, in part, that a petition for rehearing *en banc* is appropriate "[w]hen the opinion of a panel directly conflicts with an existing opinion by another court of appeals and substantially affects a rule of national application in which there is there is an overriding need for national uniformity."

The panel's conclusion that the administrative record is not admissible evidence to establish standing is in direct conflict with existing published opinions in the D.C. Circuit Court of Appeals. For example, in *Sierra Club v. EPA,* 292 F.3d at 900, the court held: "In many if not most [APA] cases the petitioner's standing to seek review of an administrative action is self-evident; no evidence outside the administrative record is necessary for the court to be sure of it." In such circumstances, "there should be 'little question that the action or the inaction has caused him injury, and that a judgment preventing or requiring the action will

redress it.'" Id. quoting *Lujan*, 504 U.S. at 561. See *Fund for Animals v. Norton*, 322 F.3d at 733-734 (Parties are not required "to file evidentiary submissions in support of standing in every case. To the contrary" standing is usually "self-evident" from the record) and *Waukesha v. EPA*, 320 F.3d 228, 233-234 (D.C. Cir. 2003) (evidence in administrative record, not disputed by EPA, is sufficient to establish standing).

Under the test applied in the D.C. Circuit, NCIP's standing is self-evident from the administrative record, especially when coupled with the allegations in the complaint and the unopposed statement of undisputed facts. Furthermore, in response to the panel's concerns, NCIP's and its members' comments in the administrative record were confirmed by Mr. Cranford's declaration. (DE 66.)

The panel did not find NCIP lacked standing. Instead the panel held the district court could not rely on the administrative record, or other evidence, because it was not sworn to under oath. Contrary to *Lujan*, the panel held only sworn affidavits could be considered. Therefore, according to the panel, there was no evidence to support the district court's finding. The panel's conclusions are wrong as a matter of law and, based on *Patchak*, unnecessarily restrictive.

And if not reversed, the panel's opinion will create an unnecessary conflict with published opinions of the D.C. Circuit which, given its location, has jurisdiction

and venue over more federal agencies and APA cases than any other circuit. Indeed, because of the federal agencies involved, this case could have been filed in either this Circuit or the D.C. Circuit. The APA rules of evidence with respect to standing vis-à-vis final agency actions by the same federal agencies should not vary with the venue or the circuit. The panel's decision should be reversed to insure there is uniformity with D.C. Circuit opinions that the administrative record is admissible to establish standing.[1]

CONCLUSION

For the forgoing reasons, NCIP requests that the panel rehear this case, or that the Circuit rehear this case *en banc*, and find *de novo* that NCIP has standing.

Dated: November 20, 2017.

Respectfully submitted,

/s/ Kenneth R. Williams

KENNETH R. WILLIAMS
Attorney for Plaintiffs-Appellants

[1] The fact that the panel's decision was an unpublished memorandum does not diminish this potential circuit conflict. Unpublished memorandum can be cited in this Circuit for claim or issue preclusion purposes. Ninth Circuit Rule 36-3(c)(i). And they may be cited "in order to demonstrate a conflict among opinions." Ninth Circuit Rule 36-3(c)(iii). Furthermore, the D.C. Circuit Rules apparently allows the citation of unpublished dispositions from other circuits "as precedent." D.C. Circuit Rule 32.1(b) citing Fed. R. App. Proc. 32.1.

ATTACHMENT 1 – MEMORANDUM DISPOSITION (DE No. 67)

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 6 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NO CASINO IN PLYMOUTH; and CITIZENS EQUAL RIGHTS ALLIANCE,

Plaintiffs-Appellants,

v.

RYAN K. ZINKE, Secretary, US Department of the Interior; U.S. DEPARTMENT OF THE INTERIOR; KEVIN K. WASHBURN, Assistant Secretary for Indian Affairs; AMY DUTSCHKE, BIA Director; JOHN RYDZIK, Chief, Division of Environmental, Cultural Resources Management and Safety / Bureau of Indian Affairs; PAULA L. HART, Chairwoman of the Office of Indian Gaming; JONODEV CHAUDHURI, Acting Chairman of the National Indian Gaming Commission,

Defendants-Appellees,

and

IONE BAND OF MIWOK INDIANS,

No. 15-17189

D.C. No. 2:12-cv-01748-TLN-CMK

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Intervenor-Defendant-
Appellee.

Appeal from the United States District Court
for the Eastern District of California
Troy L. Nunley, District Judge, Presiding

Argued and Submitted July 14, 2017
San Francisco, California

Before: GRABER and FRIEDLAND, Circuit Judges, and FOGEL,** District Judge.

Plaintiffs No Casino in Plymouth and Citizens Equal Rights Alliance challenge the Department of the Interior's 2012 decision to take certain lands into trust for the benefit of the Ione Band of Miwok Indians. Reviewing de novo, La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest, 624 F.3d 1083, 1087 (9th Cir. 2010), we conclude that neither Plaintiff has met its burden of showing that it has organizational standing.

For an entity that sues on behalf of its members to establish that it has organizational standing, it must show that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to vindicate are germane to the organization's purpose; and (c) neither the claim asserted nor the relief

** The Honorable Jeremy D. Fogel, United States District Judge for the Northern District of California, sitting by designation.

requested requires the participation of individual members in the lawsuit." Ass'n of Pub. Agency Customers v. Bonneville Power Admin., 733 F.3d 939, 950 n.19 (9th Cir. 2013) (internal quotation marks omitted). Here, neither Plaintiff has "'set forth' by affidavit or other evidence 'specific facts'" to show that any of its members would have had standing to sue in his or her own right at the time the complaint was filed. See Lujan v. Defs. of Wildlife, 504 U.S. 555, 561 (1992) (holding that, in order to oppose summary judgment successfully, a plaintiff "must 'set forth' by affidavit or other evidence 'specific facts,' which for purposes of . . . summary judgment motion will be taken to be true" (citation omitted)). The "undisputed facts" cited by Plaintiffs were not stipulated to by Defendants or sworn to under oath, nor did they comply with 28 U.S.C. § 1746; accordingly, they cannot be considered for purposes of summary judgment. United States v. Ritchie, 342 F.3d 903, 909 (9th Cir. 2003). And the evidence contained in the administrative record, even if it can be considered for other purposes, is not admissible to establish Plaintiffs' standing, because it does not meet the requirements of Federal Rule of Civil Procedure 56. See Lujan, 504 U.S. at 561 (holding that, because standing is "an indispensable part of the plaintiff's case, each element [of standing] must be supported in the same way as any other matter

on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation").

Accordingly, we vacate the district court's entry of judgment for Defendants and remand with instructions to dismiss this action for lack of subject-matter jurisdiction.

VACATED and REMANDED. Costs on appeal awarded to Defendants-Appellees.

ATTACHMENT 2 – CRANFORD DECLARATION (DE No. 66)

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July 25, 2017

Ms. Molly C. Dwyer,
Ninth Circuit Court of Appeals for the Ninth Circuit
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San Francisco, CA 94103

Re: *No Casino in Plymouth, et al. v. Zinke et al.* Case No. 15-17189
Citation of Supplemental Authority, Fed. Rule App. Proc. 28(j)
(Oral argument held on July 14, 2017.)

Dear Ms. Dwyer:

Please bring this letter to the attention of the judges on the panel that heard this appeal on July 14, 2017, including: Judges Graber, Friedland, and Fogel.

In their reply brief, Appellants provided a LEXIS citation for the case of *Mackinac Tribe v. Jewell,* 2016 U.S. App. Lexis 13140 (D.C. Cir. July 19, 2016). (Reply p. 29.) The official cite for that case is 829 F.3d 754 (D.C. Cir. 2016).

Also, during oral argument, the Court asked several questions regarding the status and interest of the Appellants, NCIP and CERA. Attached is a Declaration by Mr. Cranford, a member of both groups, responding to the Court's questions.

Please let me know if there are any questions in this regard. Thank you.

Respectfully submitted,

/s/ Kenneth R. Williams

Kenneth R. Williams
Attorney for Appellants

DECLARATION OF DUEWARD W. CRANFORD II

I Dueward W. Cranford II, also known as Butch Cranford, declare that:

1. I am over 18 years old, in good health and competent to make this declaration. I was present during the oral argument before the Ninth Circuit Court of Appeals on July 14, 2017, and heard the questions of the Court as to whether the administrative record accurately reflected Appellants interests and standing when this lawsuit was filed in 2012. Our comments in the administrative record accurately detail our many concerns related to the Ione Band's proposed casino and fee to trust application from 2003 to 2012 and to the present day.

2. I am a founding member of the local community group known as No Casino in Plymouth (NCIP). NCIP is a small grassroots non-profit community organization with members and supporters throughout Amador County. Dr. Elida A. Malik, one of the other key commentators, is also a founding member of NCIP. Other members directly affected by the proposed Las Vegas style casino, and who participated in preparing the comments in the administrative record include: Jon Colburn, Dick Minnis, Walt Dimmers, Pat Henry, and Arlene Reeves.

3. I am also a member, director and researcher for the national group Citizens Equal Rights Alliance (CERA). CERA is a non-profit group that believes in equal rights and defends the Constitutional rights of all American citizens, including Native American citizens. And, when appropriate, as in this case, CERA assists and joins local groups in litigation with potential national importance. CERA has organized and held educational conferences on fee to trust and federal Indian policy in communities throughout the country. I have spoken at several of these conferences on fee to trust, the Indian Reorganization Act (IRA), and the Indian Gaming Regulatory Act (IGRA). I organized a CERA fee to trust conference for the Plymouth and Amador community in September 2014.

4. NCIP and CERA, on behalf of their members, including myself, have been actively involved since 2003 in protecting our communities by opposing the efforts of an unrecognized group of Indians that includes a few who live near the town of Ione (15 miles away) while the majority live further away (25-40 miles) in Sacramento and San Joaquin Counties to build a Las Vegas style casino on 223 acres of private property in the small rural foothill community of Plymouth.

5. I have been one of the lead representatives of both groups in this campaign for fairness and justice for all the residents of Plymouth and Amador County. Other affected members of NCIP, as evidenced by their comments in the administrative record, include: Dr. Elida Malick, Walter Dimmers, and Dick Minnis.

6. NCIP and CERA are also the Plaintiffs and Appellants in *No Casino In Plymouth et. al v. Zinke et al,* (Ninth Circuit No. 15-17189). I am submitting this declaration

on their behalf in this appeal and in response to some of the questions and comments made by the Court during oral argument on July 14, 2017.

7. My family and I have lived and own property in the in the City of Plymouth in Amador County California since 1958. I own and live on five acres in Amador County near the proposed casino site and own two homes in Plymouth adjacent to and less than a mile from the proposed casino site. My three children were raised and went to school in Plymouth and my two sons now live in Plymouth. My Mother, Father, and Grandfather are buried in the Plymouth cemetery. Plymouth has been and will continue to be my home.

8. The City of Plymouth was settled during the California Gold Rush and incorporated in 1917. The city has a total area of 0.9 square miles and a population of about 1,000. It is a quiet, rural foothill community that has changed little over the last hundred years. However, the proposed casino would change Plymouth and surrounding communities dramatically for the worse if the BIA and the Ione Band build a large Las Vegas style casino in Plymouth.

9. Since 2003, a group of Indians known as the "modern Ione Band of Miwoks," with funding from private investors, and support from the BIA, have proposed to build a large Las Vegas style casino on 223 acres of private non-Indian land in Plymouth. The modern Ione Band of Miwoks is one of several factions of Ione Indians. None of the factions is a federally recognized tribe pursuant to any ratified treaty, Act of Congress, or Section 83 petition. Until 2002, the United States and BIA took the position that the Ione Indians must complete the 25 CFR Part 83 recognition process. (See district court Judge Karlton's 1992 order and his 1996 final judgment based on briefs filed by the United States, that the Ione Band is not a federally recognized tribe and has not completed the Part 83 process.)

10. In 2003, the modern Ione Band submitted a "preliminary" fee to trust application to the Department of Interior and to the Pacific Regional Office of the BIA (now headed by modern Ione Band member Amy Dutschke) to have the 223 acres of privately owned land taken into trust in Plymouth in order to build a large Las Vegas style casino. In 2003 Ms. Dutschke was in charge of the Realty Office which administered fee to trust applications for the Regional Office.

11. In 2004, the modern Ione Band asked the National Indian Gaming Commission (NIGC) for an Indian Lands Decision (ILD) that the 223 acres are "restored land" eligible for gaming under the Indian Gaming Regulatory Act (IGRA). The NIGC has not responded to the modern Ione Band's request, has not issued the requested ILD, and has made no final decision whether the lands in question would qualify for a casino pursuant to the IGRA.

12. Instead, in 2006, Associate Solicitor Carl J. Artman issued an opinion that the unrecognized modern Ione Band was a "restored tribe" and, if acquired in trust,

the land in Plymouth would be "restored land" eligible for gaming under IGRA. The Artman opinion was an advisory opinion to the NIGC. However, that advice was never accepted as the Artman opinion is filled with false, misleading statements, unsupportable conclusions, and is contrary to the history of the Ione Indians. The "modern Ione Band" was never a recognized tribe and has failed to complete the Part 83 process despite being directed to do so by Judge Karlton in 1992. In fact the United States in the 1990 litigation, informed the Court that the Section 83 process was the "sole" administrative method for the Ione Indians to achieve recognition. The never recognized Ione Band was never terminated by Congress as required by language in the ROD and are not a "restored" tribe.

13. In 2009, Solicitor Bernhardt in response to, and based on, a letter from NCIP concluded the Artman opinion was wrong and withdrew it stating it no longer represented the position of the Department. The NEPA EIS review and the administrative fee-to-trust processes were halted. NCIP and CERA and the public were led to believe that the modern Ione Band's application was no longer viable and the issue was resolved. No casino could be constructed in Plymouth pursuant to the restored lands exception in the IGRA without a restored lands/restored tribe opinion from the NIGC.

14. Between 2003, when the Ione Band submitted its fee-to-trust application, and 2009 when the application process was halted by Solicitor Bernhardt, NCIP and its members attended and submitted extensive comments on two environmental scoping sessions, commented extensively on the modern Ione Band's fee to trust application and draft Environmental Impact Statement. Those comments are in the administrative record filed by the federal defendants in 2013. The Department of Interior never challenged our standing to make those comments and in fact invited the public to comment.

15. In addition to these comments I traveled several times to Washington D.C.to meet with officials at the BIA, NIGC, and DOI. Meetings included NIGC Commissioner Phil Hogen, Office of Indian Gaming Director George Skibine, Acting Deputy Secretary James Cason, and Assistant Secretary Indian Affairs Carl J. Artman. I also met with officials from the Inspector General's Office. The AR contains several memos, letters, and emails to these individuals as well as their replies. Included in those emails is a 2011 request I made to then Secretary of Interior, Ken Salazar, and then Assistant Secretary of Indian Affairs Larry Echo-Hawk to meet to discuss the Ione Band's fee to trust and national issues related to fee to trust. AR 8767-8770

16. During oral argument on July 14, 2017, the Court questioned why there are no comments from NCIP in the administrative record after 2010. There are no comments after 2010 because the administrative process, placed on hold by

Solicitor Bernhardt in 2009, was reopened with the issuance of the final EIS for comment in August 2010. NCIP commented extensively on the FEIS. The Administrative Record shows the FEIS was issued while there was no restored lands opinion in place. There were no more opportunities to comment on any administrative processes after 2010 because there was nothing forthcoming to the public for comment from the Department prior to the Record of Decision (ROD) in 2012. Mr. Laverdure issued his ROD without further opportunity for public comment and without notice in 2012. Mr. Laverdure's ROD was unexpected because Solicitor Bernhardt, withdrew the Artman opinion because it was wrong and held that the modern Ione Band was not a restored or recognized tribe. NCIP was not aware that Solicitor Tompkins had reinstated the Artman opinion in 2011, after the FEIS was issued for comment in 2010, until we received a copy of the Administrative Record in May 2013, a year after the ROD was issued.

17. After Mr. Laverdure filed his ROD, it was uncertain when construction on the casino might begin, so NCIP and CERA filed their lawsuit within thirty days. NCIP's and CERA's interests and concerns about the negative impacts, and potential injury from the modern Ione Band's proposed casino were the same in 2012, when the lawsuit was filed, as they were between 2003 and 2010, when our extensive and well researched comments were filed and the administrative record was closed.

18. NCIP's and CERA's interests and concerns were the same when the federal defendants filed the administrative record, with their comments and without objection nearly a year after issuing the ROD, in May 2013. And those interests and concerns are the same today.

19. A Las Vegas style casino of the magnitude proposed by the unrecognized, never terminated, and not restored Ione Band will destroy the quiet foothill lifestyle enjoyed by the residents of Plymouth and surrounding communities and will adversely impact families and local businesses in and around Plymouth. As outlined in our comments in the administrative record, the adverse impacts will have on the City of Plymouth and the County of Amador include but are not limited to the concerns NCIP included in their comments on the DEIS which are included in the Administrative Record at AR 6599.

20. To begin the 2008 Federal Register notice for the DEIS contains a false statement which, after it was brought to its attention, the Department did nothing to correct the Notice. The Ione Band did not and does not own the 228 acres in FEE as was stated in the Federal Register Notice. AR 6255–6256.

21. At the time the DEIS was issued the City of Plymouth was subject to a State imposed building moratorium due to an insufficient and unreliable source of water. The City's water was obtained from two groundwater wells. The DEIS at

Table 3.3-4 Long Term Well yields indicates that the recommended total long term yield (gpm) for three wells designated as M1(10gpm), M3(38gpm), and H1(35gpm) is 83gpm. At page 2-10 it is stated that the total sustained yield of these wells is 119,520 gpd. 83 x 60 x 24 = 119,520. The daily water requirement for the casino project is 119,520 gpd. It is further stated that the three wells will be pumped in rotation to allow for recharge. NCIP raised several questions related to this questionable inclusion in the DEIS as it is impossible to pump the three wells at their long term yields in rotation and deliver 119,520 gpd.

22. None of the questions NCIP presented related to the wells or the issue of an inadequate on site water supply for the project were addressed in the FEIS. NCIP asked specifically for a pumping schedule that would deliver the 119,520 gpd required for the project and none has ever been provided. The Department simply ignored the water related concerns of the impacted communities. AR 6637-6638.

23. Much of the data and many statements in the DEIS were outdated or unsupported as indicated by a comment on Fire Protection at AR 6655. The material from 2003 is outdated and not reflective of current conditions. The DEIS in several places referred to a Municipal Services Agreement with the City of Plymouth. The MSA did not exist as a valid agreement in 2008 when the DEIS was issued.

24. The FEIS was simply a reissue of the 2003 DEIS with minor cosmetic changes and none of the serious issues and questions raised by NCIP and others were adequately addressed and in the case of groundwater not addressed at all. The concerns of the community were simply ignored.

25. I could include many more examples of the inadequacies of the DEIS and FEIS. If the Court needs more evidence of the interests of NCIP and its members, I request and recommend that the Court read our detailed and well researched comments on .the DEIS and FEIS which are incorporated here by this reference.AR 6599–6695, AR 8301–8333, AR 8342-8350, AR 8360-8366, AR 8369-8370, AR 8436-8510.

26. I declare under the penalty of perjury that the forgoing is true and correct to the best of my knowledge and information.

Executed on this 25th day of July, 2017, at Plymouth, California.

Dueward W. Cranford II

Dueward W. Cranford II

ATTACHMENT 3 – ADMINISTRATIVE RECORD EXCERPTS

November 05,2003

Dear Congressman,

As I am sure you are aware, the Ione Band Of Miwok Indians from Ione, California is in the process of trying to push through a class III casino complex project in and near the city of Plymouth, California in Amador County.

It is clear that this tribe has a formal application procedure to go through with the Bureau of Indian Affairs either as a two-part determination process or more likely a "sham" claim as restored lands. It has come to this communities attention that this tribe may attempt to circumvent the requirements imposed by the Bureau by requesting special legislation through Congress for this land acquisition.

I am writing you today, as I have to Congressional leaders across the country, to urge you to stand as sentry for the California taxpayers of this small city by guarding against attempts at achieving Congressional fiat by this tribe.

Enclosed are copies of letters that have been submitted to our City Council, the Bureau of Indian Affairs, and Counselor to the Secretary of the Interior(sans exhibits) which together summarize some of the issues we are facing. The bottom line in Plymouth would be another **instant reservation** for Class III Nevada-style gambling, which is **a violation of the intent of the IGRA and of California voters when we passed Prop. 1A.**

We are hopeful that you will assist us in monitoring bills presented to you carrying language that would essentially give this tribe the "keys to our city".

Thank you,

Elida A. Malick
209-245-6211
www.nocasinoinplymouth.com

11/10/03 AGENT PLACED
FAX TO: GEORGE SKIBINE
EDITH BLACKWELL
PMI
MGR

Mr. Clay Gregory
Acting Area Director
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825
October 29, 2003

Re: Tribal Casino/Plymouth, CA

Dear Mr. Gregory;

In the October issue of the Ione Band of Miwok Indians *Ione Band Newsletter*, under the section Chairperson Report, the following statement appears.

> "On October 24 the tribal council will be meeting with the BIA to discuss land into trust. This meeting will be to support the city of Plymouth telling the BIA that they are in support of the Ione Band's current project..."

To clarify, it is patently untrue that the city of Plymouth supports this bands project within and near the city limits. The "City", made up of people who live here, and supported by the surrounding neighborhoods, is overwhelmingly opposed to this project. In a City sponsored survey, 73% of the registered voters in Plymouth rejected this casino proposal.

It is unfortunate that two members of our current city council have chosen to represent and lead the small minority who favor this project. This failure to faithfully and honestly represent the democratic majority of their constituency has led to a recall movement that is strongly underway.

It is perhaps more unfortunate that the Tribe itself, or by virtue of its Ikon representatives, have chosen to insert themselves into Plymouth City Hall by manner of drafting documents for the Council and, in so doing, preparing to make a litany of false representations to the federal government. As one example, enclosed you will find a copy of the letter executed for Mayor Scanlon by the Tribe/Ikon after the results of the City survey where made public.

The citizens of Plymouth will not tolerate tribal manipulation of our government offices. Likewise, there is zero tolerance for representations made to the federal government on our behalf that are based on falsehood and deception.

Thank you for your attention and consideration of this matter;

Elida A Malick

Dr. Elida A. Malick
Citizens For No Casino In Plymouth

Cc : Secretary of Interior, Gale Norton
Governor of California, Gray Davis
Attorney General of California, Bill Lockyer
Senator Dianne Feinstein
Chairman, National Indian Gaming commission, Phil Hogan
Realty Specialist for the Consortium Tribes, Kevin Bearquiver

Mr. Greg Bergfeld, Regional Director
National Indian Gaming Commission
501 I Street, Suite 12-400
Sacramento, CA 95814
November 11,2003

Dear Mr. Bergfeld;

Enclosed please find information regarding the Ione Band of Miwok Indians and their continued drive to establish a casino complex in and near the city of Plymouth, California, miles away from their land base in Ione.

These letters summarize some of the more pressing issues confronting our community with respect to this casino proposal. We are adamant in our stance that this project will be of serious detriment to this community, as it has already shown itself to be.

We respectfully urge the Commission not to approve this off reservation proposal and thank you for your attention to this matter.

Elida A Malick

Dr. Elida A. Malick
209-245-6211
www.nocasinoinplymouth.com

11/14/03 COPY TO: GEORGE SKIBINE FROM: M ROSSETTI

Mr. Michael Rossetti
Counselor to the Secretary of the Interior, Gale Norton
Department of the Interior
Washington, D.C. 20240
November 05, 2003

Re: Proposed Class III Tribal Casino Complex in Plymouth, CA

Dear Mr. Rossetti:

As a founding member of No Casino In Plymouth, homeowner, parent, and small business owner, am writing to urge Secretary Norton not to approve any land acquisitions requested by the Ione Band of Miwok Indians for purposes of establishing gambling facilities in or near the city of Plymouth, California located in Amador County.

Seventy-three percent of the registered voters in Plymouth, as indicated in a City sponsored survey and, *over eighty percent* of citizens from the immediately surrounding communities, as found in a citizens poll, are opposed to three tribal casinos in our small county of 30,000 people (one already existing in Jackson and one soon to open in Buena Vista). We are specifically and strongly opposed to this type of establishment in the *heart of our home town.* If the land in question is taken into trust, it will effectively and physically split the heart of our city in two with a sovereign nation and place a casino complex near residential neighborhoods, churches, schools and small family businesses.

Furthermore, the following critical situations exists:

1. Strong and compelling allegations of Regional BIA office impropriety/illegality regarding the manner in which the current tribal leadership was attained. We have two tribes calling themselves the Ione Band of Miwok Indians. One group has been a historical part of the Ione area and is well known in the community. The group attempting to open this casino is made up of members primarily from outside this community, many of whose names appear on other tribal roles, for example the Wilton Rancheria in Auburn. (Exhibits 1,2) Congressman Richard Pombo, 11th District, with Oversight Committee responsibility of the BIA (Sacramento), is well aware of the history regarding the conflict that exists in this regard. (Exhibit 3,4) In the interest of justice, a clean determination of legitimate claim to tribal recognition, free of any encumbrances from official manipulation, should be made prior to land to trust exercises being completed.

Additionally, alarming conflicts of interest exist at the Sacramento Regional offices of the BIA with respect to tribal members of the Ione Band of Miwok Indians occupying positions of critical authority over approval of this project. Although the office of Acting Regional Director is currently being filled on a "director of the day" basis, the name Amy Dutschke, one of the Acting Regional Directors, is an example of an individual operating with clear conflict in that she also appears on the tribal roles of registered voters for the

tribe in question. (Verified by personal communication with the BIA offices on 10-31-03, and Exhibit 1) The Amador County Board of Supervisors are requesting that this case be removed from the jurisdiction of the regional offices because of this type of conflict of interest. (Verified by personal communication with District 5 Supervisor on 11-04-03)

2. The Ione Band of Miwok Indians has a land base in the Ione area. While the current ruling elements of the tribe call themselves landless, the property in Ione, termed Indian Country has been associated with the historical tribe for generations. This new group is attempting to exploit only those facts pertaining to the Ione Band of Miwok Indians that they find useful. Members of this community are currently investigating the inconsistency of this new group possibly extracting government funds intended for the maintenance of this Ione property yet disclaiming any significant relationship with it. This land, is well described and has been clearly associated with this tribe as elucidated in the Ada E. Deer letter of March 1994 clarifying this tribes tie to the land in Ione. (Exhibit 5) Though apparently still not registered as trust land, it is land that the United States Government holds in fee simple for this tribe. Susan Jensen, spokeswoman for California Nations Indian Gaming Association was recently quoted as saying," One of the main criteria for building an off-reservation casino is the tribe must have a tie to the land". Contrary to the assertions made by this tribes current ruling faction, they have no relevant claim or genuine tie to the land in the center of our historic California Gold Rush town. Clearly if any land should be taken into trust it should be the forty acres located in Ione, California.

3. The "reaffirmation" of the Ione Band of Miowk Indians resulted in the tribes inclusion on the list of "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs". (Exhibit 5) The Ada E. Deer letter points out the **fact that the tribe is eligible for government benefits only and that there was no mandate given for land acquisitions**. We have made a formal FOIA request for all documentation of the recognition/reaffirmation process for this tribe with Mr. Fred Doka of the Sacramento offices of the BIA, with no response as yet. Furthermore, this land request is not an appeal for an initial reservation site - a homeland - as the tribe and its investors have made it overtly clear, in open forum, that this acquisition will be for the primary purpose of building a casino complex and will not include housing. Certainly the irregularities that exist as regards the "tribes" eligibility for land acquisitions must be clarified and the intended use taken into account prior to taking land into trust.

4.Currently we, the citizens of Plymouth, are in the process of recalling a city council that has been completely unresponsive to the vast citizen opposition to this project and impotent in its *willingness* to research and provide reasonable levels of information to substantiate its position to its constituency.

A. There has been public admission and documentation of allowing tribal authorities and or the Ikon casino investment group to *write draft documents for the city* and likewise our mayor is allowing similar drafts to be written on her behalf which make

false representations to the federal government. (Exhibit 6) Therefore, we are requesting that any letters received from the City Council of Plymouth, California , specifically Mayor Darlene Scanlon, stating support for this project, be thoroughly investigated prior to action being taken based on their statements.

B. We are in the process of electing a representative body that can effectively lead this town through this crisis and prevent the tribal and investment-group manipulation of this small city government. While the City Council currently powered by two casino proponents, who have been actively and openly courted by the investment group, are aggressively pursuing this casino project, *they do so against a growing wave of tremendous opposition which spans not only the City but the entire county.* (Documentation in Exhibit 7)

C. Enclosed you will find a letter submitted to our city officials by our legal council which clearly and concisely explains some of the primary issues of concern. (Exhibit 8) Also enclosed is our letter to Mr. Clay Gregory, Acting Area Director of the Sacramento BIA concerning these same issues. (Exhibit 9)

In closing, we are relaying a clear and unequivocal message that the people of this community are not supportive of this proposed land acquisition and we urge you again to *reject any request for trust status for lands in or near Plymouth, California made by the Ione Band of Miwok Indians.* While we would prefer no third casino in Amador County, if the taxpayers must subsidize yet another tribal business venture, it is agreed that placing it well outside the heart of this small town would be the responsible course of action.

Plymouth, is a wholesome and virtually crime free environment in which children are thriving. The current building moratorium due to inadequate water availability and sewer capacity, all access being virtually limited to winding, two-lane country roads, local land use patterns based in agriculture, and community focus on youth and family, are only a few of the realities that qualify our home as uniquely unsuited to weather the assault of negative impacts resulting from a Class III Nevada-style gambling casino, a disfavored industry as stated in the California Business and Professions Code. By preserving the intent of the IGRA and the **intent** of the voters when we passed proposition 1A you will be protecting our home, our children, and the future of this town, Plymouth, California.

Respectfully,

Dr. Elida A. Malick
17705-C Hwy 49
Plymouth, CA 95669
209-245-6211

ISSUES RELATED TO IONE BAND OF MIWOK INDIANS PROPOSED OFF RESERVATION LAND ACQUISITION FOR CLASS III GAMING

Prepared For:

Congressman Dan Lungren

January 24, 2006

By:

NO CASINO IN PLYMOUTH *

P.O. Box 82

Plymouth, Ca. 95669

209 245 6211

www.nocasinoinplymouth.com

*** NO CASINO IN PLYMOUTH (NCIP) is a grassroots 501c4 corporation organized and supported by local concerned citizens who oppose the establishment of a large casino complex in the City of Plymouth. Note that this presentation deals with irregularities associated with the proposal and does not attempt to deal with the scope, extent, or costs of the impacts the proposed casino would have on the citizens of Plymouth and Amador County.**

Issues Related to the Ione Band of Miwok Indians Proposed Off Reservation Land Acquisition for Class III Gambling

How can we fight to uphold the rule of law if we break the rules ourselves?"

Admiral John Hutson

Introduction

The Indian Gaming issues that apply to our situation in Plymouth, California, apply across the country. Citizens and local governments are impacted by casinos with limited consideration of their rights and virtually "no voice on whether or not gambling is an accepted industry in their communities." [1] The American tax-payer is failed as legislative and administrative processes are corrupted and the federal government is failing to deal responsibly, via the Bureau of Indian Affairs, with its Native American citizens. Few Tribes benefit, many do not, and they are pitted against one another as well as their non-tribal neighbors.

Amador County currently has one operating casino, with two more proposed. Our county, with a population of approximately 35,000, will be overwhelmed by a daily influx of gamblers nearly equal to he number of full time residents. The proposed Plymouth casino alone is expected to draw approximately 9000 visitors a day. Amador voters expressed their opposition to any additional casinos in the special election of last November. With nearly 70% voter turnout, citizens voted 85.2% against "approving the establishment of any more casinos in Amador County."[2]

In early 2003, the Ione Band of Miwok Indians informed the City of Plymouth (City) that IKON (their out of state investor) held options on land in and adjacent to the City and they intended to build a small gaming" facility, just big enough to support the Tribe. (Only after the Scoping session results were published did we learn that actual plans called for a "World Class" casino complex.) They stated that the project was a done deal and there was nothing the City could do except enter into a Municipal Services Agreement (MSA) with the Tribe. Over the objections of the residents, the City signed the MSA under very questionable circumstances. Subsequently, three City Council members, including the Mayor and Vice-Mayor, were recalled and replaced with individuals opposed to the proposed casino.

In 2004, No Casino In Plymouth (NCIP) joined Amador County (County) in a legal action to require the City, within the context of the MSA, to comply with the requirements of the California Environmental Quality Act (CEQA). Amador County Superior Court found in favor of the County and NCIP. The City has dropped its appeal. However, the Tribe has intervened as a third party and the case is currently under appeal by the Tribe in the 3rd District Court.

From the beginning, by not conforming with the procedures established in government regulation, the processes used by the Regional Office of the Bureau of Indian Affairs (BIA) and the Tribe have been highly suspect. Investigations by NCIP since 2003 have revealed a host of irregularities associated with:

I. Tribal Recognition, Status and Leadership/Membership

II. Land status

III. Fee to Trust Process

There are substantial quantities of conflicting documentation which the Tribe and BIA selectively reference as the situation requires. In the following pages we present in some detail the inconsistencies and conflicting positions that beg for an impartial resolution.

We ask you to carefully consider the following information, help us to ensure that existing laws are followed, advise us of productive approaches to our problem, and act to correct the abuses of a failed policy.

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I. Tribal Leadership, Recognition, and Status

A. Time Line

1923 - The Reno Indian Agency's annual report indicates that Ione is listed identifying forty six residents. The report states "As the office is aware, we have been considering the purchase of a tract for the Indians at Ione for the past several years, the property being a forty acre tract, which has been tied up in legal procedure."

1927 - The United States Department of the Interior Indian Field Service discusses the forty acre Ione tract to be purchased for the Ione Indians in his annual report to the Commissioner of Indian Affairs.

October 1972 - A letter from Commissioner for Indian Affairs, Louis Bruce to Mr. Nicholas Villa and Ione Band of Miwok Indians agrees to accept the forty acre tract in Ione in trust for the Ione Band of Miwok Indian. He also states, "Federal recognition was evidently extended to the Ione Band of Indians at the time the Ione land purchase was contemplated." [Exhibit 1]

May 11, 1992 - Sacramento Area Director, Bureau of Indian Affairs declines to review an economic development agreement between appellant [IBMI] and the American Development Company, Ltd. on the grounds the appellant is not a Federally recognized Indian tribe.

August 4, 1992 - Interior Board of Indian Appeals (IBIA) appeal by the Ione Band declines their request for federal recognition citing the Federal regulations for acknowledgment, 25 CFR Part 83, as the necessary process for recognition.

> In the Indian Bureau of Indian Appeals decision for docket no. 92-289-A, Chief Administrative Judge, Kathryn A. Lynn and Administrative Judge Anita Vogt file and order docketing appeal and affirming decision that the Ione Band of Miwok Indian is not a Federally

recognized Indian tribe.

Contrary to IBMI insistence that they were not included on the first list of Federally recognized Indian tribes due to a clerical error, Judge Vogt explains that "instead, it [the Tribe] was included on a list of Indian groups whose petitions for recognition were pending at the time the regulation went into effect." She further went on to state that " the district court noted that [the] appellant had not pursued its petition through the acknowledgment process." This, coupled with Mr. Louis Bruce's use of the term "evidently" recognized lends a troubling air of doubt as to the reality of the IBMI being in fact recognized in 1972.

The IBMI would indeed have been required to comply with rules for Federal acknowledgment as "the court held that the appellant had failed to demonstrate that it was entitled to federal recognition through any mechanism outside the acknowledgment process in 25 CFR Part 83 and that appellant had failed to exhaust its administrative remedies by applying for acknowledgment in accordance with the regulations."

March 22, 1994 - In a letter from Assistant Secretary Ada Deer to Honorable Nicholas Villa, Jr., Chief, Ione Band of Miwok, the Assistant Secretary reaffirms the Louis Bruce letter and states that the tribe will "henceforth be included on the list of "Indian Entities Recognized and Eligible to Receive Services from the United Sates Bureau of Indian Affairs". [Exhibit 2]

May 24, 1994 - A letter from Hilda A. Manual, Director, Office of Tribal Services, Washington D.C., addressed to Chief Villa informs him that his name is now on the Tribal leaders list and that the relevant Bureau of Indian Affairs Offices have been informed that the Ione Band of Miwok is federally recognized. [Exhibit 3]

June 22, 1994 - A letter from Harold M. Bradford, Superintendent DOI / BIA to Mr. Dwight Dutschke recognizes "Mr. Nicholas Villa, Jr. as the Chief of the IBMI and the government he represents" and stating that the "Asst. Sec. will work with Mr. Villa in the reorganization process." [Exhibit 4]

July 14, 1994 - A letter from Assistant Secretary Indian Affairs Ada Deer to the Sacramento Area Director clarifying her letter of March 22, 1994 by writing " It should be made clear that the intent of my letter was to recognize the entire group of Miwok Indians associated with the land in Amador County." [Exhibit 5]

July 28, 1994 - In a letter to Judge Peter Nowinski, United District Court, Sacramento stated "I am writing to provide the court with information on the status of the Ione Band of Miwok Indians. The Ione Band of Miwok Indians is a federally recognized Tribe." [Exhibit 6]

January 3, 1995 - Summary Status of Acknowledgment Cases - Petitions Resolved; Ione Band of Miwok Indians Status clarified by other means i.e. status confirmed by Assist. Sec.

July 16, 1997 - A letter from Interim Tribal Chairperson Kathy Ramey to Mr. Dorson Zuni, Tribal Operations - BIA (Sac.) re: Tribal elections reads "As for the Franklin family, they could not prove that they were descendants of Captain Charley Maximo." "All the board members voted to deny the Franklin's applications." [Exhibit 7]

1998 - The Historic Ione Band appeals to the IBIA to establish criteria for tribal membership in order to become organized to sign agreements citing the 1915 Ione Census.

B. BIA Impropriety and Congressional Inquiries

The core issue according to historic tribal members and based on available documents is interference by the Central and Regional BIA Offices in the internal Tribal affairs of the Historic Ione Band of Miwok. [Exhibit 8] The BIA Pacific Regional Office and BIA Central Office violated federal Indian Law and the Administrative Procedures Act when they interfered in an internal tribal issue and forced the Historic Ione Band of Miwok to reorganize, to open its tribal membership rolls, and to elect new tribal officers against the protests of historic tribal members.

The BIA, under signature of Scott Keep, BIA-Solicitor and the Assistant U.S. Attorney, Debra Luther, filed an amicus brief in Federal Court (See: Ione band of Miwok Indians v. Burris et. Al. CIV.90, 993 LKK. PAN) claiming the Ione Band of Miwok Indians was not a recognized Indian tribe until after 1994.

In this brief, the BIA, ignoring Commissioner of Indian Affairs Louis Bruce's 1972 letter, argued that the Tribe had never been federally recognized and the BIA possessed the authority under the Auburn Rancheria Act to force the Historic Ione Band to open its rolls and reorganize under the Indian Reorganization Act (IRA) by developing an IRA constitution and holding an election. This highly contested reorganization process resulted in hundreds of new tribal members and the election of Matt Franklin as tribal chairman.

The IRA as amended, including amendments of June 1994 and January 2004, clearly states that the BIA does not posses the authority to force a federally recognized Indian tribe to open its rolls and reorganize.. Congressional concerns in 2004 about the actions taken by the Regional BIA caused the Department of Interior, Office of Inspector General (OIG), to look into the matter. The OIG investigation was less than comprehensive and the report is a disappointing whitewash. The OIG apparently ignored the IRA, the amicus brief, the historic tribal rolls and other pertinent documents available to the OIG and OIG attorney Roy Kime stated, "we didn't look at the recognition issue. We relied on the BIA determination. We are not going to look at recognition unless we are requested to."[3]

Ample documentation exists establishing the fact that the Ione Band of Miwoks was a federally recognized Tribe in 1972 and reaffirmed on March 22, 1994. This pre 1994 federal recognition is the reason the reorganization and elections forced on the Historic Ione Band of Miwok by the BIA are highly questionable and possibly illegal. The 2004 OIG investigation report acknowledges that the Ione Band of Miwoks was a federally recognized Tribe in 1972 and reaffirmed on March 22, 1994. [Exhibit 9] It is difficult to understand how this OIG investigation into the circumstances surrounding the creation of the Franklin led Ione Band of Miwok did not look into whether the BIA ignored Federal Law and the Administrative Procedures Act when it forced the Historic Ione band of Miwoks to open its membership rolls and forced a tribal election.

In 2001, Congressional concerns arose relating to the suspected illegal opening of the tribal rolls of the Ione Band of Miwok Indians which resulted in a contested leadership change. Not only did members of the Bureau of Indian Affairs, Sacramento Regional Office, become members of this tribe that they were administering, they then took seats on the Tribe's election committee and threw out an election protest filed by the Tribes ousted chairman. The BIA in Washington, in turn, relied on the Tribal election committee decision in refusing to probe its own employees involvement in the contested election. Despite requests by four Congressmen, the Interior Departments Inspector General Earl E. Devaney conducted no significant review of these irregularities, telling the concerned Congressmen that it was an internal tribal matter.

In February 2004, Congressman Frank Wolf (R-VA) renewed allegations of wrong doing and called for investigations by the General Accounting Office (GAO),the FBI, and the Interior Department's Office of the Inspector General (OIG). [Exhibit 10] The specific allegations were:

1. Acting against the protests of the historic tribal members, the regional Bureau of Indian Affairs office forced opened the tribe's membership rolls.

2. The acting regional director, Amy Dutschke, who approved the tribal election was added to the tribal roll along with some of her relatives

3. A different BIA official who oversaw the election had three relatives added to the tribe.

Congressman Wolf's concerns and a widely circulated AP story [Exhibit 11/12] were instrumental in three separate investigations being undertaken.

1. Justice Department to initiated an FBI investigation.

2. The GAO informed Congressman Wolf that they were opening a probe.

3. The Department of Interior's Inspector General was also instructed to investigate.

The results of the FBI and GAO investigations are not available to us. The **Inspector General's** investigation did not uncover any evidence to support the allegations of misconduct in the 2002 Tribal election. However, the fraudulent election in question was the 1996 election, making the entire OIG report

a meaningless whitewash.

In February 2005, in response to inquiries from the office of Congressman Dan Lungren, the BIA Pacific Regional Office continued to obfuscate the core issue surrounding the validity of the leadership of the Ione Band of Miwok by Chairman Matthew Franklin.[Exhibit 13] The reply to this inquiry again conveniently ignored the legality of the 1996 Tribal election which is really the election at issue. Congressman Wolf called it "a potential scandal" that officials of the Interior Department's regional BIA office opened the membership rolls of the Ione Band of Miwok Indians and authorized a new leadership election when they stood to personally gain from those decisions. The Congressman was right then and he is right today.

The question that the BIA refuses to address is whether the 1996 reorganization and subsequent elections were lawful which raises questions about Matt Franklin's position as tribal chairman. The BIA steadfastly maintains this is an "internal tribal issue" but unnecessary and heavy handed BIA interference in the tribal sovereignty and tribal government of the Historic Ione Band by both the Central and Regional BIA offices have created the current situation.

C. Freedom of Information Act (FOIA) Requests

FOIA requests were submitted to the Regional Office of the BIA in Sacramento asking for numerous documents detailing the initial creation of the Ione Band of Miwok, tribal enrollment, basis for opening Tribal rolls, bands charter, etc. After three months, Carmen Fazio, Acting Regional Director on February 2, 2004, stated that no estimate of processing fees or volume of documents would be given and that without a "blank check" sent to the BIA offices, the FOIA would not be honored. (Personal communication - Elida A. Malick)

D. Summary:

The confusing and convoluted nature of events leading to the current situation are well documented. In the interest of and for the benefit of all parties now involved those events should be thoroughly investigated by independent agencies to assure that proper procedures and the law were followed in the Federal Recognition of the Historic Ione Band.

The unresolved legality of the 1996 tribal reorganization remains a critical issue and is one that the DOI has so far steadfastly refused to investigate. Congressional concerns are well founded and a more thorough investigation by an independent agency, a Congressional Committee, the U.S. District Attorney, or a Federal Grand Jury should be seriously considered.

Additionally, an administrative hold on all activities, applications, requests, legal actions, etc. of the Ione Band relating to the its proposed land acquisition for Class III gaming in Plymouth should be in place until all issues are independently investigated and properly resolved and the Franklin led Ione Band should not be allowed to initiate similar action elsewhere.

II. Land Ownership and EPA GAP Grants

A. Land's Current Fee Simple Status:

The Historic Ione Band of Miwok Indians has resided in the Ione Valley and Jackson Valley area long before gold was discovered and settlers moved into the region. They own and reside on a forty acre parcel near Ione in the Jackson Valley area today. This forty acre parcel is owned fee simple by the Ione Band of Miwok.

In 1972 California Legal Services, on behalf of the Ione Band, initiated a quiet title action before the Amador County Superior Court, and a judgment was issued on October 31, 1972 that declared the forty acre parcel was owned fee simple. [Exhibit 14] A 1972 letter from Commissioner of Indian Affairs, Louis Bruce, states plainly that "Federal recognition was apparently extended to the Ione Band of Indians at the time that the land purchase was contemplated." There is in the Bruce letter a clear offer to take the Ione Band's land into trust and a description of the parcel is included in the letter. The March 22, 1994 letter from Assistant Secretary Ada Deer reaffirming Commissioner Bruce's 1972 letter also agreed "to accept the parcel of land designated in the Bruce letter to be held in Trust as territory of the Tribe." Action to take the land into trust has not been accomplished and Amador County records indicate the property is

still held fee simple. However, the fact that this forty acre parcel was clearly recognized in 1972 and 1994 as the Tribe's historic land base by high ranking DOI officials is undisputable. The ownership and status of the property was subject to further litigation in US District Court in 1996 and again in Federal District Court in 1998 and the Historic Ione Band's ownership of the forty acres remains fee simple.

B. Landless Claim:

The Franklin led Ione Band of Miwoks has claimed to be landless at least since 2003. This landless claim is simply false. The Historic Ione Band of Miwok ownership of forty acres of land is recorded in both the tax records and property records on file with the Recorder and Assessor in Amador County.[Exhibit 15] A rather extensive record of litigation and appeals relating to internal Tribal disputes over ownership and status of the Ione Band's forty acres also exists in California Superior Courts and U.S. Federal Courts. The inability of the Tribe and the BIA to resolve internal Tribal disputes over the land and obtain title in form that would allow a trust application to be submitted should not be cause for the tribe to acquire lands in and near Plymouth away from their historic land base near Ione.

The Franklin led Ione Band's current landless claim is clearly at odds with both the 1972 Louis Bruce letter and the 1994 Ada Deer reaffirmation letter where two high ranking Federal DOI / BIA officials describe the Historic Ione Band's land base, and offer to take the land into trust.

Despite, the Franklin led Ione Band's landless claims, the Franklin group has used the Historic Ione Band's land base as justification for receiving hundred of thousands of dollars of federal funds under the EPA General Assistance Program (GAP).

The current landless claims certainly have every appearance of being an attempt to bypass the Administrative Procedures Act and qualify them for restored lands and facilitate an off-reservation land acquisition for gaming purposes. The Historic Ione Band of Miwoks may be entitled to engage in Class III gambling under IGRA, but that gambling must take place on their forty acres in Ione after it has been taken into trust as defined at 25 CFR 151.9 and with subsequent approval of the trust acquisition pursuant to the requirements of the Indian Gaming Regulatory Act.

C. Request for Restored Status:

No Casino In Plymouth recently learned from a September 2004 memorandum addressed to NIGC Chairman Philip Hogan [Exhibit 16] and prepared for the Franklin led Ione Band by legal counsel for their out of state investor, IKON , that the Franklin led Band has requested a determination from the National Indian Gaming Commission as to whether the Ione Band qualifies for a restored lands exception under 25 USC sec 2719(b)(1)(B)(iii). This request is clearly a result of their three year long failed efforts to gain community support for a casino required under the two part determination process in 25 USC sec 2719(b)(A).

On page 10 of the IKON memo [Exhibit 16] we find "The Ione Band has identified and **acquired** a 228 acre tract of land....." This acquisition statement is simply false based on land sale records currently available for the September 2004 period. Current DOI regulations require the Tribe to own outright any land contemplated for Trust acquisition.[Exhibit 17] The 228 acre tract of land in question is merely optioned by the tribe's investor, IKON. This same memo is filled with tribal and IKON's opinions concerning restoration and would have NIGC Chairman Hogan believe that the BIA can accidentally, inadvertently or perhaps intentionally drop a tribe from the Federally Recognized Tribes list and when the clerical error is realized and corrected the tribe should be afforded a restored status under 25 USC sec 2719(b)(1)(B)(iii). (The Federally Recognized Ione Band, because of an administrative oversight was accidently left off the Federally Recognized Tribes list and after years of work by Historic Ione Band members the Tribe was placed back on the list in 1994 by Ada Deer.)

This request for a restored lands determination from the NIGC Chairman comes 10 years after Under Secretary Ada Deer's action to place the Ione Band back on the Federally Recognized Tribes list. The OIG Gaming Checklist on page 7 states "Copies of the enabling acts or legislation such as the settlement act, the restoration act, ...the final determination of federal recognition and other documentary evidence must be included in the acquisition package. A legal opinion from the Office of the Solicitor concluding that the proposed acquisition comes within one of the above exceptions must be included."

NIGC regulations further clarifies the Indian lands definition:

Indian lands means

(a) Land within the limits of an Indian Reservation; **or**

(b) Land over which an Indian tribe exercises governmental power ***and*** that is either -

(1) Held in trust by the United States for the benefit of any Indian tribe or individual; or

(2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.

Section 2703 is plainly written by the Congress and requires no clarification. The change of the **and** in (4)(A) to **or** in the NIGC regulation is a major change that allows the NIGC to issue land status opinions favorable to tribes that do not have lands within a reservation or who do not own trust ;lands. The NIGC has issued many favorable land status opinions using their "clarified" regulation as if it represented the law as written by Congress. This change in the 25 USC Sec. 2703 (4) by NIGC has been misused by NIGC to determine that the non reservation, non trust, fee simple rancheria lands of many California tribes are Indian lands eligible for Class III gaming under IGRA. Recently such an opinion was issued relating to the Buena Vista Rancheria. [Exhibit 19] If the IGRA is to perform as Congress intended then the NIGC and their "clarified" land determinations must be reined in so that the intent of Congress is realized.

F. <u>Freedom of Information Act request issues at BIA:</u>

With the need to resolve this critical land base issue, Freedom of Information Act requests (FOIA) were submitted to both the Department of the Interior and the Environmental Protection Agency [Exhibit 20]. The law requires that FOIA requests be answered within 20 days. The EPA responded immediately and after an exchange of information to determine processing fees, provided the requested information. The Department of the Interior responded about a month after the initial FOIA request and forwarded the request to The Sacramento Offices of the BIA. To the best of our knowledge the Sacramento offices have not replied to the FOIA requests.

We believe that the failure of the Sacramento Offices of the BIA to respond to this FOIA request is a deliberate attempt to obfuscate both:

1. The fact that the Ione Band of Miwoks is not landless and its historical land base is located near Ione.

2. To hide the fact that the EPA grants to the Franklin led Ione Band were obtained under highly questionable circumstances.

The BIA is responsible for application of the EPA Grant process and requisite audit trail and most certainly had knowledge of the laws' requirements. If three of the four applications for federal Assistance lack even a specific GAP project description on the application, then it is very likely that the EPA reporting requirements of 40CFR part 31 and 40 CFR part 35 have not been met. As stated previously a visit to the historic land base near Ione which would raise questions as to what the EPA monies were actually used for as would the absence of any specific project descriptions on the applications. Unfortunately, the Sacramento Office of the BIA's continuing disregard for FOIA requests make this information unavailable to NCIP.

G. <u>Summary:</u>

The Historic Ione Band of Miwok owns forty acres near Ione and the land is held fee simple. The Historic Ione Band of Miwok was recognized and a land base for them discussed as early as the 1920's and Commissioner Bruce recognized that in 1972. After accidently being left off the Federally Recognized Tribes list the Historic Ione Band was placed back on the list in 1994 by Ada Deer. These are facts that are documented.

The Franklin led Ione Band is a creation of the Regional BIA Office and their landless and restored claims are simply false. Their restored claim is based on nothing more than the unfortunate result of a clerical error that went uncorrected for 18 years, until Ada Deer corrected the error and placed the Historic Ione Band of Miwok back on the list of Federally Recognized tribes. The "landless" Franklin

There is no documentation that we are aware of that demonstrates that the Ione Band is a federally restored Tribe eligible for restored lands status and the Franklin led group is now enlisting the tribe friendly NIGC to create the desired restored lands determination for 228 acres that is not owned by the tribe.

D. Use of Historic Ione Land Base for EPA Grants:

The Indian General Assistance Program Act of 1992 (42 USC 4368b) provides the authority for the Environmental Protection Administration to fund "the costs of planning, developing, and establishing environmental protection programs consistent with other applicable provisions of law and providing for enforcement of such laws by Indian tribes on Indian lands." The General Assistance Program or GAP wording is very specific as to applying to Indian Lands. The EPA 40 CFR Part 35 Subpart Q of 1993 codifying the administrative requirements for GAP Grants also specifically refers to Indian Lands. The EPA 2001 revamping of CFR Part 35 removes the references to Indian Lands to "avoid the appearance of unnecessarily limiting its grant authorities" but states that the changes are "consistent with the Indian Environmental General Assistance Program Act 42 U.S.C. 4368b." These EPA Grants are not general in nature but expressly tied to specific land parcels. Furthermore the law requires the BIA to oversee the program, which makes the Sacramental Regional Office aware of this land base recognition.

From 1999 through 2004, the Ione Band of Miwoks has received over $543,000 of GAP funding for environmental reasons. EPA documentation substantiates that the Ione Band of Miwoks lists the land in Ione as the area affected by the EPA Grants.[Exhibit 18] The Federal Government has acknowledged this land base by the authorization of a half million dollars in EPA GAP funding. How did the landless Franklin led Ione Band receive Federal Funds for use on private property under a law designating those grants for use on Indian Lands and Reservations? The Franklin led Ione Band's application and receipt of these monies using the Historic Ione Band's land base would make this BIA supported landless claims to the NIGC, State, County, and City governments fraudulent.

A visit to the Historic Ione Band's land base raises the further question as to how did Franklin use the EPA GAP funds? Unless the improvements are underground there is nothing visible to the eye to suggest that more than half a million dollars has been used on the property. If the EPA monies were not spent improving the property identified in the applications then how and where were the monies spent. A thorough investigation into this matter is needed to assure that the Franklin led Ione Band has not procured EPA GAP funds fraudulently, misused EPA GAP funds, or misrepresented itself as landless in order to fraudulently acquire lands away from the Ione Band's historic land base near Ione.

E. NIGC Misuse of 25 USC Sec. 2703 (4) (A) (B):

The September 2004 request to NIGC for restored status requires additional comment on potential issues with any opinion that might be received from NIGC related to the question of what lands are qualified under the IGRA for Class III gambling. Based on numerous opinion letters from NIGC concerning requests for a determination of whether rancheria lands or other lands owned fee simple by tribes and / or tribal members it became clear that our separate understandings of Section 2703 (4)(A)(B) are significantly different.

The NIGC writes opinions with interesting interpretations of what lands are eligible for Class III gambling based on their regulation clarifying 2703 (4)(A)(B). NIGC has demonstrated time after time their ability to "clarify" 2703 (4)(A)(B) and determine that non reservation, fee simple lands are eligible for Class III gambling. Such determinations simply cannot be reached if 2703(4)(A)(B) is not "clarified." To understand what NIGC has done one only need carefully read and compare their clarification to what is written in the Indian Gaming Regulatory Act.

Section 2703 of IGRA provides definitions for purposes of this chapter and 2703 (4)(A)(B) reads as follows

The term **"Indian Lands"** means -

(A) all lands within the limits of any Indian reservation; **and**

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation ***and*** over which an Indian tribe exercises governmental control.

led Ione Band's receipt of more than a half million dollars in EPA GAP funds using the historic land base on the applications is well documented. However, where and what the monies were actually used is yet to be determined.

The Historic Ione Band land base has been the subject of several internal tribal disputes and it will be the Historic Ione Band that determines whether their land base remains a fee simple property or is taken into Trust for the Tribe. If the land used to procure the EPA GAP monies is not the historical land base then the funds were fraudulently obtained. If, as we maintain, the land near Ione is the historic land base for the Historic Ione Band of Miwok then the Franklin led Ione Bands landless claims are simply false. The landless claims of the Franklin led Band must be investigated and the questionable activities of the landless Franklin led Ione Band and the Regional BIA Office in procuring and using hundreds of thousands of dollars of EPA GAP monies for a landless band cry out for investigation.

III. Fee to Trust Process

A. Trust Process / IGRA Issues:

As outlined in October 2002, by then Dept. of Interior, Acting Director of Trust Responsibility, Larry E. Scrivner, in a paper found at Vol. 37.3 pages 609 - 617 of the New England Law Review, "The acquisition of title to land in trust is governed by the acquisition regulation contained in Title 25, Code of Federal Regulations, Part 151. This means an Indian tribe acquires title to the land in fee simple in their name and request that the Secretary accept title in trust for the Tribe's use and benefit."

· *After nearly three years neither the Franklin led Ione Band of Miwok or their investor Ikon owns any land in fee in or adjacent to the City of Plymouth according to available local land sales records.*

· *And with no ownership of any land there is no application to take land into trust from the Franklin led Ione Band as described at 25 CFR Part 151.9.*

In the absence of a 25 CFR 151.9 trust application the process for reviewing and approving the acquisition for Class III gambling as contained in the March 2005 Office of Indian Gaming Management (OIGM) issued CHECKLIST FOR GAMING ACQUISITIONS GAMING RELATED ACQUISITIONS and IGRA SECTION 20 DETERMINATIONS cannot be initiated. Consequently, the City of Plymouth has been subjected to a Class III Casino Proposal by the Franklin Group for nearly three years without the Franklin led Ione Band owning any land in or adjacent to the City of Plymouth and without the Tribe having submitted an application as required by Title 25 CFR 151.9.

B. MSA / Tribal Misinformation:

A review of the minutes of the Plymouth City Council meetings from April 2003 through February 2004 will reveal a consistent theme of Tribal representatives misinforming the City Council that the Casino is a "Done Deal" and the best financial arrangement for mitigation of Casino impacts is dependent on the City entering into a Municipal Services agreement with the Tribe. The tribe reminded the City continually that unless such an agreement was reached the City would receive fewer mitigation dollars if the Casino is built without the agreement. Similar information was mailed to Plymouth's citizens by the Franklin led Ione Band where it is clearly noted that all the monies projected to be paid by the Tribe to the City of Plymouth were dependent on the City supporting the Casino Project.[Exhibit 21]

Title 25 CFR 151 does not require agreements with City governments as part of a trust application. Likewise, 25 USC Chapter 29, Indian Gaming Regulation does not require agreements with City governments as part of a trust application. Yet, the Tribe insisted on an agreement with the City without a requirement for such agreement in Title 25 CFR 151 or 25 USC Chapter 29. The reason for this action by the tribe is also found in the October 2002 Scrivner paper at Vol. 73.3 pg 606 of the New England Law Review.

"Gaming is a whole different process from acquiring land into trust. .... " Of course the factors that really matter in these applications are the impact on the state and political subdivisions and the jurisdictional problems. We heard this morning about the joint agreements between tribes, states, and local governments to address these concerns. **The BIA encourages tribes to address these concerns in the sense that we encourage them to work with the local and state governments to arrive at**

these cooperative agreements. Why do we do that? Because it just makes the whole process easier. Any time you have an application where all the parties are in agreement , the whole process is just simpler. **As soon as someone starts raising a flag, politics come into the mix, making it more difficult to process the applications. Difficulty arises when we have to explain why we may approve an application when we have public concerns."** (emphasis added)

The record of Plymouth City Council Meetings from April 2003 to present and the record of Environmental Scoping sessions conducted in December 2003 and February 2004 by the BIA indicate that ***the proposed Casino in Plymouth would certainly be an application where flags were being raised, where politics assuredly would come into the mix, and the BIA would certainly have difficulty approving an application due to immense public concerns.***

C. Scoping / EIR Irregularities:

There are irregularities with the scoping process that has been utilized in Plymouth for the last three years by the BIA, the Franklin led Ione Band, and IKON. When the two scoping sessions were noticed and conducted the public was not informed as to the exact size and scope of the project. The Scoping results document describes Tribal preferred projects of greater size and scope never noticed or disclosed for either scoping session. A draft Tribal Environmental Impact Report (TEIR) completed in March 2005 is available only to cooperating agencies and has not been made available to the public. The TEIR was not made available to MATRIX, a contractor hired by the City of Plymouth to analyze and report the impacts of the proposed Casino on Plymouth, even though Plymouth is a cooperating agency. 25 CFR 151.10©) states that such TEIRs will generally be considered adequate for one year prior to the acquisition and with no trust application and March 2006 approaching, the tribe should be required to repeat the Scoping and TEIR processes if they should submit a trust application.

Scoping Sessions, Scoping results, and TEIR's are costly, must be funded, and are ultimately paid for by taxpayers. For the BIA/DOI To fund and conduct these Sessions and prepare follow on Reports without the tribe owning the land appears most unusual and raises questions as to why monies were approved and who approved them? Without an application per 25 CFR 151.9 any notification of state and local governments of any proposed action by the Franklin led Ione Band is not required, has never happened, and state and local governments and the public are under no obligation to respond to or cooperate with the Franklin led Ione Band. Yet, the Franklin Group without owning the land, without a trust application but with the consent and cooperation of the BIA conducted two scoping sessions with deadlines for public comment leading the City and County officials and the public to believe that some legitimate process was being conducted.

D. Summary:

There is no Trust Application. Without having completed Step 1, submitting an application to place fee land into trust (25 CFR 151.9) the Franklin led Ione Band, with the knowledge, consent, and cooperation of the Regional BIA office, has been operating outside processes and procedures established by the Congress via 25 CFR 151 and 25 USC Chapter 29. The BIA policy of encouraging tribes to work with local and state governments to reach joint agreement to address Casino related concerns prior to submitting an application is not called for in either 25 CFR 151 or 25 USC Chapter 29. This unofficial policy without a defined process is a tool used by the BIA and tribes that allows tribes and the BIA to work outside established procedures and creates difficult, costly, and complex situations like that which currently exists in Plymouth. Any further activity by the Franklin led Band should be prohibited until a complete and thorough investigation of their questionable claims and actions since April 2003 related to their proposed Casino has been conducted.

IV. Conclusion / Requested Action Items

In April 2003 a group led by Matt Franklin appeared in the City of Plymouth claiming to be the "landless" Ione Band of Miwok Indians and proposing to build a Class III Casino complex on land in and near Plymouth to be taken into trust by the United States for the benefit of the Franklin led Ione Band. As we stated earlier and the Abramoff scandal is revealing, Federal Indian Policy as it relates to Class III gambling is fraught with corruption and is failing both Indians and non Indians alike. The very existence of

Honorable Phil Hogan, Chairman
National Indian Gaming Commission
1441 J Street NW
Washington, DC 20510
May 23, 2005

RE: Ikon - Non-Indian investors associated with Ione Band of Miwok proposed casino project in Plymouth, California

Dear Mr. Hogan:

The community of Plymouth, California is deeply troubled by the planned casino project proposed by the Ione Band of Miwok Indians and their Mississippi-based, non-Indian investors known as Ikon.

Over the past two years this non-tribal corporation has taken the lead role in representing this proposal to the City of Plymouth. Through their representative, a Mr. Dick Moody, they have proceeded to engage in activities in this community that if not illegal, have been at least highly unethical. In fact, during my tenure on the Plymouth City Council, even the Regional Office of the Bureau of Indian Affairs in Sacramento reported to us that Mr. Moody was responsible for many of the difficulties facing the tribe and City with respect to this project.

The citizens of this community are strongly opposed to this project being developed in the heart of this town. And, our City Council is on record as well as being opposed to this project. Nevertheless we realize that communication with the tribe must take place. As such, it is of great concern that these communications are being driven by an entity that is not tribal in nature. During my term on the City Council we experienced Ikon representatives making essentially all decisions for the Ione Band and at times holding meetings with the City without tribal members even present. In other words, the whole concept of a government-to-government relationship is nearly non-existent.

As you "sit in the shoes of the trustee", we encourage your office to investigate Ikon and its representatives to the fullest extent possible in order to ensure the safety of this community and the integrity of this tribal venture. Enclosed please find information which may be helpful in your work on this issue.

Respectfully,

Elida A. Malick
Director, No Casino In Plymouth
Former member Plymouth City Council

Commissioner Nelson Westrin
National Indian Gaming Commission
1441 J Street NW
Washington, DC 20510
May 23, 2005

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Elida A. Malick
Director, No Casino In Plymouth
Former member Plymouth City Council

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Carl J. Artman
Associate Solicitor, Division of Indian Affairs
Office of the Solicitor
Main Interior, MS 6513
1849 C Street N. W.
Washington, D.C. 20240
October 19, 2006

Re: Memorandum dated September 19, 2006 from Carl J. Artman, Associate Solicitor, Division of Indian Affairs to James E. Cason, Associate Deputy Secretary concerning Ione Band Indian Lands Determination

Dear Mr. Artman;

No Casino In Plymouth (NCIP) is a representational organization acting on behalf of the citizens of Plymouth, California and the surrounding communities in Amador County, California. Because the Ione Band of Miwok and its investors have threatened the City of Plymouth with legal action for any comments they may put forward, the City has been rendered mute on the matter of the Ione Band of Miwok proposed tribal casino. Therefore, the citizens have found it necessary to act as their own agents in the domain of local representation on this issue.

Having reviewed your recent opinion on behalf of the Ione Band of Miwok, NCIP would like to take this opportunity to request a review and appeal of this opinion based on the facts presented by the County of Amador[1], Dr. Stephen Dow Beckam[2], and the State

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[1] Letter Dated Dec. 23, 2005 to Mr. Philip Hogan, National Indian Gaming, Re: *Opposition to Ione Band of Miwok Indian's Request for Determination that Certain Lands Qualify as Restored Lands Pursuant to 25 U. S. C. sec. 2719,* from Cathy Christian Attorney for Amador County

[2] A Report prepared for Amador County, California, as comment to the National Indian Gaming Commission on a request for land determination from the Ione Band of Miowk, May 2006, The Ione Band of Miwok Indians of Amador County, California, Stephen Dow Beckham, Pamplin Professor of History, Lewis & Clark College, Portland OR

of California[3]. The above sited documents represent a comprehensive review and clarification of the Ione Band of Miwok situation and successfully and thoroughly refute all arguments brought forward in the casino investors claim for restored status as found in the supporting documents[4] attached to the tribal Request for Determination.

We agree that the history of the Ione Band is "unique and complex" as stated in your opinion and therefore, strongly believe this Bands history must be "described in detail". We respectfully submit that as your letter stands today, there is insufficient factual information to support the conclusion of restoration.

In addition to our support of the appeal prepared for the Indian Board of Appeals, Department of the Interior by the County of Amador, our further observations include, but are not limited to, the following:

1. There is no signed or ratified treaty that includes the site in question. There is only one treaty that was signed in this area, involving the confluence of the middle fork and north fork of the Cosumnes River in El Dorado County, eight miles distant from Plymouth. This treaty was not signed by <u>any</u> Amador County band of Indians but rather by Indians in El Dorado County.

2. The Ione band has held only one meeting in Plymouth until your office was in the process of rendering this recent opinion; August and September of 2006. If the site of two to four recent meeting is enough to establish modern ties to the land in question, then certainly it should be taken into consideration that the Tribal office is in Ione, California, nearly all Tribal meeting have taken place at the Evelyn Bishop Hall in Ione (17 meetings confirmed at this Ione site), and that over half a million dollars in GAP funding was requested and received from the EPA by this Band on behalf of their land base in Ione.

3. Regarding the Bruce letter of 1972 you state, "For reasons that are not entirely clear, the Department did not follow through on the Commissioners direction." Vía a recent FOIA of the Central and Regional offices of the Bureau of Indian Affairs we have obtained volumes of letters and memos from the Solicitors office at the Department of Interior that make it abundantly clear why the Department did not follow through on the Commissioners direction. For your letter to state that it is unknown why the Commissioners direction was not carried out clearly demonstrates a lack of review of the Solicitors own departmental records.

4. It appears that you were unaware of the information presented by the State of California and the County of Amador regarding the lands determination for the Plymouth

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[3] Letter Dated May 01, 2006, to Ms. Andrea Lord, Staff Attorney, National Indian Gaming Commission, Re: <u>Opposition to Ione Band of Miwok Indians' Request for Restored Lands Determination</u>, from Andrea Lynn Hoch, Legal Affairs Secretary, Office of the Governor of California

[4] Memo Dated August 06, 2004, to Tribal Council of the Ione Band of Miwok Indians, Re: Ione Band of Miwok Indians' Rights Under IGRA to Have Certain Lands Taken Into Trust as Restored Lands for a Restored Tribe, from Fredericks, Pelcyger & Hester, LLC Attorneys for Ikon Group, LLC

site. Perhaps, in the transfer of duty from NIGC to the Solicitors Office, all the pertinent data was not included in the file requesting determination for this Franklin-led faction of the Ione Band of Miwok Indian.

No Casino In Plymouth, strongly urges you, as an expression of good faith to this non-tribal community who will be so deeply affected by your actions, to withdraw this opinion pending a thorough investigation and review of the pertinent facts. We are confident, that as a reasonable and just Solicitor, you will find that restoration, much like in the Karuk[5] determination, will not be the appropriate determination.

Respectfully submitted,

Elida A. Malick, Director
No Casino In Plymouth
Plymouth City Council 2004

cc: Dirk Kempthorn
Secretary of the Interior
U. S. Department of Interior
1849 C Street
Washington, DC 22040

James Cason
Acting Assistant Secretary for Indian Affairs

[5] Letter Dated October 12, 2004 to Bradley D. Bledsoe Downes, Esq. Subject: NIGC Negative determination on Karuk off-reservation , from Penny J. Coleman, Acting General Counsel, National Indian Gamming Commission

Attach 13

To: Carl J. Artman
Associate Solicitor, Division of Indian Affairs

From: Butch Cranford,
Citizen Amador County Plymouth Community

Subject: Reply to Ione Band Indian Lands Determination

Mr. Artman,

Having had the opportunity to review your recent opinion on the behalf of the Ione Band I now have several comments regarding the statements and claims in the opinion as well as a number of questions related to pertinent facts that you apparently have little or no knowledge of, or you overlooked or you ignored in the opinion.

1. Concerning the alleged pending fee to trust application.
    a. What constitutes a "pending" application?
    b. When was this "pending" application from the Ione Band received at Department of Interior?
    c. Was the Ione Band's application pending in September 2004 when they requested a lands determination from the NIGC?
    d. Does a pending application require any action(s) by the Department?
    e. If action(s) by the Department are required for a pending fee to trust application why have the City of Plymouth, County of Amador, and State or California not been notified?

2. According to your opinion you reviewed the Ione Band's request.
    a. What other documents, if any, did you review?
    b. Were you aware that the NIGC requested assistance from the California State Attorney General in 2006 in preparing the lands determination opinion requested by Ione Band?
    c. Were you aware that the California Attorney General provided assistance to the NIGC in form of a letter from the Governor of California?
    d. Were you aware that the Amador County Board of Supervisors provided multiple inputs to NIGC regarding the Ione Band's request through their legal counsel?
    e. Did you review any of the documents from the Governor of California or Amador County Board of Supervisors?

3. You state the Band has not suggested it acquired the Plymouth parcel in settlement of a land claim, nor is there any basis for such a claim.
    a. Does the pending application identify a single Plymouth parcel or are multiple parcels identified?
    b. What evidence can you provide that the Band has acquired the Plymouth parcel(s)?
    c. Would it be a more accurate representation of the Bands current relationship to the Plymouth parcel(s) to state that the Bands investor group, IKON, has options to purchase the parcel(s) at some as yet undetermined time in the future?

4. As to your statement that when the Dept. adopted its acknowledgment regulations at the end of 1978 the Band was treated as having submitted a letter of intent to petition.

a. Could you provide some specific reasons as to why the Band was treated in this manner?

b. Was this treatment consistent with Department practices at the time? For instance was this treatment afforded the Sault St. Marie Band which had received a substantially similar letter?

c. Did the Band actually submit a letter of intention to petition in 1978?

d. Was this treatment the result of any opinions or decisions from the Solicitor's office or members of the Solicitor's office staff to Interior Officials, the Central Office or the Regional Office?

e. Was the Band's inability to complete the petitioning process affected in any way by opinions or decisions from the Solicitors office to the Central office or the Regional Office?

f. How was the Band treated immediately following the 1972 Louis Bruce letter and prior to 1978?

5. Your conclusion that the only way the Band can conduct gaming on the lands it seeks to acquire in trust without a two part determination is if the lands are restored lands for a restored tribe does not address why the two part determination is not an option.

a. Why is the two part determination not an option for the Ione Band?

b. Has the Ione Band ever owned any land near Ione?

c. Did the Band inform the Department in their pending application or their request for a land determination that their proposed Casino project has been overwhelmingly opposed from the day it was first publicly announced by the Citizens of Plymouth, surrounding communities, and Amador County?

6. You write that We believe that the history of the Band's relationship with the United States is unique and complex but we need not describe it in detail.

a. Why not? I believe inclusion of a comprehensive description of the unique and complex history is necessary as no logical or objective determination can be made without such a description.

b. Are there any portions of the unique and complex relationship the Ione Band has with the United States that do not support your opinion and have therefore been excluded?

7. The Department's defense of the Tribe's recognized status in the Sault St. Marie case mentioned in your opinion causes me to ask the following:

a. In your opinion would the treatment by the Department and the Solicitor's office and staff afforded the Ione Band related to its status as a federally recognized tribe after 1972 to be substantially similar to the treatment afforded the Sault St. Marie Band?

b. If the treatment afforded the two Bands was substantially different what

differences in the two substantially similar letters that would have caused the different treatment?

c. How do you explain how the Sault St. Marie Band's recognition was successfully defended by the Department and the Ione Band's status remained unclear until 1994 if the letters were substantially similar?

d. Based on available documents how would you characterize the treatment afforded the Ione Band by the Department after the 1972 Louis Bruce letter recognizing the Band?

8. You state that for reasons that are not entirely clear, the Department did not follow through on the Commissioner's directions and the Department took the position that the Band was not recognized.

a. To whom is it not entirely clear and why the lack of clarity for the Ione Band because this lack of clarity was apparently not an issue with the Sault St. Marie Band that received a substantially similar letter?

b. Is there no documentation available relating to the position the Department took that would clarify the reasons?

c. Did the Department rely on any opinions, memos, or letters from the Solicitor's office in taking the position that the Ione Band was not recognized?

9. You write that in 1993 Ada Deer met with representatives of the Band and after review of the matter reaffirmed the conclusions of Commissioner Bruce's 1972 letter and Ada Deer agreed to accept into trust the specific parcel of land described in the Commissioner's letter.

a. Exactly, who met with Ada Deer?

b. Who were the representatives of the Ione Band in 1993?

c. Are the persons who met with Ada Deer currently members of the Ione Band?

d. Did any of the current Ione Band Tribal leadership or any current Ione Band members meet with Ada Deer in 1994?

e. The reaffirming letter was addressed to what Ione Band Tribal representative at what address?

f. Did the Ione Band, at any time, by tribal resolution agree to relinquish title to the parcel of land referred to in the 1972 Louis Bruce letter to the United State to be placed in trust for the Ione Band after receipt of the Ada Deer letter in 1994?

10. You state that the Bruce letter of 1972 amounts (empahsis added) to recognition of the Band in accordance with the practices of the Department at the time.

a. I fail to understand how, if the letter amounted to recognition in accordance with the practices of the Department at the time, the Ione Band was refused said recognition until 1994. Can you explain further?

b. Is it possible that there were actually no documented or consistent practices at the time of the Bruce letter just as there are currently no documented or published rules or regulations governing Section 20 of the Indian Gaming Regulatory Act 18 years after its enactment?

c. Mr. Artman please help me understand that if the Bruce letter amounted to

recognition in accordance with the practices of the Dept. at the time how is it you are writing this opinion some 34 years later?

11. Your previous use of the word amounts becomes clearer after reading that Assistant Secretary Deer's review of the matter and reaffirmation of Commissioner Bruce's recognition amounts to a restoration of Band's status as recognized Band.

a. Mr. Artman, in a matter as serious as this and with the consequences that your opinion could bring to Plymouth and Amador County are you sure it is a restoration or does it simply amount to a restoration?

b. If in fact as you conclude, that the actions by the Department in Federal Court and before the IBIA, manifested a termination why did the Ione Band continue to seek recognition and not restoration?

c. If the Band was terminated why is there no mention of this termination in the Ada Deer letter which clearly reaffirmed their 1972 recognition?

d. Was the Ione Band ever made aware or ever notified by the Department that the actions of the Department in Federal Court and before the IBIA manifested a termination or that the Ione Band was considered in any context to be a terminated Band?

d. In either of these actions did the Department clearly inform the Court or the Board or the Ione Band that the Ione Band was being terminated, had been terminated, or could be terminated?

e. Can you produce any document(s) that indicate the Ione Band was informed that it had been terminated by virtue of the Department's actions in Federal Court and at the IBIA?

f. When, if ever, did the Ione Band know that it had been terminated and when, if ever, did the Department or any other office of the United States so inform the Ione Band?

g. Can you explain why the Ione Band notified by Ada Deer in 1994 that the 1972 recognition by Louis Bruce was reaffirmed would need to seek restored status and then wait more than 10 years to submit a request to the NIGC for a restored lands determination?

12. You state that in this case the evidence that the land being acquired is in an area that is historically significant to the Band.

a. What credible or reliably sourced evidence can you provide to support your statement that this area is significant to the Ione Band?

b. Since 1972 and prior to the "pending" application to take land into trust for gaming can you produce any documents within the Dept. of Interior or Bureau of Indian Affairs that any members of the Ione Band were concerned about the Plymouth parcel(s) at any time for any reason?

c. Were you aware that a 2003 Report on a slate mining expansion project named the Pioneer Project contains an Archaeological report which details the failure of the Ione Band to respond to repeated queries as to whether the Ione Band had any concerns about the project's impacts to the area.

This report contained nothing relating to any Native American site(s) on the 1000 acre site within which is contained a major portion of the Plymouth parcel(s) you state are so historically significant to this Ione Band.

d. You write that many of the Band's members live in the surrounding area and I must ask on what documentation is this statement based and how many of the more than 500 Ione Band members live in the Plymouth area in Amador County?

e. Your further statement that the Band has held governmental meetings in Plymouth establishing a modern connection to the area while bringing a smile to more than one reader in Plymouth is a trivial and trite assertion not deserving of further comment when dealing with this very serious matter.

Mr. Artman, a few more questions and then closing comments.

a. Based on records available in or to the Department what historically has been the size of the Ione Band? (# of Families / # of Adult members / # of Children)

b. What was the size of the Ione Band in 1994 at the time of the Deer letter? What is the current size of the Ione Band?

c. What is the status of the 40 acre parcel referenced in both the Louis Bruce letter and the Ada Deer letter and which both Bruce and Deer agreed to accept in trust?

Summary: Mr. Artman, I can appreciate and understand your desire to assist and promote Native Tribes as outlined in your recent testimony before the Senate Indian Affairs Committee. Certainly, the history of the Ione Band is unique and complex and a closer examination and a more comprehensive review of their unique and complex history would have resulted in a more objective and less biased opinion than the one to which your signature is affixed.

An example of what I find to be particularly troubling is the scenario explaining what amounted to recognition, manifested a termination, and amounted to a restoration. This scenario carefully constructed with selected portions of the Ione Band's complex and unique history to fit the undocumented practices of the Department 18 years subsequent to the passage of the IGRA bears little resemblance to actual events. Further, when these events which are supported by documentation are examined in the context of the time in which they occurred they simply do not support your scenario. It appears that this opinion was written to make past and current Department practices fit with selected elements of the Ione Band's history to allow a Casino in Plymouth for the BIA created Ione Band of Indians led by Matt Franklin.

There is a real historic Ione Band of Ione Indians. The real Ione Band is the one that dealt with Louis Bruce and was recognized in 1972 by Louis Bruce. The real Ione Band is that small dedicated group of Native Americans that worked for 18 years to be reaffirmed by Ada Deer. The real Ione Band has historically consisted of a small number of families with the Band numbering less than 100 members. Descendants of the Ione Band's tribal leaders that sought and received Federal Recognition in 1972 continue to live quietly on the same 40 acre parcel that both Commissioner Bruce in 1972 and Secretary Deer in 1994 agreed to take into trust. The real and historic Ione Band does not need or want restored lands in Plymouth nor do they need to establish a historic or modern connection with land in Plymouth as they have a long established and well documented connection to the land near Ione and with the Ione area.

The real Ione Band needs only to have the Department finally follow the directions contained

Reg Dir
Dep Reg Dir
Reg Adm Ofer
Route RIM
Response Required NO
Due Date F/T
Memo
Telecon
cc: DECRMS

NO CASINO IN PLYMOUTH
Working to Preserve Rural Amador County
P.O. Box 82
Plymouth, California 95669
www.nocasinoinplymouth.com

Mr. Clay Gregory, Regional Director
U. S. Department of the Interior
Bureau Of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825-1846
May 10, 2007

Re: Memo dated April 10, 2007 from Mr. Rory Dilweg, Holland & Knight, attorney's for the Ione Band of Miwok Indians

Dear Director Gregory;

Mr. Rory Dilweg, representing the law firm of Holland & Knight, which represents the Ione Band of Miwok Indians (Tribe) in their attempt to open a casino in Plymouth, Amador County, California, made several allegations in a memo to Clayton Gregory, Regional Director for the Bureau of Indian Affairs, Sacramento, Ca. Some of these allegations concern our organization, NO CASINO IN PLYMOUTH (NCIP). Others are on the substance of the cause his firm represents.

For the record, with respect to the seven points directed at NCIP on page fourteen of the above memo, the following shows that these allegations are false and stretch the bounds of hired advocacy.

1. On p.14 the Dilweg memo alleges that NCIP had claimed that the lands where the Tribe wants to open the casino are not in the midst of the tribe's historic land base. But, NCIP had only stated, entirely truthfully, that the Tribe (and its attorneys) had not documented the claim that the lands are in that base. The Dilweg memo references certain documents. But, these were not part of the application that the Tribes attorneys

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Pacific Regional Office
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had filed with the BIA regional office.

2. Also on p.14 Dilweg states that NCIP asserts incorrectly that the application references plans for ~10 acres within the Plymouth City limits. But in fact, the application states that "the entire first phase of the project would be built on land within the City of Plymouth." (i.e. the ~10 acres). The application discusses a gaming facility, hotel, parking lots, water treatment plant, and other facilities, but never discusses placing them in any other location. Again, NCIP is correct. The Dilweg memo is not.

3. The Dilweg memo suggests that NCIP has no basis for its claim that the people of Plymouth oppose the casino. But the fact that the 2003 City survey showed 73% of the people opposed the casino is part of the public record, as is the fact that 84% of the Amador County voters voted against more casinos in Amador County on Measure I in 2004. The Dilweg memo's case rests on the City Council's approval of a Municipal Services Agreement (MSA), because it instructs the reader to "see MSA attached to the Tribe's application." See indeed. The MSA was not attached to the Tribes application. More important, the MSA was approved by a City Council recalled by the voters for supporting the casino proposal.

4. The Dilweg memo alleges that NCIP's concerns about the proposed casino's impact on Plymouth's water resources and businesses are unfounded because they would be addressed in the context of the NEPA Environmental Impact Statement. Note however that Mr. Dilweg's firm argued before the 3rd District court that no environmental impact studies were done at the time the MSA was approved because the project had been defined only vaguely. Nor has any environmental study been done in the intervening three years. Hence, NCIP's point is entirely correct; environmental concerns were never addressed and remain unaddressed.

5. Not addressed as well is NCIP's question concerning the Tribe's intent regarding use of a landing strip. The Dilweg memo blames NCIP for asking but, does not answer the question.

6. The Dilweg memo accuses NCIP of asking "irrelevant" and "rhetorical" questions about whether the Tribe intends to provide its own fire, water, and sewer services, or whether it intends that the City do so. But, if such questions were irrelevant, what would relevant ones look like? Note especially that while the application states that "the proposed acquisition will be self sustaining, including water supply, wastewater treatment, and fire protection," the MSA is specifically to the contrary. Hence NCIP's question remains; "Which is it, a self sustaining casino project, or a casino project connected to the City and County infrastructure?" The Dilweg memo does not provide and answer.

7. The Dilweg memo alleges that NCIP somehow places no value in a Market Study of how Plymouth and Amador County would be affected by the Casino. But, NCIP never said any such thing. Rather, NCIP believes that the public and local governments

should be allowed to comment on it and that it should be updated. The Market Study, like much of the work surrounding the casino application, is non-transparent. This is public business. It should not be treated as a *cosa nostra* by the interested parties.

The Dilweg memo is a small, none too subtle, none too competent attempt to create the appearance that NCIP has been somehow refuted and discredited. But, any impartial person, or court, that examines the record will see that NCIP has been scrupulous with the facts and law. It represents the citizens of Plymouth, California. It is financed by its own members who work entirely pro bono. On the other side, we see law firms financed by gambling interests that play fast and loose with facts, law, and allegations, confident that corrupt agencies will side with them.

The recent decision, regarding the MSA and CEQA, by the 3rd District Court of California upheld NCIP against all that Holland & Knight could muster. This will probably not be the last instance in which the citizens of Plymouth and Amador County will have the opportunity to ask the courts to examine this matter. We have reason to hope that impartial authorities will inquire into the ways in which law and process have been manipulated, and hold those people accountable.

Respectfully submitted,

Elida A. Malick

Dr. Elida A. Malick
Director, No Casino In Plymouth

rec'd
JAN 5 - 2007
S Klein

NO CASINO IN PLYMOUTH

Working to Preserve Rural Amador County
P.O. Box 82 Plymouth, CA 95669
nocasinoinplymouth.com

Reg Dir
Dep Reg Dir
Reg Adm Ofcr
Route
Response Required
Due Date 1/12/07
Memo

Hand Delivered

Clay Gregory, Regional Director
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825

Re: Preliminary Comments on Ione Band of Miwok Fee to Trust Application

Dear Mr. Gregory,

General Issues with the Ione Band of Miwok Fee to Trust for Gambling Application as noted during brief review on December 5th, 2006.

The Municipal Services Agreement (MSA) with the City of Plymouth was listed as an exhibit but was not included in the application. No explanation provided in the application for it not being included as listed.

The Ione Band of Miwok's September 2004 letter to NIGC requesting an Indian Lands Opinion for Restored Lands was not included but was listed as an exhibit.

No Environmental Impact Study was included but it was noted that it will be submitted under separate cover. No estimated time of delivery was noted.

A Market Survey completed for the Ione Band was not included due to protection afforded under the Freedom of Information Act.

A map of sites culturally relevant to the Ione Band of Miwok was not included due to protection afforded under the Freedom of Information Act.

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There is no information included in the application as to how the 200 acres in the County will be used.

Observations, Findings, and Issues related to the Cover Letter

It was noted that the cover letter is undated and is addressed to Secretary Norton. Without knowing when the Regional Office received the application the fact it was addressed to Secretary Norton indicates that the application has been in receipt at the Regional Office prior to Secretary Norton's resignation effective March 31, 2006. **Please provide the date on which the Regional Office first received the application.**

1st Paragraph - ."...request you take these lands into trust for the benefit of the Ione Band for gaming and governmental purposes.

Does Governmental purposes include "affordable housing, job training, education, affordable health care, child care and other services?"

2nd Paragraph - "These lands are located within the aboriginal territory of the Ione Band. Furthermore, the tribe has a strong temporal, cultural, and geographical nexus to these lands a shown in the application."

Where in the application is a strong temporal, cultural, and geographical nexus documented?

3rd Paragraph – "The Tribe submitted a Request for Restored Lands Opinion to the National Indian Gaming Commission (NIGC) to support this application in September 2004." *(and copied the Office of Indian Gaming.) added* "The NIGC is currently drafting an opinion in consultation with the BIA, Office of Indian Gaming,and the Dept. of Interior Office of the Solicitor." Presumably, this was being done in accordance with the Memorandum of Understanding in place between the NIGC and DOI in September 2004.

Please explain how the September 2004 request from the Ione Band to the NIGC for a restored lands opinion was responded to by the Solicitor's Office in September 2006 with an opinion which closes with the following ....."so once the land is in trust , the Band may conduct gaming on it without obtaining a two part determination.".

Additionally, the Solicitor's opinion was not addressed to the Ione Band but instead addressed to the Bureau of Indian Affairs Associate Deputy Secretary, James Cason.

Did the Tribe instruct that the restored lands opinion be sent to Associate Deputy Secretary Cason in their September 2004 request to the NIGC?

A reading of #14 of a May 31, 2006 Memorandum of Agreement between the NIGC and the Department of Interior raises the question as to how the Solicitor would have knowledge of a PENDING trust acquisition that addresses whether a tribe is a restored tribe and whether the lands are restored lands under IGRA.

Additionally, the only opinion that could be delivered by Assoc. Solicitor Carl J. Artman pursuant to the MOA is an opinion to the BIA pursuant to #3 of the MOA where it was agreed that "If the Secretary is considering an a fee to trust acquisition, then the DOI's Division of Indian Affairs (DIA) will draft the legal opinion to the Bureau of Indian Affairs(BIA) whether it must conduct a two part determination as part of the fee to trust acquisition.

However, the Secretary as of September 2006 was not considering a fee to trust acquisition for the Ione Band, as according to your recent notification the application for the

Ione Band was not filed until November and no two part opinion could have been required from the Solicitor's Office for the Ione Band before November 2006.

In the September 2004 restored lands request to the NIGC the Ione Band states that "At this time the Tribe has completed but not submitted a fee to trust application ("Application") that will be submitted to the Bureau of Indian Affairs ("BIA") upon receipt of a favorable determination in response to this request.

What is the process for obtaining a restored lands opinion?

When and how did the Ione Band's fee to trust application become a "pending application" when according to their request to the NIGC the application would not be submitted until a favorable response was received?

Did the tribe know a September 2006 favorable opinion was forthcoming on or before March 31, 2006 and in accordance with their request filed their application?

Was the Pacific Regional Director or his / her staff informed as to the new May 31, 2006 Memorandum of Agreement between the NIGC and the DOI which replaced the old MOU? If yes, provide some evidence, memo, email, etc of the notification.

Did you as the Regional Director or any of your staff notify the Solicitor's Office of a "pending" application from the Ione Band that might require the Solicitor's Office to deliver an opinion that addressed a restored tribe or a restored lands issue?

When, if ever and by whom, was an opinion requested from the Office of Solicitor?

Where is it defined who writes restored lands opinions for pending fee to trust applications for gaming beyond the May 31, 2006 MOA?

How is it possible for the Solicitor's Office to deliver a two part determination pursuant to #3 of the MOA without an application for the Secretary to consider?

4th Paragraph – Some or all of this land will be used for Class II and Class III gaming and related purposes.

It is important to agencies and concerned citizens commenting on the application to know whether it is some or all of the land that will be used for gaming and related purposes?

....it is the policy of the Department to require tribes with no reservation to make their initial acquisition as an "off – reservation" request. Restored implies or requires that land was owned at some time by the Ione Band, is no longer owned and ownership needs to be restored.

If the tribe is a restored tribe eligible for restored lands why is this an *initial* acquisition?

There is an exception for initial reservations for newly recognized tribes.

Why is the Regional Office not advising the Ione Band to use that exception?

5th Paragraph. The contents of the application conform to the guidelines in the March 7, 2005 Checklist.

Do the contents of this application conform to the guidelines in the Checklist?

Has the Regional Director or his staff reviewed the application prior to sending the recent notice that the application has been filed?

Are there any requirements of the Checklist including those required by the Regional Director or his or her staff that have not been met?

Comments on the Fee to Trust Application of the Franklin led Ione Band of Miwok

Introduction

1st Paragraph – ....offices located in Ione....

How long have the offices been in Ione?

With offices in Ione please explain the Ione Band's modern connection to Plymouth given the fact that the offices could have been moved to Plymouth at least 3 ½ years ago.

III Need for *Additional* Land

This section might be better titled "Need for Initial Reservation" if the Ione Band is indeed landless or "Need for Restored Lands" if they are restored.

No reservation or land in trust...

Has the Department of Interior or BIA ever attempted to purchase land for the Ione Band? If yes, when and with what result?

Do you have any documents at the Regional Offices or at the BIA or DOI that indicates the Ione Band may own fee land in Amador County?

The use of the word restored in this paragraph is the only place I can find restored used in the application. In fact, the preamble to the Ione Bands Constitution reads ....***a Federally Recognized tribe , reaffirmed by Assistant Secretary Ada Deer on March 22, 1994, . Reaffirmed NOT restored.***

Did the tribe not know it was restored when its Constitution was drafted and approved in August 2002?

A review of the documents from Ada Deer related to the action she took on March 22, 1994 will show that she, at no time, considered her reaffirmation as restoring the Ione Band.

Can the BIA or Department of Interior produce any documents that meet the requirements of the March 2005 Checklist for terminating the Ione Band or restoring the Ione Band, exclusive of the Artman opinion?

Please explain how, if the Ione Band is landless, the Franklin led Ione Band has applied for and received EPA GAP funds using 40 acres of fee land near Ione?

Did Ada Deer have authority to restore the Ione Band?

The Tribe has lacked sufficient funds to purchase land.....

Doesn't the Ione Band, as a non gaming California tribe, receive approximately $1,000,000.00 annually from a fund administered by the State of California?

Could not the tribe have purchased land with these monies and have that land taken into trust?

...the Tribe has been unable to provide for its people in ways similar to the surrounding community and surrounding Indian tribes because the Tribe has no sustainable economic base.

If the tribe is landless and has no land base which surrounding communities or Indian tribes are the object of this statement?

What legal authority requires that the Tribe provide for its people similar to surrounding communities or other tribes?

Do any surrounding communities operate casinos?

Without trust land, the Tribe has had little opportunity for successful economic development and little chance of true governance.

Do any surrounding communities hold land in trust?
Does the Buena Vista Band own trust land?
Is the Jackson Casino located on trust land?
If any of the above answers is yes, please provide the Trust documents that indicate the land is held in trust.

Is Ikon Group LLC still the Ione Band's gaming developer?

Has the Ione Band purchased any options or have the options been purchased by and are recorded in the name of Ikon?

....revenue to assist the Tribe and its members in obtaining affordable housing, affordable health care, child care, job training, and other services.

Aren't these services and more available to Federally recognized tribes through the BIA? Additionally, aren't these services and more to U.S. Citizens and California residents through a number of Federal and State programs?

How often, since 1994 has the Ione Band or any of its members applied for services or assistance from the BIA or other federal agency for the Tribe and its members for any of services listed in the application?

Same question for any applications for Federal and State programs?

The proposed acquisition will be self sustaining, including water supply, wastewater treatment and fire protection. *The MSA with the City of Plymouth requires the Tribe receive its fire protection from the City of Plymouth.*

Please clarify which it is; self sustaining for fire protection or receive fire protection from the City?

A market study was prepared but is not available for review since it is protected by the Freedom of Information Act.

How are we to comment on the viability of the market if we do not know how the study was conducted and what size casino was used, how many, what type machines etc?

IV Intended Use of the Land

This section provides very limited information on the development of the casino and related facilities and there is NO information about the location of affordable housing, health care facilities, a child care center, a job training center, or facilities for any other services for tribal members and nothing related to the infrastructure required for these kinds of facilities.

Can you explain where these services will be provided if they are not included in this section and there are no facilities being built from which they could be provided?

120,000 sq. ft is the only reference to the size of the proposed casino and related facilities.
What is the actual size of the proposed casino complex project in square feet?
Aren't the two most preferred alternatives sized at 316,000 and 297,000 sq. ft?

The first phase would include small retail shops and food/beverage facilities that would compete unfairly with local retailers and food / beverage small businesses in Plymouth.

How many small retail shops specifically and what kind?
Can you define small retail shop as a small retail shop in a mega casino may not be a small retail shop in Plymouth?

Only 2 phases for 10.28 acres of the ~228 acre parcel are mentioned in the application. Nothing is known as to plans for the ~218 acres not in the City of Plymouth and this lack of information makes substantive comments on 95% of the lands in the application extremely difficult if not impossible. .

Can you explain how review and comment could be considered relevant if use for less than 5% of the total land to be taken into trust has been defined in a very limited, inaccurate, and inadequate way in the application?

Tribal construction of a fire station is included again in contrast to provisions in the MSA with Plymouth where the Tribe agreed to pay for the remodeling or building of a new fire station for Plymouth, purchasing a new fire truck, and paying more than $700,000 annually to man the fire station.

Please explain this discrepancy? Is the Tribe planning on meeting its commitment under the MSA with Plymouth or are they building, operating, and maintaining their own fire station?

The subject of wastewater, the wastewater treatment system, the standards it will meet, and how recycled water will used are all discussed. However, there is no discussion as to the source or sources of the water to be treated.

Specifically, what is the source or sources for the potable water for the proposed casino project?

Not a single reason listed for needing additional land in section III is a part of either phase 1 or 2 development for and on the land other than to build a casino and hotel.

In what phase of the project will the affordable housing be built?
Where are the health care facilities, the job training facilities, the child care facilities, the schools, the government buildings and buildings and facilities associated with other services normally associated with and required from "sovereign" governments so that their citizens' economic, social, cultural and political needs are met?

The schools, businesses and residences in proximity to the Casino listed in the in the application represent only a small portion of the schools, businesses, and residences with ~ one mile of the proposed casino.

There is a preschool, a grade K -6 elementary school, a high school for troubled youth, and a Montessori pre school within approximately one mile of the proposed casino site.
Three churches are within approximately one mile of the proposed casino.

There are nearly 300 residences within a mile of the proposed casino, in fact most of the City of Plymouth is within one mile of the proposed casino.

Please explain why none of the above schools, residences, or businesses are listed as being in close proximity to the proposed casino?

What are the size and kinds of commercial uses currently on the land versus the size and scope of a casino?. Are all commercial uses considered equal.

The alleged minimal traffic pattern disruption is based on what traffic or circulation studies, since no EIS is available?

Did the tribe contact the City, County or State to inquire or verify the amount of traffic and the level of disruption and impact to traffic patterns?

What other sites, if any, were considered or evaluated for the criteria listed?
Were there no properties in Sacramento County where the majority of the Franklin led Ione Band lives and which would be even closer to population in general?

Wouldn't land in Sacramento County better qualify as aboriginal territory of many of the terminated members of the Wilton Rancheria now listed as members of the Ione Band, including Matt Franklin?

V. Physical Description of the Land

most of the vegetation consists of grasses, but there are also a significant number of small pine and other brush and bushes.

Please explain how a tribe with a long historical connection to the land and a strong modern connection would not have included the hundreds of majestic oak trees of of various varieties on the site.

Not only do we question whether any historical or modern connection to this land by the Franklin led Ione Band exists; we question whether whoever prepared this section of the application has ever been to the site. There is simply no 228 acre site in and around Plymouth that meets the description in the application.

VI. Past and Present Uses of the Land

The landing strip. A small landing strip might prove beneficial for some high rollers who want to visit the casino and not want to wait in traffic.

Has the landing strip ever been used and will the tribe ever develop the landing strip for use as a landing strip as part of the proposed casino complex?

The mine lift station was removed. **When and by whom?** We believe that if a pending application that included a draft EIS were on file that removing structures would not be done on or to the property without some type of notice. **Are there any residual EPA issues related to the mining operation?**

VII Proof of Ownership / Plan for Transfer to Tribal Authority

Prior to trust acquisition the Tribe will purchase the parcels and take fee title.

How is it possible that the Tribe can now purchase property after having not been able to since 1994?

Appraisals are underway and will be provided to the BIA when completed.

Will the public, local, county and state governments have access to these

appraisals?

Will they know at least whether the appraised value of the acquisition is more than $100,000.00?

Did the Tribe obtain the rights of way or did Ikon obtain rights of way and by what means were the rights of way obtained?

VIII Legal Description and Maps of Land to be Acquired.

Located within the Tribes aboriginal territory in and about Plymouth.

This assertion of aboriginal territory is based on what documentation?

Within 2.5 miles of State highway 16. Highway 16 is much nearer than 2.5 miles.

Have tribal members actually traveled from Highway 16 to the proposed site?

The Tribe ***intends*** to place its gaming facility (casino) on the 10.28 acres.

Is the tribe not sure or is there a possibility the casino would not be placed on the 10.28 site?

IX Proximity to the Tribes Reservation

While the statement in section III that the Ione Band has no reservation and no land in trust is correct the statement that the Tribe is landless is incorrect. The Ione Band owns 40 acres in fee near Ione and has since acquiring quiet title to the property in 1972. This is not the tribe's initial acquisition of land.

Does the Ione Band own 40 acres in fee near Ione?

Have members of the Ione Band lived on that 40 acres for decades?

Has Matt Franklin used the 40 acres near Ione to apply for and receive EPA GAP funds?

Has the Regional Office assisted Matt Franklin in applying for EPA GAP funds using the 40 acres near Ione?

Does the Regional Office possess any documents that mention or make reference to the 40 acre parcel now owned in fee by the Ione Band?

XI Tribal Resolution in Support of the Trust Application

Irrespective of what is contained in the Tribal Constitution at Article VII, Section 1 (i) the Tribal Council does not have the authority to take land into trust.

By what authority under the U.S. Constitution and laws of the United States do the Ione Band of Miwok have the authority to take land into trust?

, as evidenced in the *original* Tribal resolution, entitled Resolution 2005 – 19. Exhibit B.

Are there other resolutions that are not included that might be of some value to those commenting.

XII Impact on Local Government / Jurisdictional Issues

Impact on Tax Rolls

After reading this section we wonder if local government comments or comments from the affected community are necessary at all. We do not understand the tribe's very short sighted assessment on city, county, and state taxes. The mistaken assumption that these parcels will never be

developed to a value beyond their current assessed value is simply ludicrous in light of the development that has taken place in Plymouth, Amador County and California in the past decade. Since this casino proposal was first introduced in April 2003 several new developments aligned with and in harmony with our General Plan are proposed for Plymouth. This impact assessment fails to account for any projected revenues that might accrue in the future through development that is more thoughtful, responsible, and reasonable than a casino. No considerations were given for any Prop. 13 properties or any Williamson Act properties.

$200,000.00 per year to the City is not generous. If one simply uses a very conservative estimate of the assessed value of a Las Vegas style casino and hotel of $350 Million and uses 1% as the basis for mitigating annual revenues to the City we get $3.5 Million annually. The offer of $200,000 annually is a paltry 0..57% of the conservative assessed value of $350 Million. The application does not include any assessment of the loss of sales taxes, hotel taxes, etc that a casino may collect but not distribute to the city, county, or state.

Jurisdictional Problems and Potential Conflicts of Land Use.

The section begins with "The Tribe does not foresee any jurisdictional or land use conflicts.... and the tribe intends to work co operatively with the local jurisdictions to ensure that the casino project *harmonizes* with the surrounding community".

Does the Regional Director or the BIA believe it proper for a tribe to offer money in exchange for the City's support?

Does the BIA believe that continually threatening the City and Community with reduced mitigation dollars or zero mitigation dollars if the City did not approve the MSA and support the casino is a proper method for working co operatively to site an off reservation casino in Plymouth?

Does the BIA believe that falsely claiming on the public record that the proposed casino was a "Done Deal" and there was nothing the City or County could do was working co operatively?

For this application filed in November 2006 to state that no problems and conflicts were foreseen after more than three years filled with issues, problems, conflicts, and litigation related to the Ione Band and their proposal to build a casino in Plymouth is simply beyond belief.

The third sentence of this section declares that "To demonstrate this co operative spirit, the Ione Band and the City of Plymouth have negotiated a Municipal Services Agreement ("MSA") that *addresses and resolves* any potential jurisdictional and/or land use issues...."

Are these the jurisdictional and / or land use issues the Tribe does not foresee?

It was the Tribe that initiated the negotiation that led to the MSA.

This leads one to ask if there were no jurisdictional and / or land use issues foreseen why would the Tribe initiate negotiations with the city for a MSA?

The very fact that the MSA was successfully challenged by Amador County and NCIP on CEQA related issues is proof that the MSA did not adequately address and resolve potential jurisdictional and / or land use issues as stated.

The following is a brief review of how the unnecessary and unwanted MSA is a farce because of the manner in which it was negotiated and then approved by a City Council under

recall by the citizens of Plymouth who overwhelming oppose the proposed casino.

The Plymouth City Council entered into the MSA despite overwhelming city and community opposition as initially indicated by an August 2003 survey conducted by NCIP indicating that more than 60% of Plymouth's citizens were opposed and opposition in surrounding communities reached 90%.

Suspicious that opponents of the casino manipulated the survey result, the City Council approved and administered a September 2003 survey of registered voters that indicated 73% of Plymouth's voters opposed the casino. The City Council voted to support the casino project in spite of this overwhelming opposition.

The overwhelming opposition to more casinos in Amador County was verified in November 2005 when during the special state election the Amador County Board of Supervisors placed the non binding Measure I on a county wide ballot. In response to a simple "Do you want any more Casinos in Amador County", 84% voted NO MORE CASINOS. Voter turnout was 72%. The City of Plymouth voted 73% NO MORE CASINOS. These results speak not only for the City of Plymouth but for surrounding communities and Amador County.

From September 2003 to February 2004 the City Council negotiated the MSA. During these negotiations the support letter from Mayor Darlene Scanlon, now a part of the MSA was attached to an early MSA draft made available to the public. This was 3 months prior to the City Councils approval in February 2004 and this indicates that the City Council was planning to approve the MSA without regard to the overwhelming public opposition registered over the intervening months.

In open session of a City Council meeting, Mayor Darlene Scanlon admitted that she did not write the letter of support on which her name was found. She also admitted the letter of support was drafted by the tribe.

Longtime City Attorney, Mike Dean, was completely shut out of the negotiation process and is on the public record numerous time stating that he had nothing to do with the final MSA as approved.

Finally, in November 2005, Mike Dean was provided a copy of the draft MSA for his review and comment during a regularly scheduled Thursday night City Council meeting. In written comments that reached 11 pages Mr. Dean provided objective comment that echoed many of the issues raised by the public and specifically raised the CEQA issues over which the City was ultimately sued in an email to Mayor Scanlon on the following Saturday. Hard copies were later provided to then Mayor Scanlon and other Council members.

The following Monday, City Administrator Charles Gardner informed tribal representative Dick Moody that the City had hired a new attorney to review the MSA. Without a City Council meeting a new attorney was hired.

Unfortunately, the public was never informed of this hiring and no agenda item to consider the hiring of another attorney exists or record of the hiring other than his billings and the record of the City's payment exist. No contract, nothing. In the Grand Jury report for 2005 City officials are on record as never having interviewed Stan Wells.

The public learned of this sordid affair more than 3 months after the MSA was approved. The attorney, one Stan Wells, turned out to be none other than Dick Moody's attorney. Dick Moody was the Tribal Representative.

A recall effort was initiated in September 2003 and in May 2004 the three elected members supporting the casino were recalled but not before approving the MSA in February 2004.

This is a very brief review of what the city council under threat of a successful recall and in concert with the Ione Band and their tribal representative, Dick Moody, was willing to do in order to get an MSA as favorable to the tribe as possible approved before they could be recalled. Former Councilman and casino supporter Raymond Estey recently stated during public comment that the Council had to hurry and approve the MSA because they were being recalled.

Any suggestion that the MSA between the Ione Band and the City of Plymouth and the accompanying support letter accurately represents city and /or community support for the Ione Band's proposed casino project is simply false; it is a misrepresentation of the facts.

The MSA and support letter were created and approved using highly questionable if not illegal methods and practices . The MSA and the letter of support are nothing more than the disgusting result of what can happen when casino / reservation shopping tribes work co operatively with unethical local public officials.

The MSA is not before the court on a motion for a new trial. That motion was denied over a year ago. The City of Plymouth decided not to appeal the Superior Court Ruling but the Tribe in their desire to work co operatively with the City intervened and appealed the ruling in spite of the City's decision to let the Superior Court ruling stand. Oral arguments are scheduled to be heard on February 20, 2007 at the District Court in Sacramento.

When will accurate, truthful, and up to date information concerning the status of the MSA be included in the application for additional comment?

Under terms of the MSA, law enforcement, ***fire protection***, and emergency services to the project would be paid for by the tribe.

Again, this is not what is detailed in section III where the project is described as being self sustaining including water supply, water treatment and *fire protection*. A thorough explanation is requested.

A preliminary review of the Ione Band's Application was completed on December 5th, 2006 by D.W. Cranford II and the MSA was not included in the application.

Can you explain why the MSA is not included?

When if ever will the MSA be available in the application for comment?

the Tribe fully intends to mitigate any such impacts that result from the proposed acquisition. Intends.

At no time during the past 3 ½ years has the Tribe been willing to state for the public record or provide any written document that simply states the infrastructure, and services for the building, operation, and maintenance of the proposed casino would not cost the taxpayers of Plymouth and Amador County one cent.

We believe that the many negative impacts of this proposed casino project should not cost taxpayers one cent. Not a very cooperative spirit on the part of the Ione Band and their out of state investors and certainly not indicative of any intention to *fully* mitigate any such impacts.

The Tribe would connect to existing City infrastructure and pay for sewer disposal and potable water services for the project under the terms of the MSA.

Which is it a self sustaining casino project for water and wastewater or a casino project connected to the City infrastructure?

The study of local impacts of the project includes non gaming commercial alternatives that would also change the character of the area.

Specifically, what non gaming commercial alternatives?

However, the proposed acquisition is in an area that is zoned commercial and related infrastructure for such commercial development is planned not only for this site, but in many nearby areas throughout the County.

The City of Plymouth has been on a building moratorium for lack of a reliable water supply since 1987 and its wastewater system has under a citation from the State of California since before 2003.

On what data is this statement based?

Please provide specific information about the many nearby areas throughout the County where commercial infrastructure is planned that would accommodate a 316,000 square foot Las Vegas style casino complex.

Ability of the BIA to Discharge Additional Duties

To the extent it has not done so already so, the Tribe intends to contract and/or compact under the Indian Self Determination and Education Assistance Act, P.L. 93-638, to perform most if not all of the federal services the BIA currently provides to the Tribe.

What services are currently provided to the Franklin led Ione Band?

As a dependent sovereign nation with a Las Vegas style Casino anticipated to generate hundreds of millions of dollars in revenues annually is there any reason that the BIA would ever have to provide any services to the Tribe?

The tribe will have primary responsibility for the supervision and administration of its land.

Who would have secondary responsibility for the land?

Why wouldn't a dependent sovereign nation have *sole* responsibility for its land?

For example if the Tribe decides to request road services (roads will likely total less than a mile), then such roads might be added to the BIA system.

Why would a dependent sovereign nation with annual revenues in the hundreds of millions need to have its roads funded by the BIA or any other government agency?

Additional burdens to the BIA should be minimal.

Why would the burdens to the BIA not be zero? The BIA should consider charging for services to gaming tribes.

Isn't the reason for the application to allow the tribe as a sovereign entity to provide for its tribal members? Why would the BIA or any other Federal or State agencies be responsible for additional burdens?

Economic Benefits arising from Acquisition

The Market Study is not available for comment.
How is the public, local governments, or agencies expected to make informed comments on the reliability of this study?

Much has changed in Plymouth, Amador County and the surrounding region since September 2004. Without access to the more than 2 year old study we believe an updated study is required.

Indian Lands Opinion Request

The Tribe made a request to the NIGC to issue an Indian Lands Opinion for the proposed acquisition in September 2004. The request is still pending. A copy of the request was forwarded to the Department of Interior, Office of Indian Gaming, under separate cover.

Under what rule or regulation of the fee to trust process for gaming is the Tribe authorized to send such a request to the NIGC or to the OIG?
When was the copy forwarded to the OIG?
Was a copy also sent to the Office of the Solicitor?
As part of their desire to work co operatively with local jurisdictions did the Tribe also send copies to the City of Plymouth, Amador County and / or the State of California or even notify the City or County that the request was made?

A preliminary review of the Ione Band's Application was completed on December 5th, 2006 and this Indian Lands opinion request was not included in the application for that review.

NEPA Compliance

The Tribe, through the BIA has retained Analytical Environmental Services to prepare an environmental impact statement (EIS) on the acquisition of the land into trust.

All the dates pertinent t to the above statement are past and 2007 is upon us. When will an EIS be available for review and comment?
Are any former BIA employees now employed by AES that might have participated in the NEPA process while employed by the BIA.?
Will separate comment periods be noticed when the EIS and other documents not included in the application on December 5th , 2006 are available?

Compliance with the March 2005 Office of Indian Gaming IGRA Checklist

In the undated letter addressed to Secretary Norton in the application the 5th paragraph reads. "The contents of this application conform to the guidelines issued by the Bureau of Indian Affairs on March 7, 2005 entitled, "Checklist for Gaming and Gaming Related Acquisitions and IGRA Section 20 Determinations".

In paragraph four of the same letter the tribe writes that this application is made as an "off reservation" acquisition pursuant to 25 C.F.R. 151.11

The Checklist at IX. 151.11 Off reservation acquisitions. A. When 25 CFR 151.11 applies, the acquisition must include all the information required under Part 1, Section VIII of this Checklist.

Since this application has been on file at the Regional Office at least since April 1, 2006 and possibly longer **has the Regional Director or his / her staff reviewed the application for**

The Market Study is not available for comment.
How is the public, local governments, or agencies expected to make informed comments on the reliability of this study?

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The Checklist at IX. 151.11 Off reservation acquisitions. A. When 25 CFR 151.11 applies, the acquisition must include all the information required under Part 1, Section VIII of this Checklist.

Since this application has been on file at the Regional Office at least since April 1, 2006 and possibly longer **has the Regional Director or his / her staff reviewed the application for**

compliance to the March 2005 IGRA Checklist? Have any of the actions required of by the Checklist have been completed by the Regional Director or his or her staff ?

151.10 A. The scope of gaming beyond the generic Class II / Class III was not included in the notice nor is it detailed in the application. **Would scope include the specific types of gaming and the number of machines, number of tables or types of games, etc. ?**

151.10 B. There appears to be no independent factual analysis of the application of such statutory authority to the tribes request included in the notice provided.

At the end of 151.10 B the reader is directed to See Part 1, Section I of the checklist. At E of this section we find, When the Regional Director believes that the acquisition satisfies one of the Section 20 exemptions other than (b)(1)(A) the transmittal memorandum from the Regional Director must include an analysis establishing that such an exemption exists and include supporting documentation. i.e. An appropriate Solicitor's Office legal opinion, in the acquisition file.

A preliminary review of the Ione Band's Application was completed on December 5th, 2006 and this documentation was not included in the application for that review.

Does the Regional Director believe that the acquisition satisfies one the Section 20 exemptions other than (b)(1)(A)?

If yes, when will an analysis establishing that such an exemption exists that includes supporting documentation be available from the Regional Director for review?

151.10 C. The Regional Director must conclude that the Tribe has sufficiently justified the need for additional land based on a factual finding.

This conclusion by the Regional Director and finding appears to not be not included in the notice or the application. When will this conclusion be documented and will the conclusion be available for review and comment at a later date?

151.10 D Is this conclusion documented and if not when will it be documented? Will it be available for review and comment?

151.10 F Again is this conclusive statement by the Regional Director documented and if not when will it be documented? Will it be available for review and comment?

151.10 G Again is this conclusive statement by the Regional Director documented and if not when will it be documented?

The MSA was not included in the application on December 5th, 2006.

151.10 H Given that the Regional Office has had this application for more than 8 months when will this independent assessment be documented and available for review and comment.

151.10 I Is there a pre-acquisition environmental site assessment available? None was included in the application as reviewed on December 5th , 2006.

151.11 Off reservation acquisitions

151.11 B Does this section apply to fee lands owned by the Ione Band?
151.11 C Will this review be documented or summarized and included in the acquisition package ?

If these conclusions, findings, statements and any documents indicating that the various requirements of the Checklist have been complied with will be prepared and available at some later date when will there be opportunity for the public, local governments, and agencies to review and comment prior to submission to the OIG?

PART 2 INDIAN GAMING REGULATORY ACT – 25 U.S.C. 2719, SECTION 20

End of 3rd Paragraph: A tribe's contention that gaming on newly acquired lands is not prohibited because of one of more of the exceptions apply will require a conclusive factual and legal finding that the particular exception does apply to the acquisition.

Where in the application is this conclusive factual and legal finding located?

II Section 20(b)(1), 25 U.S.C. 2719(b)(1)

When application indicates that the proposed acquisition falls within one of these exceptions, the Regional Director must provide documentation that the particular exception is applicable to the case. Copies of the enabling acts, or legislation such as the settlement act, the restoration act, the reservation plan, the final determination of federal recognition and other documentary evidence relating to the tribes history and existence must be included as part of the acquisition package. A legal opinion from the Office of the Solicitor concluding that the proposed acquisition comes within one of the above exceptions must be included.

No such opinion was included in the application reviewed on December 5th, 2006.

Where is the documentation the Regional Director must provide pursuant to the Ione Band's application for restored lands? No such documentation was included in the application as reviewed on December 5th , 2006.

When, if ever, did the Regional Director request such an opinion from the Solicitor's Office based at least partially on the documentation provided by the Regional Director? No such opinion was included in the application as reviewed on December 5th, 2006.

While this application for fee to trust for gaming is for alleged restored lands and in the opinion of the Office of Solicitor to be exempt from a two part determination the consultation process outlined under the two part portion of the checklist is presumed to be the consultation process used for exceptions such as restored lands since no other consultation process is described.

If there another consultation process please advise us to its location or provide a copy?

Appropriate state and local officials include the governor of the state, state officials and appropriate officials of local governments located within 10 miles. The cities of Sutter Creek, Amador City, Ione, and Jackson were not included in the notification. The City of Plymouth where the casino is proposed was not notified.

According to the list of recipients provided with the notification the Governor was not notified, only his deputy legal affairs secretary.

Will these cities be notified? If not why not?

The Regional Director should provide a minimum of 30 days for the consulted officials to comment and respond to the consultation letter. In determining the proper length of the consultation period, the Regional Director should take into consideration the number of parties contacted, the scope and magnitude of the proposed gaming project, the preliminary indications of public sentiment, support, opposition, the potential impact on other gaming operations and such other factors which will be issues of concern to the consulted parties.

With the consultation period set at 30 days it appears that the Regional Director determined that the scope and magnitude of the project and its impacts is minimal while preliminary indications of County, State and public sentiment is not worthy of more than 30 days given that the County, State, and the public have overwhelmingly opposed this project for more than three years.

Please explain the justification for determining the comment period should be the minimum of 30 days.

To Assist the Secretary in determining whether the gaming establishment on newly acquired land will be in the best interest of the tribe and its members, the applicant tribe should be requested to address terms such as the following.

1. Projections of income statements, balance sheets,..... **Is this information contained in the Market Survey? If not where is this information in the application?**
2. Projected tribal employment, job training, and career development including the basis for projecting an increase in tribal employment considering the off reservation location of the facility. **This issue is not specifically addressed and included in the application, when will it be addressed and included in the application?**
3. Projected benefits to the tribe for tourism. **This issue is not specifically addressed and included in the application, when will it be addressed and included in the application?**
4. Projected benefits to the tribe and its members **This issue is not specifically addressed and included in the application, when will it be addressed and included in the application?**
5. Projected benefits to the relationship between the tribe and the surrounding community. **This issue is not specifically addressed and included in the application, when will it be addressed and included in the application?**
6. Possible adverse impacts on the tribe and plans for dealing with those impacts. **This issue is not specifically addressed and included in the application, when will it be addressed and included in the application?**
7. Any other information.... including copies of any consulting agreements, financial agreements, and other agreements relative to .....**These issues are not specifically addressed and included in the application, when will they be addressed and included in the application?**

III Guidance for Preparing NEPA statements.

The law and regulations defining the parameters of NEPA are well defined and explicit. The implementing regulations for NEPA require the use of and interdisciplinary approach, consultation with all interested parties, and a speedy commencement of the process. **The NEPA regulations also require....**

that the entire process be completed without delay (40 CFR 1500.5)
and that consideration of NEPA occur early in the planning process (40 CFR 1501.1).

Given these requirements why is there no completed EIS, as recommended by the checklist, available as part of the application currently available from the Regional Office in Sacramento?

Preparation of Section 20 Documentation by Region

When is the documentation required by this section expected to be completed?
Will these documents be available for review and comment by local governments and the public?
Are all the documents (except those protected by the FOIA) that the Regional relies on for his or her finding of facts under this section currently available to the Regional Director for review?
If no when will all the documents be available?

The Regional Director's finding of fact is to organized for ease of review which raise the question; Will local governments and the public be allowed to review the Regional Director's finding of facts?

If the conclusions, findings, statements and any documents indicating that the various requirements of the Checklist have been complied with will be prepared by the Regional Director or his or her staff at some later date when will there be opportunity to review and comment prior to submission to the OIG?
Specifically which documents, if any, will be prepared and available for review and comment at some later date?

Is this notification of a fee to trust application for gaming for the Ione Band of Miwok a properly executed notification?

The application is incomplete, inaccurate and does not meet the requirements as outlined in the March 2005 IGRA Checklist. There is no documentation that supports the Ione Band's landless claim, that supports their claim to be a restored tribe, or that supports their restored lands claim and that basis we submit this application for fee to trust should be denied.
We submit these comments for your consideration and request that each of the issues we have raised or questions we have asked be thoroughly and completely answered at your earliest opportunity. Please provide an immediate written response that indicates when your response to our inquiries will be available. We are available by phone at 209 245 5338 or 209 245 4588

Submitted on Behalf of NCIP

Walter Dimmers

Walter Dimmers, President

D.W. Crawford

Dueward W. Crawford II Vice President

NO CASINO IN PLYMOUTH
Working to Preserve Rural Amador County
P.O. Box 82 Plymouth, California 95669
www.nocasinoinplymouth.com

Rec'd 5/16/08 EE

Mr. BrianWaidmann,
Chief of Staff
1849 C Street NW
Washington, DC 20240

April 16, 2008

Dear, Mr. Waidmann,

In December 2007, Mr. Butch Cranford communicated to you via electronic mail a list of potential ethics issues associated with the fee-to-trust application and the restored opinion of the Franklin-led Ione Band of Miwok Indians. The application in question pertained to a proposal for Indian Gaming on the land in and adjacent to the City of Plymouth, California. Mr. Cranford outlined several ethical issues and requested a hold be placed on noticing the tribes EIS in the Federal Register until such time as these issues could be clarified. In January of this year, in a letter to Mr. Jim Cason, Mr. Cranford provided information detailing additional ethics issues associated with this Tribe's Fee to Trust Application to acquire off reservation lands for a casino.

We believe that these ethical concerns have evolved from failing to correctly address three primary issues. The three questions at the crux of the matter are:

- Is the current Ione Band leadership authentic?
- Is the Ione Band landless?
- Is the Ione Band restored?

We believe these questions can only be answered in the negative. The attached documents submitted by No Casino In Plymouth, will provide a more complete and comprehensive list of ethics issues and provide the contextual background information necessary to understand the serious nature of what has taken place during the past 5-15 years in the Pacific Regional Office (BIA PRO), at DOI, at NIGC, and in the Solicitors Office. The attached information is readily available and the fact that it has been ignored indicates an intentional and pervasive pattern of behavior at the BIA PRO, DOI, NIGC, and the Solicitor's Office. This pattern when combined with the misapplication of ill defined fee to trust process requirements has suborned the transparency and consistency which should be integral to good government. The deliberate and documented actions by the above named agencies to accommodate and facilitate the Ione Band's fee to trust application at any cost raises serious ethical and legal questions that have not been addressed by any government agency to date.

A complete and detailed review of the facts related to the Ione Band of Miwoks and their fee to trust application will reveal that the Matt Franklin led Ione Band is fraudulent, that the Ione Band is not landless, and the Ione Band is not restored. Therefore we respectfully request investigations be initiated into all aspects related to the Franklin led Ione Band and that their fee to trust application be placed on hold including the April 18th EIS Federal Register notice pending completion of the requested investigations. A response related to the request to hold the EIS notice is requested before April 18th and we believe a response to our request for investigations no later than April 30th is reasonable.

Respectfully Submitted,

D. W. Cranford

D. W. "Butch" Cranford Vice President

Walter W Dimmers

Walter W. Dimmers President

to John Hay

To: Concerned Citizens and Elected Officials
From: Citizens for No Casino in Plymouth
Subject: Off Reservation / Acquired Land for Gaming Issues in Plymouth

May 10, 2004

Plymouth, Amador County, California; is a small rural community of 1,000 citizens located 35 miles east of Sacramento in the rolling foothills of the Sierra Nevada mountains. Located in the "Heart of the Mother Lode," the Gold Rush days of more than a century ago are long gone from Plymouth. The rush has been replaced by a quiet rural lifestyle found in other Mother Lode communities and many small towns across America. One year ago that all changed when a group claiming to be the "landless" Ione Band of Miwok proposed to bring prosperity and financial security to our small community by building a "World Class, Las Vegas Style" gaming facility with a hotel, shops, and restaurants in our small town. From the day this proposal was made public there has been consistent and overwhelming opposition to the project.

A rogue City Council ignoring this opposition, cooperated with the tribe and their out of state investors and entered prematurely and unnecessarily into a Municipal Services Agreement in Feb 04 to facilitate the processing and approval of the Ione Bands yet to be filed application to have 220 acres of land put into trust. Three of those Council persons were just recalled by wide margins on May 4th. If there were a Poster City for what is wrong with the current practice of reservation shopping and the process for siting off reservation gaming facilities, Plymouth might well be that Poster City. How can I make such a statement? Let me explain why Plymouth is not a suitable site and summarize the issues related to our situation.

Amador County, population 33,000, is home to three Federally recognized Miwok bands. Jackson, Buena Vista and Ione and currently has one operating Casino in Jackson with a second approved in Buena Vista. A third casino, an acquired land off reservation casino, is not needed in Amador County. Amador County currently has a budget shortfall of nearly $1 million annually due to unmitigated impacts from the Jackson Casino.

The proposed Casino project in Plymouth is in complete conflict with land use as described and outlined in both the City of Plymouth's General Plan and Amador County's General Plan. The land surrounding the site is primarily range and grazing land; beautiful rolling tree covered hills.

The voters of the City overwhelmingly indicated with a Sep 03 survey vote of 73% opposed that the sovereign citizens of Plymouth do not want a Casino in their City and surveys of neighboring communities indicate more than 90% in those communities are opposed to the project. The City Councils of Ione, Sutter Creek, Amador City, and Jackson and the Amador County Board of Supervisors quickly passed resolutions in May 04 opposing the project. Only the rogue Plymouth Council supported the project.

The City of Plymouth has been under a State Board of Health imposed building moratorium for lack of a reliable supply of water since 1989. Current City pumping is believed to have caused more than 20% of the 67 wells in a neighboring community to be deepened or have new wells drilled. Monitoring of static water levels in wells, including the City's wells, for the past 5 years shows that static levels are dropping, a clear indication that a limited supply of water is already being depleted. There is simply not enough water available to support this Casino project without impacting the City and surrounding communities water supplies.

No viable cost analysis or environmental impact studies were conducted prior to the signing of the Municipal Services Agreement. You might ask as many citizens have this obvious question. How could actual accurate costs for the City to expand and in some instances initiate services be determined without such analysis and studies being completed? The California Environmental Protection Act has not been complied with and the No Casino in Plymouth citizens group and the County have sued the City for CEQA violations and to require compliance with CEQA. Many impacts and environmental issues have been ignored and

DEIS Comments

Ione Band of Miwok Indians' Casino Project

Submitted July 2, 2008

By

No Casino in Plymouth
P.O Box 82
Plymouth, CA 95669

7/2/08

Amy Dutschke,
Acting Regional Director,
Pacific Regional Office, BIA
2800 Cottage Way
Sacramento, Ca. 92825

RE: Comments on the Draft Environmental Impact Statement Ione Band of Miwok Indians' Proposed 228.04-Acre Fee-to-Trust Land Transfer and Casino Project, Amador County, California.

Dear Director:

We the undersigned are submitting this cover letter and the following comments on behalf of the organization No Casino in Plymouth, their many individual members, and the good people who have diligently prepared these comments.

Description of No Casino in Plymouth

Members of No Casino in Plymouth and their families have taken their place in the rural grasslands and woods of Amador County. Their lives and memories are inextricably interwoven on the multifaceted tapestry of this unique region. It is the place they work with, struggle with; and where they endure the hot summers and the wet winters. Their connections to this place have inspired in them a desire to maintain the quality of their City and County, and to pass it on to newcomers and future generations.

The members of No Casino in Plymouth value the City's simple rural amenities, and lack of urban blight. Plymouth is a city with no traffic lights, because it needs none. Plymouth is a City that has no loud and bright urban "night life", because the early rising, hard working, people who call Plymouth their home like it that way. Plymouth is a city with actively grazed land right on edge of town, because ranching is a valuable part of its past and present. Plymouth is a city with a patch of irises along the highway that dazzlingly announces spring every year. Plymouth is a city where the post office door can stay open even after the postmaster has left for the day. Plymouth is a city where people check on the wellbeing of their elderly neighbors if they miss seeing them that week at church or at the branch library.

Members of No Casino in Plymouth, and the Amador County public, rely upon the area's roads as the arteries of commerce, public service, community relations, and family life. It is through the highways that they commute, supply their businesses, and receive their customers. Safe and free-flowing thoroughfares are the difference between life and death when police, fire, and ambulance services are called into action. Their rural roads take them to the potlucks, dances, churches, and volunteer endeavors through which distant strangers, isolated by rural acreage, are transformed into communities of

caring neighbors. It is on these roads that children return home from school, that parents return home from work, that patient drivers wait as elderly drivers carefully negotiate slow turns, and that the entire spectrum of life's errands is run.

Members of No Casino in Plymouth recognize that there are a lot of things that are commonplace in urban cities that Plymouth does not have. Plymouth and Amador County do not have grand plans for expanding road infrastructure, because existing development patterns around narrow roads make widening cost prohibitive, and the area does not receive outside funding at the levels seen in urban areas. Plymouth does not have a large surplus potable water supply and available sewage treatment capacity, because it has a limited level of development planned for within its sphere of influence. Plymouth and Amador County do not have large enough populations to financially support one gaming and entertainment complex, let alone the three that are planned for the area.

Finally, members of No Casino in Plymouth recognize that the scale of the built environment is smaller and simpler in Plymouth than in urban cities. Plymouth is a city without a building over three stories. In Plymouth, people park their cars in small parking lots, not multi-level parking structures. In Plymouth, roadside advertisements are on waist-high sandwich boards and wooden roadway signs, not multi-story electrified billboards. For recreation in Plymouth, parents take their children to a baseball diamond or to Sharkey Park, instead of going to a 120,000 square-foot casino. For event receptions, folks in Plymouth use a carousel- styled picnic area, not a 30,000 square-foot event and convention center.

Thus, while a more populated urban area like nearby Stockton or Sacramento would be an ideal location for a casino, it would be an environmental catastrophe to introduce a loud, bright, late night, traffic generating, water sucking, sewage spewing casino into a rural city like Plymouth. Members of No Casino in Plymouth, like any reasonable person, have to believe that there are less harmful and more profitable alternative casino locations available for the Bureau to consider.

Purposes of NEPA

Before reviewing the Bureau procedure and the Draft EIS for compliance with NEPA, it is useful to review the purposes of the act.

"The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment." (40 CFR 1500.1(a).)

"In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may –

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and cultural pleasing surroundings;." (42 USC 4331(b).)

"NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." (40 CFR 1500.1(b).)

"The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." (40 CFR 1500.1(c).)

"Federal agencies shall to the fullest extent possible:

b) Implement procedures ... to emphasize real environmental issues and alternatives.
d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.
e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment."
f) Use all practical means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment." (40 CFR 1500.2.)

With this federal mandate for environmental protection and informed government in mind, we can now review the adequacy of the Bureau's procedures and the DEIS.

The Bureau Afforded Insufficient Notice and Opportunity to Comment

The Bureau has failed to provide the public an adequate opportunity to review and comment on this document. The following problems are noteworthy:
1. Though the Tribe was given over 4 years to professionally produce the Draft EIS, the public was given only 33 days to review it prior to the May 21 hearing, a mere 42 days more to provide written comments.
2. Though the letter sent out to notify people of the intent to file a DEIS stated that interested parties can receive a copy of the draft document, in fact only select individuals have been provided a copy and others have been informed that they would have to pay $175 for a copy. Two or three copies of a document this lengthy available only during working hours for an entire county to review in only 75 days is wholly inadequate.
3. Electronic versions have proved impossible to navigate due to the number of appendices and cross-references and have suffered continual technical difficulties.

4. Additionally, a simple 25-day request for extension of the comment period made on behalf of this community by our Congressman was denied.
5. Lastly, while no mention of time constraints on the public comments where included in the notification and instructions sent to interested parties prior to the May 21, 2008 hearing (and indeed at the prior Scoping sessions held in 2003 and 2004 no time limitation where imposed) the public was informed at the meeting just prior to the commencement of the oral comment period that a three minute time limit would imposed. This severely prejudices that opportunity to participate by those members of our community who due to physical limitations are not be able to provide their comments in written form.

The Bureau's DEIS Does not Inform Public Participation and the Agency's Decision.

Inaccurate Notice

Basic flaws in the DEIS make it unsuitable as an environmental disclosure document and as a tool to inform pubic participation and agency decisionmaking.

The credibility of data in the DEIS was compromised from the very beginning, due to the gross factual inaccuracy in the Federal Register Notice. The Federal Register notification for this Draft Environmental Impact Statement is false and misleading to the public in stating that the "228 acres in question is currently held in fee by the Ione Band." It is more than difficult to believe that an error in such a fundamental and easily verifiable aspect of the project description could be mistaken.

The Department of Interiors own Ethics Office indicates this statement may be a violation of U.S. Code and the Code of Federal Regulations and quoting in part from the same (18 U.S.C. § 1001; 43§ CFR 20.510) *"An employee shall not, in any matter within the jurisdiction of any department or agency of the United States, knowingly or willfully falsify, conceal or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, fraudulent statements or representation, or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statements or entry."*

We are pleased that, at the Public Hearing held on May 21, 2008 in Plymouth, California, the hearing facilitator admitted to this error and indicated that a correction should be made. She indicated that the properties in question where in fact "not" owned by the Tribe but were in the "acquisition pipeline". We hope that the Bureau is similarly responsive in making the numerous corrections needed in the DEIS as described in our comments and in those of others.

Lack of a Clear, Stable, and Finite Project Description

From the beginning of this environmental review, we have not had a clear and stable project description for the casino proposal. The Scoping sessions held here in 2003 and

2004 took place without a formal project description. Even the number of parcels of land under discussion has continued to change to this day.

Narrow and Vague Alternatives

The descriptions of the proposed alternative projects are brief and sketchy, and certainly do not meet the criteria for adequate alternatives for the sake of the environmental review at this time.

Substandard Analyses

The issues of inaccuracy, incomplete analysis of data, and complete omission of supportive materials, are pervasive throughout the (DEIS) text. Quite frankly, the majority of the document is so poorly and inaccurately put together as to amount to, in many instances, a huge collection of words few of which have any relation or relevance to actual fact.

Conclusion

While the members of No Casino in Plymouth have tried to diligently participate in this environmental review process, they have been repeatedly frustrated by the fundamental failure of this process to meet the basic foundational principles of the National Environmental Policy Act (NEPA). Neither the letter nor the intent of the laws regarding this process are being followed with respect to public notice, public participation, and environmental review. These fundamental flaws must be corrected as this process continues.

The flaws in the EIS process and document to date are so pervasive that they cannot be cured by mere production of the Final EIS. The DEIS should be withdrawn until a project proposal has been submitted with all the necessary and required detail. Likewise, care should be taken in correcting the false statements in the DEIS. The Federal Register notice should be reissued in an accurate and truthful form, and appropriate public hearings should be held. Then and only then can we move forward with this process in the transparent manner that the law intends.

Documents referenced in these comments are incorporated into the administrative record for this project. Please retain a copy of these comments for the administrative record.

Sincerely,

Thomas P. Infusino, Esq.
P.O. Box 792
Pine Grove, CA 95665
(209) 295-8866
tomi@volcano.net

Elida Malick, Director
No Casino in Plymouth
P.O. Box 82
Plymouth, CA 95669

LIST OF PREPARERS

Below is a list of the individuals who prepared these written comments on the DEIS.

D.W. Cranford II P.O. Box 794 Plymouth, CA, 95669	Executive Summary Section 1 Section 2 Section 3.3 Water Resources Section 3.6 Cultural Resources Section 3.9 Public Services Section 4.3 Water Resources Section 4.9 Public Services Appendix A Environmental Data Report Appendix B Water & Wastewater Study Appendix C Pumping Tests Appendix O Phase I Appendix R Economic Impact Study Federal Register Notice
Walter W. Dimmers 18000 Burke Dr. Plymouth, CA 95669	Section 4.10 Other Values
Patrick Henry 18210 Burke Dr. Plymouth, CA 95669	Section 3.4 Air Quality
Thomas P. Infusino, Esq. P.O. Box 792 Pine Grove, CA 95665	NEPA citations Section 4.11 Cumulative Impacts
Elida A. Malick, Director No Casino in Plymouth P.O. Box 82 Plymouth, CA 95669	Sections 3.7 & 4.7 Socioeconomic Conditions/Environmental Justice
Dick Minnis P.O. Box 880 Plymouth, CA 95669	Appendix M Traffic Study

NCIP Detailed Comments
AR 6610 - 6695

NO CASINO IN PLYMOUTH
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Secretary of the Interior Salazar
Department of the Interior
1849 C Street, NW
Washington, D.C. 20240
February 18, 2009

Dear Secretary Salazar;

Shortly after preparing the enclosed letter of introduction to our organization and the issues surrounding the tribal gambling facility proposed by the Ione Band of Miwok Indian in Plymouth California, No Casino in Plymouth became aware of a recent opinion by Solicitor Bernhardt dated January 16, 2009, correctly reversing the 2006 restored lands opinion of Carl J. Artman.

No Casino In Plymouth would like to take this opportunity to support Solicitor Bernhardt's reversal of Mr. Artman's erroneous restored lands opinion issued in 2006. We have enclosed our original letter of introduction to our case as well as questions previously directed to the department by our Congressional representative Dan Lungren, which to this day have been left unanswered, as well as our request of October 2008 to withdraw the Artman opinion. We believe these documents serve to provide background on the situation in Plymouth, California as well as support our position in favor up upholding Solicitor Bernhardt's opinion.

We would request at this time that the Department clarify the status of the tribes Fee to Trust Application which is based and relies on the restored lands opinion.

Respectfully submitted,

Elida A. Malick

Dr. Elida A. Malick, Director
No Casino In Plymouth

NO CASINO IN PLYMOUTH
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P.O. Box 82
Plymouth, California 95669
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Secretary of the Interior Salazar
Department of the Interior
1849 C Street, NW
Washington, D.C. 20240
February 4, 2009

Re: Introduction to Ione Band of Miwok proposed casino project in Plymouth, California

Dear Secretary Salazar;

No Casino In Plymouth (NCIP) is a grassroots organization bringing the voice of the citizens of Plymouth, the surrounding communities, and indeed throughout Amador County, to the attention of the new Secretary of Interior.

I. Background

Since April 2003, when this community first became aware of a tribal plan to place a gambling casino in our small, rural town of Plymouth, NCIP has dedicated itself to ensuring that the laws and regulations for administering this process are upheld and that justice for all parties, local citizens and historic tribal members, is preserved. Unfortunately our six-year experience with tribal gambling development, pursuant to the Indian Gaming Regulatory Act (IGRA), has frustrated our expectations at every turn.

In April 2003 we learned that a group calling themselves the modern Ione Band of Miwok, funded by out of state investors, were planning to take 218 acres into trust to build a large Las Vegas style casino in our small (pop. approx 950) rural community. The BIA's Sacramento Regional Office through misuse of the Auburn Restoration Act created this modern Ione Band, led by Matt Franklin. The Sacramento Regional Office forced the "reaffirmed" Ione Band to open their tribal rolls for enrollment, a process that admitted more than 700 persons of questionable ancestry and, created a modern Ione Band. Among those enrolled were Acting Regional Director Amy Dutschke and several of her family members. This outrageous and questionable action came to the attention of Congressman Frank Wolf (Va) and an Inspector General investigation followed which was stonewalled and whitewashed by the Sacramento

Office. Inspector General Devaney reporting that Ms. Dutschke or no one with her surname was on the Ione Band's rolls evidenced this whitewashing. Ms. Dutschke and her relatives were on the rolls at the time of the investigation and remain on the tribal rolls of the modern Ione Band to this day.

Next came the propaganda of a contrived tribal history with respect to the Tribes relationship with the U. S. government leading to a reaffirmation being incorrectly used as a claim of "restored status." Following – the expected sequela of attempting to acquire "restored" lands for gambling purposes, distant from the tribe's recognized, historic land base.

While the historic Ione Band could not achieve Federal Recognition via the prescribed Section 83 process, its status was administratively "reaffirmed" by Under Secretary of Indian Affairs Ada Deer in 1994. The modern Ione Band and Regional Office in Sacramento has promoted a contrived tribal history with respect to the tribe's relationship with the U.S. government, which has led to the reaffirmation being incorrectly used as a restoration, and in 2006 managed to procure a highly questionable and in fact inaccurate "restored" lands opinion from Solicitor Carl J. Artman.

Former Solicitor Carl J. Artman issued a restored lands opinion in September 2006 for the Ione Band of Miwok that is not supported by the well-documented history of the Ione Band available from the Department of Interior. The opinion is filled with errors, misinformation, and serious omissions regarding the Ione Band, their history, their land, and issues related to their federal recognition. An unbiased comparison of the opinion to the documented history of the Ione Band will expose the opinion as largely a work of fiction. Attempts by the No Casino In Plymouth and the County of Amador to obtain and review those documents on which Mr. Artman relied to form this opinion have been denied. Attempts to appeal this decision have been denied. And, questions raised by this opinion directed to the Department by Congressman Lungren (Rep. Ca) have been ignored.

As is the case in Plymouth, California, the reservation-shopping phenomenon has been fueled largely by the "restoration" exception. In enacting Section 20 of the IGRA, Congress sought to achieve a balance between tribal sovereignty and states rights by providing a mechanism for inclusion of local government in the dialogue between tribes and the Secretary in ascertaining whether gaming on newly acquired land would be detrimental to the surrounding community. In addition, concurrence by the governor of the state in that determination would be required. However, the misuse and abuse of the "restoration" exception, through the rewriting of tribal histories, clearly seeks to evade the two-part test outlined in the IGRA in order facilitate gaming development by excluding potential negative or complicating input from affected jurisdictions. The result has become essentially a BIA sanctioned policy of avoiding the two-part test through the manipulation of tribal histories and the restoration exception.

Finally, in a documented and verified case of serious ethics abuses, the " Inspector General reported in September 2006 that the Sacramento Office of the BIA is operating a Fee to Trust Consortium where tribes pay the salaries of BIA employees whose job it is to expedite and approve Consortium members Fee to Trust Applications. The Inspector General stated this Consortium is a conflict of interest, yet no known action has been taken to eliminate the Consortium or the conflict." The Ione Band of Miwok Indian has been reported to be a member

of the Fee to Trust Consortium. Congressman Lungren (Ca) who represents our district has been unable to obtain information that was redacted in the OIG report; yet another instance of FOIA requests being ignored.

II. Requests Relative to Plymouth and the Ione Band of Miwok

Unscrupulous investor manipulation of local and tribal government, probable violation of the Administrative Procedures Act, suspected fraud involving the procurement and use of EPA-GAP funds, refusal of the Regional BIA to honor FOIA requests, multiple cases of federal employees leaving government positions to work for the Tribe with some then returning to work for our federal representatives, a Tribal Consortium illegally facilitating land acquisition applications, bogus claims of "restored" tribal status and a classic case of "reservation-shopping" are just a handful of the issues that have resulted in the Plymouth situation growing into what has been termed a "poster-child" for all that is wrong with tribal "gaming'.

No Casino In Plymouth, on behalf of the citizens of Amador County and others throughout California who, like us, are suffering from the inequities and injustice prevalent in the current administration of the laws and regulations governing tribal gaming, makes the following requests of the new administration of President Barack Obama.

1.An investigation of all BIA Fee to Trust applications for gaming, with a special follow up investigation into the Ione Band's Fee to Trust Application and the Sacramento Regional BIA Offices Fee to Trust Consortium.

2.An investigation into the restored lands opinion for the Ione Band of Miwok issued in September 2006 by Carl J. Artman with special attention to determining the basis and background documentation that form the foundation of this opinion.

3. Thorough investigation into the improper creation of the Franklin-led Ion Band by officers at the BIA Sacramento Regional Office and the presence of Acting Regional Director (Sacramento Regional Office of the BIA) Amy Dutschke on the Ione Band's membership list since at least 2002.

III. Recommendations Relative to Indian Gaming Regulations

Undoubtedly the Secretary will have a heavy workload as the new administration embarks on this exciting chapter in U.S. history. Nonetheless, we believe that the situation existing in Plymouth, California offers a unique and clear perspective regarding the flaws inherent in the IGRA leading to exploitation of local communities and deterioration of tribal relations with local governments and the non-tribal communities.

The growing backlash toward casino expansion makes it unequivocally clear that the IGRA must be strengthened for the benefit of all those affected by the unintended consequences of tribal gambling. To this end NCIP suggest the following recommendations be included in the scope of work for this new administration.

1. **All Section 20 exceptions for land acquisition should be held to the same criteria as those undergoing the Two-Part Determination process.** The negative impacts of Class III gambling

to the existing communities remain the same regardless of the methods or processes used to determine that the tribe is entitled to the land in question (including the restored land exception and legislative fiat). Therefore, a significant expansion of the role of the affected community/state in the Fee to Trust process for Class III gambling must be part of any change.

2. A Fee to Trust process that is **fully integrated** with the IGRA is needed when land is being taken into Trust for the specific purpose of Class III gambling. Likewise, there can be only **one set of guidelines** defining what is Indian Land eligible for Class III gambling. The National Indian Gaming Commission and the Department of Interior cannot have guidelines that differ from the IGRA at 2703(4) and 2719. [The NIGC's prior confusion as to the definition of lands that are eligible for gaming pursuant to IGRA 2703(4) that resulted in their unilateral action to change the wording of their definition should have been relegated back to Congress for clarification.]

3. The current Bureau of Indian Affairs **practice of beginning the environmental review process under the National Environmental Protection Act (NEPA), before lands are determined to be Indian lands, must be discontinued.** This practice has necessitated that Counties and other affected parties expend considerable time and taxpayer money in studying and responding to these out-of-sequence processes when it may be entirely unnecessary if the land is ultimately not eligible for casino development.

4. **A definition and standard of economic self-sufficiency should be adopted.** This language has become the cornerstone of justification for the establishment of tribal gambling operations yet, there is no clear definition in place to guide the decision making process that would allow initial gaming land acquisition or acquisitions of additional lands by tribes currently benefiting from gambling enterprises.

5. **Tribes operating Class III gambling casinos should NOT be eligible for U.S. Government programs available to non-gambling tribes.** In these times of economic hardship, it is offensive to the American taxpayer's sense of fairness that a large percentage of non-gaming tribes and Indians, many of whom receive none of the promised revenue sharing from gaming tribes, live in abject poverty while members of gaming tribes continue to enjoy the benefit of taxpayer funded resources; all the while collecting fabulous wealth from their casino businesses. Without question, these funds should be freed and directed to those in true and often desperate need.

No Casino In Plymouth respectfully submits these requests and is prepared to be of assistance in any capacity to this new administration,

Dr. Elida A. Malick, Director
No Casino In Plymouth

No Casino in Plymouth (NCIP)

"Working to Preserve Rural Amador County"

www.nocasinoinplymouth.org

Honorable Dirk Kempthorne
Secretary of the Interior
U.S. Department of the Interior
1849 C. Street N. W.
Washington, D. C. 20240
Fax: 202-208-6956

RE: NICP requests the immediate and permanent withdrawal of the Artman restored lands opinion for the Ione Band because the opinion is deficient, has little basis in history or fact, and is not supported by the record currently available. If our request for withdrawal is denied , we request that the entire administrative record used and relied on by Solicitor Carl J. Artman in preparing the restored lands opinion for the Ione Band of Miwok be provided to No Casino in Plymouth with a detailed explanation as to why the opinion will not be withdrawn.

NCIP requests a Formal Opinion from the Department's Solicitor as to whether the Assistant Secretary of Indian Affairs has authority outside the Section 83 process to administratively restore federal recognition to tribes whose federal recognition has been officially terminated? We respectfully withdraw this request if the Artman restored lands opinion for the Ione Band is permanently withdrawn.

NCIP requests a Formal Opinion from the Department's Solicitor as to whether the Department has the authority to officially terminate federal recognition of tribes through action before a Federal Court or the IBIA. We respectfully withdraw this request if the Artman restored lands opinion for the Ione Band is permanently withdrawn.

Dear Secretary Kempthorne:

No Casino in Plymouth, a grass roots community based 501C4, respectfully makes these requests because the questions are particularly relevant to the federal recognition of the Ione Band of Miwok in 1972, the reaffirmation of that recognition by Assistant Secretary Ada Deer in 1994 and the restored lands opinion delivered by Solicitor Artman in September 2006 for the Ione Band. The history of the Ione Band, as indicated by Solicitor Artman, is unique and complex. However, Solicitor Artman failed to provide an accurate factual review of the history of the Ione Band in the opinion. We believe an accurate factual review of the Ione Band's history would have resulted in a different conclusion. We now offer an what we believe is an accurate factual review of Ione Band history to assist you in understanding the reasons this inaccurate, ill advised, illogical, and error filled opinion should be permanently withdrawn immediately.

At mid page three, Solicitor Artman declares that the 1972 letter from Commissioner Bruce is a clear and unambiguous statement that he is dealing with the band as a recognized tribe. He further informs that Commissioner Bruce's statement that he "hereby agree[s] to accept the following described parcel of land to be held in trust for the Ione Band of Miwok Indians" is a clear act of recognition.

However, in the very next paragraph he writes that for reasons that are not entirely clear the Department did not follow through on the Commissioner's directions. Secretary Kempthorne, which is it, A "clear and unambiguous act of recognition" or "not entirely clear"? NCIP believes the reasons for the Department's failure to follow through are clear and well documented. An examination of the records of Solicitor Scott Keep and former Solicitor Reid Chambers and other Department / Solicitor's Office records relating to the Ione Band pursuant to Commissioner Bruce's letter will reveal precisely why there was no follow through on the Commissioner's federal recognition of the Ione Band and his direction to take their land into trust.

Without explanation, Solicitor Artman declares that the Department took the position that the Band was not yet recognized and placed the Band on the list of petitioners for recognition. The reasons for these actions are clear, well documented, and will be found if you review the records of Solicitors Scott Keep, Reid Chambers, and other Department / Solicitor Office records. We believe, based on our knowledge of the records that it was the Solicitor's Office that withheld department action on Commissioner Bruce's 1972 recognition memo which delayed the inclusion of the Ione Band on the list of federally recognized tribes for more than 20 years. Please provide any information and documents that might clarify this if our conclusion is incorrect.

Solicitor Artman conveniently skips sixteen years of history of the Ione Band and their relationship with the Department and references a 1992 Federal case and IBIA appeal. Solicitor Artman next opines that the Department's defense of its non recognition position in the 1992 Federal Court case and before the IBIA terminated the relationship Commissioner Bruce had recognized. Are we to believe that the Departments successful defense of its non recognition position in Federal Court and the IBIA rises to the level of a termination? If by stretching the bounds of logic and common sense we consider this was a termination, it must be explained why the Ione Band would undertake an action in Federal Court and at IBIA that would result in the termination of its recognition when the Band had been trying for 20 years to have the department follow through on the "clear and unambiguous" directions from Commissioner Bruce that the Ione Band was recognized. At issue in the court case alluded to by Mr. Artman was an internal tribal dispute concerning whether the Band was exempt from county jurisdiction. In taking a position in court contrary to the "clear and unambiguous" position taken by Commissioner Bruce in 1972 that the Ione Band was recognized the Department and Solicitor's Office simply defended their erroneous "unclear" non recognition of the Ione Band dating to 1972 and it must be explained beyond Solicitor Artman's opinion how this twenty year old erroneous "unclear" non recognition of the Ione Band became a termination in 1992.

To assure the public that this termination created by Solicitor Artman has some basis in law or regulation please provide the authority that allows a tribe to be terminated through Department action before a Federal Court or before the IBIA?

NCIP requests copies of any records, memos, federal register notices or other documents that indicate the Ione Band was officially notified by the Department or any agency of the United States that the 1992 Federal Court action and/or the IBIA action terminated the federal recognition of the Ione Band and any documents indicating that the Department notified any other agency of the United States that the recognition of the Ione Band had been terminated as a result of the 1992 Federal Court and/or IBIA action referred to by Solicitor Artman in his opinion. A similar request of Solicitor Artman in 2006 remains unanswered.

These documents are important because in the very next paragraph Solicitor Artman informs that representatives of the Ione Band met with Assistant Secretary Ada Deer in 1993 and

that she "specifically reaffirmed the conclusions of Commissioner Bruce's 1972 letter " and agreed to accept into trust the specific parcel of land described in Commissioner Bruce's 1972 letter. We ask the following related to this portion of Solicitor Artman's opinion.

> If the Ione Band was terminated in 1992, why was the Ione Band still seeking a reaffirmation or recognition of Commissioner Bruce's 1972 letter and not a restoration of the 1992 termination?
>
> If the Ione Band was terminated in 1992, why did Assistant Secretary Ada Deer "specifically reaffirm the conclusions of Commissioner Bruce's letter" as opposed to restoring the 1992 termination? Surely, the Assistant Secretary would have been aware of any termination of the Ione Band.

We believe the answers are quite simple.

> Neither the Ione Band or any one else was ever notified that the 1992 Federal Court and/or IBIA actions had terminated their recognition and the Ione Band continued to seek reaffirmation of the recognition given them in the "clear and unambiguous" 1972 letter from Commissioner Bruce. and
>
> Assistant Secretary Ada Deer, like the Ione Band, was not aware of any termination of the Ione Band and since the Ione Band was not seeking restoration of the non existent 1992 termination she "specifically reaffirmed" the 1972 Bruce letter.

Not only does this section of the opinion raise serious questions about the validity of the termination and restoration invented by Solicitor Artman, it introduces the subject of land, which in the case of the Ione Band plays a major role in their unique and complex history.

According to Department documents the Ione Band has lived continuously and collectively on the 40 acres described in the 1972 Bruce letter since before 1916. While the United States failed for over 50 years to purchase the property for the tribe, the tribe finally acquired title to the 40 acre property in 1972. This is the property that both Commissioner Bruce and Assistant Secretary Deer agreed to take into trust for the Ione Band. Again, Solicitor Artman offers no explanation as to why the property has not been taken into trust 46 years after the Bruce letter and 14 years after the reaffirmation from Assistant Secretary Deer.

Therefore, we would welcome any explanation as to why this 40 acre property has not been taken into trust by a Department whose job it is to assist tribes. Additionally, please explain how the Ione Band, which still owns the 40 acres that both Commissioner Bruce and Assistant Secretary Deer agreed to take into trust, can now present itself to the Department in its request to the NIGC for a restored lands opinion and in its Fee to Trust Application as a "landless" tribe.

We now refer to Civil Action No. 03-1231(RBW) a case currently in the DC District Court which involves the plaintiff MUWEKMA OHLONE TRIBE vs. defendant DIRK KEMPTHORNE, Secretary of the Interior. We direct your attention to this case because references to the Ione Band are frequent, and prominent in the case documents and these relevant references clearly demonstrate that Solicitor Artman's opinion is not based on the factual history of the Ione Band and should be withdrawn.

The following is an excerpt from Judge Walton's September 21st 2006 memorandum opinion page 8-9 which as part of the opinion background are facts not in dispute. Emphasis added.

> *Moreover, the Department does not dispute Muwekma's allegation that Ione and Lower Lake, like Muwekma, "were Central California tribes previously recognized at least as late as 1927" who did not appear on the 1979 list of federally recognized tribes despite "never [having] been terminated by Congress [or] by any official action of [the Department]." Pl.'s Opp. at 5; see also Pl.'s Mem. at 23-27; Answer at 22-23.*
>
> *On several occasions, Muwekma requested that the Department reaffirm its tribal status through administrative correction, as the Department had done with Ione and Lower Lake, without requiring that its completed petition be evaluated under the Part 83 criteria. Pl.'s Mem. at 11; Compl. 27; Answer at 23. The Department denied Muwekma's requests, stating that it did not have the power to restore Muwekma to the list of recognized tribes by administrative means.* Emphasis added

Is the Department misrepresenting the facts related to the Ione Band before Judge Walton in the Muwekma case or is Solicitor Artman representing a non existent termination and unauthorized restoration of the Ione Band in his opinion. NCIP believes the latter to be the case and that an immediate withdrawal of the restored lands opinion for the Ione Band prepared by Solicitor Artman is justified and in the best interest of the Department.

Further review of a Department brief filed on April 27, 2007 reveals more inconsistencies in Solicitor Artman's opinion. Solicitor Artman briefly mentions the 40 acre parcel in his opinion and observes that the Department was directed by both Commissioner Bruce and Assistant Secretary Deer to take this parcel into trust. However, he fails to offer any explanation as to what happened to the parcel or explain why it is not held in trust for the Ione Band or inform as to the current status of the parcel or explain how a tribe that owns 40 acres can claim it is "landless" and needs "restored lands".

This is particularly concerning because the Ione Band in its September 2004 request to the NIGC for a restored lands opinion claims that it is landless. This landless claim is also made in their November 2006 Fee to Trust Application. This Fee to Trust Application was made available for public comment in November 2006 and lists Solicitor Artman's restored lands opinion as an exhibit. However, the opinion was withheld from the Fee to Trust Application made available for public comment. While it would seem a relatively simple task to determine whether the Ione Band is landless it appears this has been beyond the capability of the BIA's Sacramento Regional Office since the Ione Band began making the unfounded claim.

However, the 4/27/2007 Department brief in the Muwekma Ohlone case provides some key insight into the Department's findings and policies relative to the Ione Band. Let us review what the Department has presented to the DC District Court pertaining to the Ione Band, its reaffirmation, and the land it owns and occupies from Case 1:03-cv-01231-RBW, Document 66 Filed 04/27/2007 and how its contents compares to the Artman opinion. (emphasis added below)

> From Page 1: Those two decisions emphasized correcting an administrative error on behalf of groups that had either trust land or collective rights to land and a history of dealings with the federal government. Unlike Ione and Lower Lake, Plaintiff also cannot demonstrate that it possesses collective rights in tribal lands. *The Department confirms that the decision by Assistant Secretary Deer to administratively reaffirm Ione was based in part on the fact that the Ione Band owned land.*
>
> From Page 6: Defendants' Motion also explained that, unlike Lower Lake and Ione, Plaintiff lacks collective rights in lands. Defs.' Mot. (Dkt. No. 61) at 13-17; *see also id.* 14 (detailing that the United States held land in trust on behalf of Lower Lake for forty years); *id.* at 14- 15 (explaining the efforts made by the Department of the Interior

("Department") to obtain land for Ione and noting that the members of Ione successfully quieted title to land); *id.* at 15 *Here again is a reference to the fact that the U.S. attempted to purchase land for the Ione Band and that members of the Ione Band currently own land and are not landless.*

From Page 6: In addition, Ione's common land base, which it successfully quieted title to, demonstrates that Ione's members lived in a centralized geographic location. *And the members live in this centralized geographic location which happens to be about 5 miles southwest of the city of Ione and not on lands in or near Plymouth.*

From Page 6-7: The fact that Lower Lake and Ione possessed collective rights in land provided evidence that these Indian tribes are continuously existing political entities. *Again, we see the department acknowledging to the D.C. District Court that the Ione Band is not landless.*

From Page 7: Indeed, the Ione were not, as Plaintiff suggests, merely individual Indians living in a California town. The Band lived on an Indian Rancheria, composed almost exclusively of Indian residents, who worked on a ranch that was contiguous to the Rancheria. This land is the same property where they have lived continuously and collectively until the present. *This is the land where the Ione Band has lived continuously since before 1916 and collectively until the present. Again, not landless.*

Secretary Kempthorne, if the Ione Band is landless as claimed in their 2004 restored lands request to NIGC and their November 2006 Fee to Trust Application, is the land the Department referred to in its April 2007 brief on which members of the Ione Band are presently living the same land referred to in Commissioner Bruce's letter and Assistant Secretary Deer's reaffirmation? If no, please explain. If yes, please explain why the Ione Band can claim it is landless in its Fee to Trust Application and request for a restored lands opinion without question from the BIA's Regional Office in Sacramento, the NIGC, and the Solicitor's Office.

From page 8: In the Ione decision, the Assistant Secretary stated that she was acting to correct a failure to complete an acquisition of land to be held in trust authorized by the Commissioner of Indian Affairs in 1972. *A failure by the Department that continues to this day without explanation.*

What happened to their land after their recognition was reaffirmed in 1994 and again we ask why has the 40 acres not been taken into trust as directed by Commissioner Bruce 46 years ago and by Assistant Secretary Deer 14 years ago?

From page 13: Plaintiff's efforts to draw the Court into fabricating a "standard" for reaffirmation out of these two admittedly brief decisions recognizing a longstanding relationship with the United States, communal interest in land and correcting an administrative error, stand in stark contrast to the Department's efforts to develop general regulations through notice and public comment.

Nowhere in this brief does the Department suggest or inform the Court that the Ione Band was terminated by the Department in 1992 or ever terminated. In fact according to the Department the 1994 decision recognized a longstanding relationship with the United States, communal interest in land, and the correction of an administrative error.

Clearly, Solicitor Artman's opinion stands in stark contrast to the content of the Department's April 4th 2007 brief and Judge Waltons September 21st 2006 memorandum opinion. Again, one must consider that either the opinion offered by Solicitor Artman is not based on the facts relating to the Ione Band, their recognition, their reaffirmation, and their land

or the Department is presenting false and misleading statements about the Ione Band, their recognition, their reaffirmation, and their land to the D.C. District Court in the Muwekma case.

NCIP reaffirms our belief that the Department has accurately represented the facts and history concerning the Ione Band before the D.C. District Court and that the Artman opinion does not accurately represent the facts and history of the Ione Band. Therefore, we request that the Artman restored lands opinion for the Ione Band of Miwok be immediately and permanently withdrawn due to its gross misrepresentations of the facts and history concerning the Ione Band.

The reaffirmation of the Ione Band of Miwok was not a restoration as Solicitor Artman opines but was, according to the Department, the correction of an administrative error as presented in Muwekma case. His opinion that the Ione Band is a "restored tribe eligible for restored lands at a site other than the 40 acres owned by the Ione Band has provided the Ione Band and the Regional BIA Office in Sacramento with a lands opinion that has the practical effect of a final agency action. This is demonstrated by the Sacramento Regional Office's continued processing of an incomplete Fee to Trust Application and premature preparation of a Draft Environmental Impact Report at a cost of millions of taxpayer dollars while denying the public any opportunity to comment and/or challenge the opinion by withholding the Artman opinion from the Ione Band's Fee to Trust Application. This opinion is the foundation of the Ione Band's Fee to Trust Application and is the guiding document for the information gathering and documentation of the Administrative Record of Decision (ROD). Without Solicitor Artman's opinion there can be no the Fee to Trust Application for gaming for the Ione Band per the restored exception in the IGRA. The Fee to Trust process for gaming for the Ione Band continues to move forward on the basis of this opinion. Meanwhile the public and their representative governments are denied any opportunity to comment or challenge the specious, fictional, and unsupportable opinion delivered by Solicitor Artman and we are respectfully requesting its immediate and permanent withdrawal.

The opinion offered by Solicitor Artman failed to provide an accurate review of the history of the Ione Band of Miwok and does not accurately represent past department decisions or policies which pre-date the acknowledgment regulations that resulted in the unique and complex history of the Ione Band. An examination of the record would reveal his considerable oversight relating to the history of the Ione Band, their recognition, their reaffirmation, and the status of lands owned by the Ione Band.

Because of his opinion, the Ione Band of Miwok ROD for an off reservation fee-to-trust gaming application is fatally flawed due to the corrupting, unsupportable, imaginative, and fictional perspective of Solicitor Artman's opinion.

How will the Department verify that a restored lands decision for a Fee to Trust Application for gaming under the IGRA is based on factual and objective criteria if the restored lands opinion on which the Fee to Trust Application is based is not founded on supportable objective documented criteria on which a Final Department decision could be made?

Secretary Kempthorne, we believe it is clear that Solicitor Artman's restored lands opinion is being intentionally withheld from public comment and challenge. How else can you explain its absence from the Fee to Trust Application on which the Application is based? Provided that the Artman opinion is being withheld from the Administrative Record, how could a court provide a thorough judicial review if a complete and extensive Administrative Record of a tribe's history related to federal recognition is not available?

Solicitor Artman's opinion lacks factual objective criteria and he appears to have purposefully ignored, abbreviated and misrepresented the documented history of the Ione Band to construct a restored conclusion where none exists. To be blunt his opinion is a considerable work of fiction that bears little resemblance to fact, history, or truth about the Ione Band, its land or its relationship with the United States. This opinion is the foundation of the Ione Band's Fee to Trust for gaming Application which is, has been, and continues to be an extremely contentious and controversial Fee to Trust application. Withholding the opinion from the application to avoid comment and challenge is viewed by many as an effort by the Sacramento Regional Office and the Department to manipulate the ROD, frustrate challenges in the courts and ultimately deny judicial review of the Ione Band's Fee to Trust application. When exactly in the process will the public and affected governments have an opportunity to comment on and challenge the veracity of Solicitor Artman's opinion that the Ione band is restored and the lands in and near Plymouth qualify as restored lands under the IGRA?

All questions and requests are respectfully withdrawn if the Artman Opinion is permanently withdrawn.

For the reasons we have presented, No Casino in Plymouth respectfully requests you immediately and permanently withdraw Solicitor Artman's September 19th, 2006 Restored Lands opinion for the Ione Band. Should you decide to not immediately and permanently withdraw the Artman opinion please advise NCIP as to why the Department believes the Artman opinion should not be withdrawn and respond to all our questions and requests. NCIP thanks you in advance for your prompt reply and assistance in this very important matter.

Sincerely,

D.W. Cranford Vice President NCIP

NCIP
P.O. Box 82
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plymouthbutch@hotmail.com

CC:	David Longly Bernhardt – Office of the Solicitor		Fax: (202)-208-5584
	James E. Cason –Associate Deputy Secretary of the Interior		Fax: (202)-208-1873
	George T. Skibine – Interim Assistant Secretary of Indian Affairs		Fax: (202)-273-3153
	R. Lee Fleming – Director- Office of Acknowledgement		Fax: (202)-219-3008
	Phil Hogen – Chairman, National Indian Gaming Commission		Fax: 202-632-7003
	Jack Rohmer – Office of Inspector General		Fax: (303)-236-8279
	U.S. Senator Diane Feinstein	California	Fax: (202)-228-3954
	U.S. Senator Barbara Boxer	California	Fax: (202)-224-0454
	U.S. Congressman Dan Lungren	Calif. 3rd District	Fax: (202)-226-1298
	Andrea Hoch Legal Affairs Office of the Governor, California		Fax: (916)-323-0935
	California State Senator Dave Cox		Fax: (916)-324-2680
	Richard Forster	Chairman Amador Board of Supvervisors	Hand Delivered
	President Elect Obama's Transition Team		email to Pete Rouse

From: Butch Cranford
To: Echohawk, Larry
Cc: Echohawk, Larry
Subject: Concerns Related to the Ione Band of Miwok
Date: Thursday, June 03, 2010 4:25:14 PM

TO: Congressman Dan Lungren Fax: 916-859-9976

FROM: No Casino In Plymouth

SUBJECT: Concerns Related to the Ione Band of Miwok Proposed Long Range Transportation Plan

No Casino In Plymouth (NCIP) writes to express our concerns about a proposed 1.3 mile road project to be administered by the Ione Band of Miwok and the Bureau of Indian Affairs and funded with taxpayer dollars. A review of the proposal provided by the Ione Band indicates their fee land is not eligible for the Indian Reservation Road Program as described in the plan. Therefore, NCIP respectfully requests that you take all appropriate action to stop or hold any additional funding of the proposed road with taxpayer dollars until the properties owned by the Ione Band meet the requirements of the Indian Reservation Road program and are eligible for funding.

The Ione Band of Miwok Indians has submitted to the Bureau of Indian Affairs (BIA) a Long-Range Transportation Plan Application to acquire grant funding for planning the construction of a new road to serve residential development on Tribal Fee Land adjacent to the City of Plymouth California. This application, which will be developed under the Indian Reservation Road Program (IRR) raises more questions than it answers. The IRR is restricted by law to development of public roads on to, within, and through Indian Reservations, Indian Trust Land and Restricted Indian Lands. This project however, is intended to benefit Tribal Fee Land which does not qualify under any of the aforementioned IRR restrictions. As such, this application is inappropriate and the grant application should be denied until the land's status is resolved under the established administrative procedures of a Fee-to-Trust Application.

The 47.5 acres of Tribal Fee Land described in the application is currently under Amador County Ag-land zoning constraints. No apartment complexes and a maximum of five single family homes would be allowed under current zoning restrictions. This level of residential construction could easily be accommodated with no expenditure of public funds by the Tribe simply building a driveway to the closest existing arterial road. That solution is deemed inadequate by the Tribe for its projected phased construction of as many as 250 single family dwellings on less than 2/10ths of an acre each within their 5 parcels of fee- simple land. Obviously, this density of construction is impossible under the lands current status and is another valid reason for denying this grant application.

The Ione Band of Miwoks has a Fee to Trust Application for Gaming Land pending on an adjacent 228 acres based on a restored landless exemption to the Indian Gaming Regulatory Act. The Department of Interior has rejected their restored status claim and the Tribe now refers to themselves as a reaffirmed Tribe in the current Long-range Transportation Plan Application. However, the BIA still considers the gaming application's status as pending. The Tribal Housing and Community Development Director, Bob Terry, disavows any connection between the two applications but that assertion defies logic. The planned road location traverses land held in option for the Tribe in conjunction with the pending Fee to Trust Application for Casino development. We are concerned that the road project and the subsequent requirement to put that Land into Trust is an attempt to circumvent the several legal impediments to their

stalled Fee-to Trust application for Casino development. The fact that the application includes nearly $750,000 of probable construction costs for water and sewer mains (appendix 5) but fails to address these issues in the main body of the application lends credence to this concern as does the Tribe's intent to take responsibility for law enforcement (pg. 12).

There is simply too much obfuscation involved in this application. There is an established process for projects of this sort; one that would quite properly shed light on the real goals and intent of the Tribe. The appropriate venue for this transportation project would be to make it a part of a Land to Trust Application. During a period of runaway Federal deficits, spending taxpayer's funds for transportation planning is a waste of assets without first resolving the land trust issue. It is also a circumvention of not only the spirit but the intent of Federal regulations concerning Tribal land acquisitions.

We respectfully repeat our request the you take all appropriate action to stop or hold any additional funding of the proposed road with taxpayer dollars until the properties owned by the Ione Band are eligible for the Indian Reservation Road Program. If you have any questions regarding our concerns about this proposed road or this Ione Band please do not hesitate to contact us by phone at 209 245 4588 or email at plymouthbutch@hotmail.com.

Respectfully Submitted,

Walter Dimmers President NCIP

CC: Senator Diane Feinstein Fax (202) 228-3954

Senator Barbara Boxer Fax (202) 228-3865

Congressman Frank R. Wolfe Fax (202) 225-0437

Secretary of the Interior Ken Salazar Secretary_of_the_Interior@ios.doi.gov

Secretary of Indian Affairs Larry Echo Hawk Larry.Echohawk@bia.gov

Amador Ledger Dispatch

NO CASINO IN PLYMOUTH

Working to Preserve Rural Amador County

P.O. Box 82 Plymouth, CA 95669 www.nocasinoinplymouth.com

To: Ken Salazar, Secretary of the Interior

cc: Hilary Tompkins, Solicitor, Diane Feinstein, U.S. Senator, California

Dan Lungren, U.S. Congressman, California, 3rd District

From: No Casino in Plymouth (NCIP)

Subject: Request to Withdraw the Final Environmental Impact Study for the Ione Band

Secretary Salazar, NCIP is a non profit grassroots community organization. We write you on behalf of the 84% of Amador County and 73% of City of Plymouth voters who voted no more casinos in Amador County. We have serious concerns about the Final Environmental Impact Study (FEIS) for the Ione Band of Miwok Indians noticed in the Federal Register on Friday, August 13, 2010.

NCIP requests you immediately withdraw this Final EIS until significant questions related to the Ione Band, their 2006 Fee to Trust (FTT) Application, and this FEIS are resolved. A brief overview of only the FEIS's executive summary and introduction reveals what we believe to be several misleading and false statements concerning the "restored" Ione Band and their 2006 FTT Application for "restored" lands. These "restored" statements are unchanged from the DEIS despite extensive comment on these issues from the State of California, Amador County, the City of Plymouth and NCIP.

We make this request because we believe it reasonable that without status as a "restored" tribe and without a "restored" lands opinion the Ione Band's November 2006 FTT Application is without any legal basis or necessity for continued processing by the BIA, the DOI or by the EPA with this FEIS.

Secretary Salazar we request a response within 5 days to our request to withdraw the FEIS and a response to the following questions based on the background information provided below.

1. Is this Final EIS related to or associated with the Ione Band's November 2006 Fee to Trust Application for Class III gaming pursuant to the Indian Gaming Regulatory Act (IGRA)?

2. If this Final EIS is not pursuant to or not associated with the Ione Band's November 2006 FTT Application, under what application or authority is this Final EIS being processed?

3. Is it still the opinion and legal position of the Solicitor's Office that the Ione Band is not a restored tribe within the meaning of the IGRA? If not please provide explanation.

Background: In June 2005 the Ione Band submitted a request to the National Indian Gaming Commission (NIGC) for a restored lands opinion for ~228 acres in and near the City of Plymouth. Associate Solicitor Carl J. Artman delivered a restored lands opinion for the Ione Band on September

19, 2006 with Associate Deputy Secretary James E. Cason concurring. Amador County appealed the

NO CASINO IN PLYMOUTH

Working to Preserve Rural Amador County

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Artman restored lands opinion to the Board of Indian Appeals and the appeal was dismissed for lack of jurisdiction. NCIP, Amador County, and the State of California filed suit in Federal Court to reverse the Artman opinion. Their suits were dismissed because no final agency decision had been made. On November 21, 2006 the BIA Pacific Regional Office provided notice that the Ione Band was applying to have the ~228 acres taken into trust as "restored" lands to conduct Class III gaming on the property pursuant to the IGRA. The Artman opinion was the basis for the Ione Band's claim it was a "restored" tribe eligible for "restored" lands pursuant to the Indian Gaming Regulatory Act (IGRA). However, the Artman restored lands opinion was not included in the FTT Application made available for public comment in November 2006 without explanation. Subsequent requests by NCIP to Solicitor Artman and the DOI to respond to specific questions about the many questionable and unsupportable statements in his opinion yielded no response.

In April 2008 the Ione Band's Draft EIS was noticed in the Federal Register as available for public comment. In this notice the public was grossly misinformed that the ~228 acres were "currently held in fee by the tribe". The tribe knew this was blatantly false. Attempts by NCIP to have the notice corrected by officials at BIA and DOI failed with George Skibine informing us that the tribe was currently in process of procuring the land. More than 2 years later the Ione Band still does not own the noticed property in fee. The DEIS contained references and statements that the Ione Band was "restored" as well as other misleading and false information related to the Ione Band. Serious questions and issues with supporting information related to the status of the Ione Band as "restored" were provided in comments submitted on the DEIS by the State of California, Amador County, the City of Plymouth, and NCIP. These serious and well documented "restored" concerns were simply dismissed by the EPA as not related to the DEIS. In November 2008 NCIP requested Secretary Kempthorne to withdraw the Artman restored lands opinions based on information not provided in comment on the DEIS.

What specific effect all the comments related to the "restored" status claimed by the Ione Band based the the 2006 Artman restored lands opinion at the DOI is not known. However, in January 2009 Solicitor David L. Bernhardt sent a memo to Acting Deputy Assistant Secretary of Policy and Economic Development, George T. Skibine informing Mr. Skibine of the following concerning the Ione Band Lands Determination.

> *"We are now in process of reviewing the preliminary draft Final Environmental Impact Statement of the Plymouth parcel. As a result, I determined to review the Associate Solicitor's 2006 Indian lands opinion and have concluded that it was wrong. I have withdrawn and am reversing that opinion. It no longer represents the legal position of the Office of the Solicitor. The opinion of the Solicitor's Office is that the*

Band is not a restored tribe within the meaning of the IGRA." *(emphasis added)*

NO CASINO IN PLYMOUTH

Working to Preserve Rural Amador County

P. O. Box 82 Plymouth, CA 95669 www.nocasinoinplymouth.com

Pursuant to this action Solicitor Bernhardt sent Acting General Council of the NIGC a copy of the opinion, explained the withdrawal and invited the NIGC to comment on the opinion which reversed the "wrong" 2006 Artman restored lands opinion.

After learning of the January 2009 Bernhardt memo, NCIP requested a copy in a March 2009 face to face meeting with Associate Deputy Secretary Laura Davis, Acting Deputy Assistant Secretary for Policy and Economic Development George T. Skibine. Ms. Davis denied the request because the opinion is a draft. Additional requests for a copy of the opinion made on our behalf by Senator Diane Feinstein and Congressman Lungren were also denied. In September 2006 the "wrong" Artman restored lands opinion was readily available to the public but in the more than 18 months since January 2009 all requests to provide the public with a copy of Solicitor Bernhardt's opinion reversing that "wrong" opinion have been denied. The NIGC has removed the Ione restored lands opinion from their website and NCIP is not aware, despite repeated requests for status of NIGC comment, that any comment preparation is in process or has been completed by the NIGC. We now repeat our request for a copy of the Solicitor's opinion withdrawing and reversing the "wrong" 2006 Artman restored lands opinion for the Ione Band.

Secretary Salazar, in closing, we repeat our request for a response within 5 days to our request to withdraw the FEIS and a response to the following questions based on the background information provided below.

1. Is this Final EIS related to or associated with the Ione Band's November 2006 Fee to Trust Application for Class III gaming pursuant to the Indian Gaming Regulatory Act (IGRA)?

2. If this Final EIS is not pursuant to or not associated with the Ione Band's November 2006 FTT Application under what application or authority is this Final EIS is being processed?

3. Is it still the opinion and legal position of the Solicitor's Office that the Ione Band is not a restored tribe within the meaning of the IGRA? If not please provide explanation.

Respectfully Submitted

Dueward W. Cranford II Vice President NCIP

Comments on the FEIS

"Ione Band of Miwok" Indians' Casino Project

Submitted September 10, 2010

By

No Casino in Plymouth
P.O Box 82
Plymouth, CA 95669

Dale Risling
Acting Regional Director
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way
Sacramento, CA 95825

9/10/10

RE: Comments by No Casino In Plymouth on FEIS for "Ione Band of Miwok" Casino Project

Dear Director:

Over two years ago, members of No Casino In Plymouth submitted comments on the Draft EIS for the "Ione Band of Miwok" Casino Project. Recently we received copies of the Final EIS. We have reviewed the Final EIS. We find that the BIA's responses to our comments are not legally adequate.

Following in Section 1, you will find comments letter on the Final EIS from our members Dueward W. Cranford II, Dr. Elida Malick, Dick Minnis, Patrick Henry, and Walter Dimmers. These letters explain both major flaws that remain in the technical analyses in the EIS, and the inadequate responses to public comments. Because the BIA's responses to so many comments are flawed, in Section 2 you will find matrices summarizing the repeated failures of the BIA to adequately respond to public comments. Finally, in Section 3 you will find a guide to reference materials on the enclosed DVD. These materials both verify the factual assertions made in our comments, and validate our concerns regarding the impacts of the proposed project.

The casino is proposed in the wrong place, at the wrong time, and by the wrong agency.

It makes no sense to locate a casino, with all of its urban service needs, in a small rural town without urban services. The casino is proposed in the wrong place. That is why the proposed casino in the Bay Area (Richmond) has so much less impact on its surroundings.

It makes no sense to approve **A Third** casino in rural Amador County, miles away from its urban patrons, when the price of gas is $3.25 a gallon, and the entire world is struggling to reduce greenhouse gas emissions to avert the catastrophes associated with global climate change. This project is not a twenty-first century solution to anyone's problems.

By way of contrast, the CHIPS project, an outgrowth of the Amador - Calaveras Consensus Group, is training and employing Native Americans to work in the forest removing brush and small trees that pose a fire risk. Those small log and biomass materials are in turn used to manufacture value added products for sale, such a rustic furniture, compost, and power plant fuel. The CHIPS project not only helps the

economic condition of Native Americans, it helps the rest of the community by reducing fire risk, providing useful products, and promoting energy independence. The BIA would do better and get farther by considering these types of win-win economic development alternatives, rather than trying to force unwanted casinos down the throats of small rural towns.

Finally, the casino project is in the hands of the wrong agency. Despite 40 years of practice, Department of the Interior remains ill equipped to successfully produce environmental review documents in compliance with NEPA. Over the last couple of years, the agencies of the Department of Interior have been repeatedly rebuked by the courts for improperly stating the purpose and need for a project, for not evaluating the effectiveness of mitigation measures, and for not properly responding to public comments. Despite these repeated judicial rebukes, the BIA seems determined to repeat these very same violations in this EIS.

The proposed rural casino project is an idea whose time has passed. Now is time for the BIA to join the twenty-first century. Now is time for the BIA join with rural communities to seek economic solutions that embrace opportunities to improve our environment rather than destroy it. Now is time for the BIA to seek economic solutions that unite our communities rather than divide them. Saying no to this ill advised casino project, and joining the Amador - Calaveras Consensus Project, would be good first steps in this direction.

Sincerely,

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(209) 295-8866
tomi@volcano.net

Elida Malick, Director
No Casino in Plymouth
P.O. Box 82
Plymouth, CA 95669

P.S. Please retain a copy of the comments, the matrices, and the DVD of reference material for the administrative record.

NCIP Detailed Comments
2
AR 08439 - 08475

ATTACHMENT 4 – STATEMENTS OF UNDISPUTED FACTS

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

NO CASINO IN PLYMOUTH et al. Plaintiffs, **v.** KENNETH L. SALAZAR, et. al. Defendants.	Case No.2:12-CV-01748-TLN-CNK **PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT** Date: March 26, 2015 Time: 2:00 p.m. Place: Courtroom No. 2 Judge: Honorable Troy L. Nunley

Plaintiffs submit the following undisputed facts in opposition to Defendants motions for summary judgment. Unless otherwise indicated these undisputed facts are supported by the administrative and Plaintiffs First Amend Complaint for Declaratory and Injunctive Relief.

1. A final Record of Decision (ROD) of the Bureau of Indian Affairs was issued by Acting Assistant Secretary of the Department of the Interior (AAS) on May 24, 2012 and published in the Federal Register on May 30, 2012. (77 Fed. Reg. 31871-31872.)
2. The ROD is to place 228.04 acres of land (Parcels) located in the City of Plymouth, Amador County, California, into trust for a group of individuals who identify themselves as the Ione Band of Miwok Indians (Ione Indians).

3. The Parcels are owned in fee by private landowners, not the Ione Indians.

4. The trust acquisition proposed in the ROD is intended to facilitate the construction of a major gambling casino, hotel and related facilities on the Parcels.

5. The proposed action in the ROD, the unregulated construction of a major casino complex in a rural, historic community, is contrary to the will of the People of the County of Amador who voted 84.6% against permitting another casino in their county.

6. California has sovereign rights over all lands within its exterior boundaries, including the right to regulate and tax lands that are in private ownership.

7. The ROD, published in the Federal Register on May 30, 2012 (77 Fed. Reg. 31871-31872.) did not include the required Title Examination and report.

8. Interim acting Assistant Secretary Laverdure was not appointed by the President nor confirmed by Senate.

9. Plaintiff, NCIP, is a non-profit 501(c)(4) corporation incorporated under the laws of the State of California and has members who own homes and operate businesses in and around the areas that are included in the ROD.

10. Plaintiff, CERA, is a non-profit 501(c)(4) Corporation and has members in California and in an around the areas included in the ROD.

11. The territory that was to become California was ceded to the United States from Mexico in 1848 pursuant to the Treaty of Guadalupe Hidalgo. (9 Stats. 922 (1848.).)

12. On September 9, 1850, California was admitted to the Union. (9 Stats. 452 (1850).)

13. California entered the Union on an "equal footing" with, and with the same public property rights, jurisdiction and regulatory authority, as all other States.

14. In 1864, Congress passed an Act, known as the Four Reservations Act. which allowed no more than four reservations could be established within California. (13 Stat. 39.)

15. The Ione Indians did not occupy reservation allowed by the Four Reservations Act.

16. In 1887, Congress passed the General Allotment Act (24 Stat. 388.) which authorized the allotment and transfer portions of reservation lands to individual Indians.

17. The Ione Indians did not own or occupy reservation land that was subject to the General Allotment Act.

18. In 1905 and 1906, C.E. Kelsey of the BIA compiled a "Census of Non-Reservation California Indians." Indians in Amador County were included in the census.

19. In 1915, John J. Terrell, Special Indian Agent with the BIA began an effort to secure lands for the Indians living in the vicinity of Ione.

20. Mr. Terrell compiled a "Census of Ione and vacinity (sic) Indians" in Amador County.

21. In 1916 the DOI authorized the purchase of a 40 acre parcel occupied by homeless Indians near Ione. The BIA's efforts to purchase this land were not successful.

22. In 1924, Congress conferred citizenship on all Indians born in the United States including the Indians of Amador County. (8 U.S.C. § 1401(b).)

23. In 1933, the Superintendent for the Office of Indian Affairs in a letter (copy attached) classified the homeless Indians at Ione as "non-ward" Indians not belonging to a tribe.

24. In 1934, Congress enacted the IRA. (25 U.S.C. §§ 461 et seq.) A purpose of the IRA was to reacquire lands within reservation that, pursuant to the General Allotment Act of 1887, were allotted to Indians or sold to non-Indians.

25. Ione Indians were not a recognized Indian tribe under federal jurisdiction in 1934.

26. Ione Indians owned no land in 1934 that was under federal jurisdiction or subject to the 1887 General Allotment Act remedied by the IRA in 1934.

27. In 1941 some of the Indians at Ione petitioned the DOI, through Congressman Engelbright, to purchase the 40 acre parcel that they had been occupying.

28. In 1941 the BIA notified Congressman Engelbright that federal funds were not then available to purchase the 40 acres.

29. In 1972, the Amador County Superior Court confirmed title in the 40 acre parcel in favor of 12 individual Indians at Ione in fee as tenants in common.

30. Ione Indians have not completed the 25 CFR Part 83 acknowledgement process and are not currently a federally recognized tribe under 25 CFR Part 83.

31. Only Congress has the authority to terminate or restore recognized Indian tribes.

32. In 2004, the Ione Indians requested a restored lands opinion from the National Indian Gaming Commission (NIGC).

33. In 2004, the Ione Indians also filed a fee-to-trust application under the IRA with the Department of Interior and the Bureau of Indian Affairs.

34. In May 2006, the NIGC and the DOI entered into a memorandum agreement which provides that, if a tribe requested a lands determination, it would be drafted by DOI's Office of the Solicitor, Division of Indian Affairs and then reviewed by the NIGC.

35. On September 19, 2006, DOI Associate Solicitor Carl J. Artman rendered an opinion that the Ione Indians were a "restored tribe" and that the Parcels would be eligible for Indian gaming pursuant to the "restored lands" exception.

36. In April 2008, the BIA and DOI published a notice in the Federal Register for the DEIS for the proposed FTT transfer for the benefit of Ione Indians. The notice erroneously states the Ione Indians owned the own the Parcels in fee.

37. The DEIS was made available to the public for a 75 day comment period. Requests to extend the comment period were denied.

38. On or about January 16, 2009, DOI Solicitor Bernhardt withdrew the 2006 Artman opinion because he concluded that the Ione Indians are not a "restored tribe."

39. Mr. Bernhardt withdrew the Artman opinion while he was in the process of reviewing the DEIS. Thus, Mr. Bernhardt's decision was a rejection of the adequacy of the DEIS and a denial of the proposed FTT transfer and casino project studied in DEIS.

40. Despite Solicitor Barnhart's rejection of the DEIS and denial of the FTT, the BIA issued a Final EIS, dated February 2009, for comment in August 2010.

41. On April 20, 2009, the President nominated Larry Echo Hawk as Assistant Secretary of Indian Affairs and he was confirmed by the Senate on May 19, 2009.

42. Assistant Secretary Echo Hawk did not change the decision of Solicitor Bernhardt that the Ione Indians were not a restored tribe. Nor did he approve the DEIS.

43. On April 27, 2012, Assistant Secretary Larry Echohawk resigned. Donald Laverdure was designated to serve as interim acting Assistant Secretary until the President appointed and the Senate confirmed a new Secretary of interior.

44. Prior to his appointment as interim acting Assistant Secretary, Mr. Laverdure – while a DOI employee – worked on, promoted and assisted the, Ione Indians with the FTT.

45. On May 24, 2012, less than a month after Assistant Secretary Echohawk resigned, interim acting Assistant Secretary Laverdure reversed Mr. Echohawk's position and issued the ROD.

46. A notice of final agency action on the ROD was published in the Federal Register on May 30, 2012. (77 Fed. Reg. 31871-31872, May 30, 2012.)

47. Interim acting Assistant Secretary Laverdure also reversed Solicitor Bernhardt's 2009 decision and reinstated the Artman 2006 opinion and approved the FTT.

48. Interim acting Assistant Secretary also revived and approved the DEIS, that had been rejected by Bernhardt, in support of the project.

49. Interim acting Assistant Secretary Laverdure adopted Alternative A in the DEIS to

accept the Parcels into trust status for the Ione Indians for gaming purposes.

50. On September 22, 2012, Kevin Washburn, after being appointed by the President, was confirmed by the Senate as the new Assistant Secretary for Indian Affairs.

51. The Ione Indians were not a federally recognized tribe in June 1934 when Congress enacted the IRA.

52. 25 CFR 151.10(a) requires the Secretary to consider if there is any statutory authority for the proposed acquisition and, if so, any limitations contained in such authority. There is no statutory authority for the Secretary to take lands into trust for the Ione Indians which were not a recognized Indian tribe under federal jurisdiction in 1934.

53. 25 CFR 151.10(b) requires the Secretary to consider if there is a need for the acquisition of additional lands. The ROD did not address the fact that the Ione Indians own several properties in Amador County which is sufficient to support their needs.

54. 26 CFR 151.10(c) requires the Secretary to consider the purpose for which the land will be used. The ROD's description is incomplete because, although it outlines the casino project, if fails to reveal or study that the project also includes the construction of 162 private residences on the Parcels. (See ROD at 59-60.)

55. 25 CFR 151.10(e) requires the Secretary to consider the impact on State and local government if the land is acquired in "unrestricted fee status" and is removed purpose from the tax rolls. There is no evidence offered in the ROD that the Parcels will be acquired in "unrestricted fee status" and therefore eligible to be exempt from State and local tax. If it is not acquired in "unrestricted fee status", the Parcels remain subject to State and local tax and regulations.

56. The ROD's reliance on the "voided" MSA (ROD at 60) to support the contention that the tribe is obligated to reimburse the County of Amador is inappropriate and

disingenuous. There is no current requirement for the Ione Indians to reimburse State and local government for lost tax revenue if the FTT is approved.

57. The ROD does not discuss the additional costs that will be incurred by State and local government to provide governmental services to the project.

58. 25 CFR 151.10(f) requires the Secretary to consider jurisdictional problems and possible conflicts of land use. The use of the Parcels for a casino and related projects is inconsistent with local land use and zoning rules. The DOI and Secretary have no authority to exempt the Parcels from State and local land use and zoning regulations.

59. 25 CFR 151.10(g) requires the Secretary to consider whether, if the land is taken in trust, the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status. This issue is not addressed in the ROD.

60. 25 CFR 151.10(h) requires the Secretary to consider whether the tribe has provided sufficient, specific information to insure that the potential environmental impacts of the project are considered before the land is taken into trust. The ROD does not address this issue and the Ione Indians have not provided the required information.

61. 25 CFR 151.11(c) requires the tribe to provide a plan to Secretary which specifies the anticipated economic benefits associated with the proposed use. This issue is not addressed in the ROD and the Ione Indians have not provided the required plan.

62. 25 CFR 151.13 requires the tribe to furnish title evidence meeting the *Standards For the Preparation of Title Evidence in Land Acquisitions by the United States* issued by the United States Department of Justice. The ROD does not address this issue and the Ione Indians did not provide the required information.

63. The United States has the authority, in some circumstances, to create an Indian reservation from retained public domain lands.

64. After public domain property is conveyed to the State, or into private ownership, the US has no authority to create an Indian reservation over non-public domain lands.

65. The Ione Indians are not landless; they have a potential ownership interest in many properties including: (1) 40 acres near Ione; (2) property in the City of Ione, (3) commercial property in Plymouth, and (4) five parcels adjacent to Plymouth.

66. Plaintiffs' interest in the environmental and economic well-being of Plymouth, Amador County and the State of California are among the interests to be considered under 25 C.F.R. § 151.10(f), 151.10 (h) before land is placed into trust.

67. The proposed casino project in the ROD will have many negative impacts including increase in traffic congestion and safety concerns, increase in air pollution, increase in water pollution, overuse of limited water resources used by all residents in the area for drinking water and irrigation and potential increases in crime. These impacts were not adequately identified, considered, mitigated or resolved.

68. The DOI, the BIA NIGC and the Secretary were required to take a "hard look" at the environmental consequences of the proposed action in the ROD. This required them to: (1) make a good faith effort to take environmental values into account; (2) to provide full environmental disclosure to the members of the public; and (3) protect the integrity of the decision making process by insuring that problems are not ignored.

69. In this case, it was not possible for the BIA to take a "hard look," much less a fair look, at the environmental impacts because the BIA contends that it was required to only represents the interests of a group of Ione Indians claiming to be a tribe.

70. The regulatory and cumulative jurisdictional impacts of removing hundreds of acres from the sovereign control of state and local governments were not adequately addressed in the FEIS.

71. The FEIS also fails to provide support for the ROD's conclusion that putting the Parcels in trust is necessary to satisfy the Ione Indian's goal of self-determination and other similar needs of the Ione Indians. And the FEIS fails to adequately assess the impact this determination has on the local communities.

This Statement of Undisputed Facts is offered by Plaintiffs for the sole purpose of opposing Defendants motions for summary judgment and supporting Plaintiffs request for a judgment in their favor on these issues. It is not admissible or usable for any other purpose. The undisputed facts listed in this document are not admissions or binding on the Plaintiffs for any other purpose.

Dated: February 17, 2015

Respectfully submitted,

/s/ Kenneth R. Williams

KENNETH R. WILLIAMS
Attorney for Plaintiffs
No Casino In Plymouth and
Citizens Equal Rights Alliance

724, Amador

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
FIELD SERVICE
Sacramento Indian Agency
Sacramento, California

Aug. 15, ~~1933~~

The Honorable
Commissioner of Indian Affairs,
Washington, D. C.

Sir:

There was received at this office today copy of letter and enclosures sent to you under date of July 29, 1933, by a Committee of Citizens of Ione, California, reporting the condition of 93 Indians residing in Township No. 2, Amador County.

It is observed that this report fails to give sufficient information regarding the status of these Indians to enable the Office to determine what, if anything, the federal Government can do to assist the Committee in providing for their needs. Therefore the following facts are brought to the attention of the Office:

The situation of this group of Indians is similar to that of many others in this Central California area. They are classified as non-wards under the rulings of the Comptroller General because they are not members of any tribe having treaty relations with the Government, they do not live on an Indian reservation or rancheria, and none of them have allotments in their own right held in trust by the Government. They are living on a tract of land located on the outskirts of the town of Ione. This land, I am informed, is owned by a Chinaman and is about to be sold and the Indians fear they are going to be dispossessed, and they have no other place to which they can go.

358.2 Sacramento

About five years ago the Department approved the purchase of 70 acres of land in Amador County from Louis Alpers, at a cost of $3,000. (See Office file L-A, 45877-28; 49751-26, M.A.P., Sept. 28, 1928). This land is located a few miles from the town of Ione and there is only one old Indian living on it. None of the others have desired to make an effort to establish homes on this rancheria for the reason that they are too poor to do so. They have no funds with which to purchase materials to build houses, and the Government has never made any provisions for assisting the Indians to build houses, dig wells, fence and otherwise improve the lands purchased for homesites for them in this jurisdiction.

We now have several of these rancherias purchased at considerable cost to the Government on which no Indians are living, or have ever lived. These lands are unimproved, in many cases have no water, and the Indians are utterly unable to establish homes and live upon them.

There is no possible hope of permanently improving the condition of these homeless California Indians until a way can be found to finance the home improvement program which I have outlined to the Office in previous reports and correspondence and which was brought to the attention of the Senate Committee during their investigation of the condition of the Indians in this jurisdiction last year. It is hoped the Office may be able before the passing of another year to find some way of financing this home improvement program.

Very respectfully,

O. H. Lipps,
Superintendent

OHL:MH

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No Casino in Plymouth and
Citizens Equal Rights Alliance

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

NO CASINO IN PLYMOUTH and CITIZENS EQUAL RIGHTS ALLIANCE, Plaintiffs, **v.** SALLY JEWELL, in her official capacity as Secretary of the U.S. Department of the Interior, *et al.* Defendants.	Case No. 2:12-cv-01748-TLN-CMK **PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** Date: TBD Time: TBD Place: Courtroom No. 2 Judge: Honorable Troy L. Nunley

Pursuant to Federal Rule of Civil Procedure 56, Plaintiffs submit the following statement of undisputed facts in support of their motion for summary judgment.

1. The Ione Band of Miwok Indians filed its Complaint for Declaratory Relief, Quiet Title, Breach of Trust and to Compel Agency Unlawfully Withheld in Ione Band et al. v. Harold Burris et al (USDC ED Cal. No. CIV-S-90-0993) ("Ione Band v. Burris") against individual Ione Indians and the United States on August 1, 1990. (ECF 62; RJN No, 1.)
2. The United States filed its Answer in Ione Band v. Burris on September 28, 1990 and denied all the contentions of the Ione Band including the contention that it was a federally recognized tribe. (ECF 62; RJN No. 2.)

3. The Ione Indians filed their Answer in Ione Band v. Burris on October 22, 1990 and also denied that the Ione Band is a federally recognized tribe. (ECF 62; RJN No. 3.)

4. The United States made the following statement in its Status Report in Ione Band v. Burris: "The [United States] government denies that the Ione Band of Miwok Indians has ever been a federally-recognized tribe." (ECF 62; RJN No. 5.)

5. The Ione Indians made the following statement in its Status Report in Ione Band v. Burris: "Defendants [Ione Indians] deny that the Ione Band of Miwok Indians has ever been a federally-recognized tribe." (ECF 62; RJN No. 6.)

6. The U.S. filed a Motion for Summary Judgment in Ione Band v. Burris in February 1991. (AR00691-AR00732.) The Ione Indians joined that motion. (ECF 62; RJN No. 8.)

7. Michael L. Lawson, Ph.D. submitted a declaration in favor of the United States motion. (AR00732-AR00738 and AR020823-AR020900 (with exhibits). Dr. Lawson concluded that: "the United States has never extended federal recognition to the Ione Band of Miwok Indians as an Indian tribe." (Id.)

8. Arthur G. Barber, an employee of the BIA, also filed a declaration in favor of the United States motion. (AR020901-AR020904.) Mr. Barber told the Ione Indians that the Ione Band was not a federally recognized tribe and that they should apply for recognition under Part 83 to receive federal services from the BIA. (Id.)

9. The Ione Band opposed the United States motion for summary judgment and the United States filed a reply brief. (AR00738-AR00767.) The United States reasserted its contention that the Ione Band was not a federally recognized tribe. (Id.)

10. The United States filed a Supplemental Brief in Support of its Motion for Summary Judgment (ECF 62; RJN No. 12) and a supporting declaration (ECF 62; RJN No. 13) in March 1991. The stated purpose of this supplemental brief was to bring to the Court's

attention additional information that the Ione Band knew that they were not a federally recognized tribe as early as 1973. (Id.)

11. Pursuant to Judge Karlton's request, in October 1991, the United States submitted a second supplemental brief on whether or not the Part 83 regulations were the exclusive means to obtain tribal recognition. (AR020910-AR020922.) The United States argued that, although the Part 83 process was not the exclusive means to obtain tribal recognition, it was the only administrative means for a tribe to obtain federal recognition. (Id.)

12. In its reply brief the United States confirmed that "The government's position has been and remains that the acknowledgement regulations [Part 83] constitute the exclusive administrative means of obtaining full . . . federal tribal recognition." (AR020923-AR020928; emphasis in the original.)

13. Judge Karlton issued his decision granting the United States motion for summary judgment on April 23, 1992. (AR007763-AR007788.) Judge Karlton concluded:

> "Plaintiffs' [Ione Band's] argument appears to be that these non-regulatory mechanisms for tribal recognition demonstrate that 'the Secretary may acknowledge tribal entities outside the regulatory process,' . . . and that the court, therefore, should accept jurisdiction over plaintiff' claims compelling such recognition. **I cannot agree. Because plaintiffs cannot demonstrate that they are entitled to federal recognition by virtue of any of the above mechanisms, and because they have failed to exhaust administrative remedies by applying for recognition through the BIA acknowledgement process, the United States motion for summary judgment on these claims must be GRANTED.**" (Id at 17; emphasis added.)

Dated: October 14, 2014

Respectfully Submitted,

/s/ Kenneth R. Williams
KENNETH R. WILLIAMS
Attorney for Plaintiffs
No Casino in Plymouth and
Citizens Equal Rights Alliance

STATEMENT OF RELATED CASES

This case is related to, but distinct from, the following pending appeal in this Court: *County of Amador, California v. United States Department of Interior, et al.* (USCA Ninth Circuit No. 15-17253).

Dated: November 20, 2017.

Respectfully submitted,

/s/Kenneth R. Williams
KENNETH R. WILLIAMS
Attorney for Appellants

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation set forth in Rule 32(a)(7)(C) of the Federal Rules of Appellate Procedure. This brief exceeds 15 pages and, consequently, per Circuit Rule 40-1 is limited to a maximum of 4200 words. This brief uses a proportional typeface and a 14-point font and contains 3882 words (excluding the signature block) and 3898 words (including the signature block).

Dated: November 20, 2017.

Respectfully submitted,

/s/Kenneth R. Williams
KENNETH R. WILLIAMS
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the forgoing with Clerk of the Court for the United States Court of Appeal for the Ninth Circuit by using the appellate CM/ECF system on November 20, 2017.

I certify that Counsel for all the parties in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: November 20, 2017.

Respectfully submitted,

/s/Kenneth R. Williams
KENNETH R. WILLIAMS
Attorney for Appellants