UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

July 2, 2008

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

Subject: Draft Environmental Impact Statement, Ione Band of Miwok Indians 228.04 acre Fee-to-Trust Transfer Project and Casino Project, Amador County, California (CEQ # 20080136)

Dear Mr. Risling:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced Draft Environmental Impact Statement (DEIS) pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. Our detailed comments are enclosed.

As a cooperating agency for the project, EPA reviewed and submitted comments on the Administrative DEIS on April 26, 2005 noting our concerns regarding the availability of groundwater resources, the wastewater treatment system, the air quality analysis, and impacts to biological resources. Thank you for addressing some of our concerns. Some comments that were not addressed are repeated here.

Based on our review, we have rated two elements of the proposed action (Alternative A) as Environmental Objections – Insufficient Information (EO-2), and the remaining elements as Environmental Concerns – Insufficient Information (EC-2). (See the enclosed "Summary of EPA Rating Definitions".) The DEIS does not identify the preferred water supply or treated wastewater disposal option for the project but simply presents two options for these project elements. EPA objects to Water Supply Option 2 without the use of recycled water. We also object to treated wastewater disposal Option 1. Our concerns are summarized below and are detailed in the enclosed "Detailed Comments."

Water Supply Option 2 proposes to construct wells to utilize groundwater and to supply the remaining water demand through trucked water. The groundwater basin is currently in overdraft, and it is not clear from limited pump testing that there is sufficient long-term capacity to provide a reliable water source if recycled water use is not maximized. Additionally, based on

our knowledge of Tribal experiences, the use of trucked water is not likely to be feasible and is not recommended. EPA recommends the project maximize the use of recycled water to reduce water project demand.

Treated Wastewater Disposal Option 1 includes construction of a reservoir in a nearby canyon by erecting a 75-foot earthen dam and diverting the canyon's intermittent stream through a culvert. This project element does not avoid fill to waters of the U.S. as required by the Clean Water Act Section 404 permit needed for the project. EPA instead recommends seasonal discharge to the intermittent creek be pursued using a National Pollutant Discharge Elimination System (NPDES) permit. We would like to work with the Bureau of Indian Affairs and the Tribe and project proponent to specifically resolve these two issues, as well as the concerns discussed in our Detailed Comments. We recommend setting up a meeting at your earliest possible convenience.

EPA appreciates the opportunity to review this DEIS. When the FEIS is released, please send one hard copy and CD to this office at the above address (mail code: CED-2). If you have any questions, please contact me at 415-972-3846 or Karen Vitulano, the lead reviewer for this project, at 415-947-4178 or vitulano.karen@epa.gov.

Sincerely,

/s/

Nova Blazej, Manager
Environmental Review Office

Enclosure: Summary of EPA Rating Definitions
EPA's Detailed Comments

CC: Kathy Norton, Army Corps of Engineers
Matthew Franklin, Chairperson, Ione Band of Miwok Indians
Sarah Norris, Environmental Planner, Ione Band of Miwok Indians

Impacts to Groundwater Resources

Groundwater basin overdraft

The DEIS indicates that the proposed action (Alternative A) may utilize recycled water for landscaping and toilet flushing (p. 2-12). Water Supply Option 2 would utilize groundwater from on and off-site wells and trucked water. The groundwater basin is in a state of overdraft, despite having average rainfall for the years analyzed (p. 4.3-9), and there appears to be uncertainty regarding the yield of the groundwater wells. Because of this uncertainty and the overdraft condition of the groundwater basin, recycled water use should be maximized. If Water Supply Option 2 is chosen and recycled water is not utilized, EPA has objections to this element of the proposed project.

EPA has concerns with the long-term reliability of the proposed groundwater supply as described by the long-term well yields. Page 12 of Appendix B (Pumping Test and Sustainability Analysis) documents a boundary condition that could affect long-term well performance for well H1 and M3. It is not clear why the lower well performance limit was not used in calculating long-term well yields, which would provide a more conservative estimate of water supply yields.

The DEIS indicates that groundwater on the project site primarily occurs in confined chambers at depth in the fractured bedrock zones, creating a unique groundwater chamber that allows for limited recharge from surface water infiltration (p. 3.3-9). However, the long-term well yields were calculated using an approach that assumes a significant percentage of recharge will reach the aquifer (Appendix B, 18). The calculation of safe available yield utilized a safety factor to account for "a position for the pump, drought and seasonal water level declines, and future drops in well efficiency during operation" (Appendix B, 14). The report in Appendix B does not indicate if the safety factor also considered the limited recharge situation described above. One limitation of the calculated long-term well yields is that they are based on a relatively short period of pumping (Appendix B p. 18). It is unfortunate that additional pump tests were not completed in the period since we reviewed the Administrative DEIS in 2005, which would have yielded more information and reduced uncertainty.

We are also concerned with the long-term feasibility of utilizing trucked water, which may be too expensive to be a reliable water supply option. EPA funded a State Revolving Fund Tribal Set-Aside Grant for the Hopland Band of Pomo Indians for construction of a 10-mile water pipeline to their casino to replace trucked water that proved too costly. The DEIS indicates that if recycled water is used, trucked water will only be needed to initially fill the tanks and may not need to be relied upon for regular operations.

> *Recommendation:* EPA strongly recommends a firm commitment to the use of recycled water for landscape irrigation and toilet flushing and that the FEIS identify this as a definite project element of the preferred alternative and not simply an option. EPA recommends against the dependence of trucked water in project planning.

We also recommend additional information be included in the FEIS to address how the method for determining safe well yields considered the limited recharge condition at the site. For a more conservative estimate that considers the limitations of the calculated long-term well yields, use of the lower well performance limit may be appropriate. Based on the revised calculations, include additional mitigation and monitoring measures as appropriate, discussed below.

Mitigation of groundwater impacts

Because of the overdraft condition and uncertainty in determining long-term well yields, it is appropriate to identify all reasonable mitigation measures to mitigate groundwater impacts (40 CFR 1502.16(f) and 40 Most Asked Questions Concerning Council on Environmental Quality's NEPA Regulations, #19). The DEIS identifies one mitigation measure: to develop and implement a groundwater monitoring program in consultation with BIA and EPA to monitor levels of impact to offsite users (p. 5-7). If it is determined that offsite wells are significantly affected, the Tribe will undertake specific actions. It is not clear how a significant impact will be determined or how this agreement will be implemented with neighboring well-owners. We note that EPA does not have regulatory authority and generally does not get involved with groundwater issues not related to water quality.

Recommendation: Provide specific information regarding the determination of significance and the mitigation commitment to impacted well-owners. Identify additional mitigation measures in the FEIS for impacts to groundwater should Option 2 be chosen. This should include the exploration of recharge mitigation options as appropriate. For example, the proposed North Fork casino project in Madera County included a proposal and Memorandum of Agreement for utilization of reclaimed water from its wastewater treatment plant for golf course irrigation at a nearby golf course, which would eliminate golf course groundwater withdrawal of over 240,000 gallons per day. Similarly, the North Fork Tribe also proposed to contribute to a reserved water bank or a groundwater recharge area to mitigate groundwater impacts.

Treated Wastewater Disposal Options

The DEIS includes two options for disposing of treated effluent from the onsite wastewater treatment plant (WWTP). Option 1 includes utilizing sprayfields, leachfields and an onsite reservoir constructed in a nearby canyon by installing a 75-foot earthen dam and diverting an intermittent stream. Option 2 includes sprayfields, leachfields, and a seasonal discharge of treated effluent into the unnamed tributary of Dry Creek. EPA has objections to Option 1 due to the avoidable impacts to waters of the U.S. This Option would also impact 3 acres of riparian woodland habitat.

The DEIS indicates that the WWTP will produce a high quality effluent (p. 4.9-3). As mentioned, the opportunity to utilize this effluent for landscape irrigation and toilet flushing should be maximized. The remaining effluent could be seasonally discharged to surface waters utilizing a National Pollutant Discharge Elimination System (NPDES) Permit issued by EPA.

The Water and Wastewater Feasibility Study, Surface Water Discharge Addendum[1] recommends an NPDES permit be pursued, either year round or seasonally, for discharges to a tributary of Dry Creek to the maximum extent possible (p. 15 of Addendum Report). It notes that while this will require extensive sampling and upfront documentation, and will require monitoring and reporting, the cost for installation, land requirements, infrastructure and maintenance is greatly reduced (p. 15 of Addendum Report).

Construction of the onsite 10.3 million gallon reservoir will require extensive engineering and construction efforts, including an upstream headwall and longitudinal culvert to divert the maximum anticipated flow of the intermittent stream during a storm event to prevent it from entering the reservoir. The dam will need to be constructed to withstand moderate ground shaking in the event of a major earthquake (Geotechnical Report p. 9). Also, the issue of the liner is unresolved. The Geotechnical report recommends the reservoir system be designed without a liner (p. 13) but also states that the leakage of detained water, which could possibly lead to offsite seepage, will need to be minimized and HydroScience Engineers has indicated that the reservoir will likely need to be lined (p. 4). The Geotechnical report further states that "it is our opinion that, given the site topography, soil and geologic conditions, constructing and maintaining a suitable reservoir liner will be extremely difficult" (p. 12).

Additionally, the DEIS does not fully characterize the impacts of constructing and operating this reservoir. The impact assessment should disclose all impacts to waters of the U.S. and biological resources associated with dam construction, including the upstream headwall, longitudinal culvert, possible perimeter french drain system to collect surface runoff including cleanouts and other maintenance features, access roads, and the impacts to the borrow site for the imported impervious material to construct the dam (Geotechnical Report p. 11). The DEIS indicates that 4.35 additional acres of habitat will be affected, almost 3 acres being riparian woodland, but it is unclear whether all impacts from project elements listed above have been included in the DEIS.

Additionally, there is insufficient discussion of permitting and mitigation associated with needed Clean Water Act (CWA) Section 404 permits. The DEIS mentions the need for a CWA 404 permit from the U.S. Army Corps of Engineers (Corps) but does not discuss the 404(b)(1) alternatives analysis that is required for the permit. The Corps can only permit the Least Environmentally Damaging Practicable Alternative (LEDPA) for discharge of dredged or fill material. EPA shares a regulatory role in the implementation of Section 404 of the CWA and will review the 404(b)(1) alternatives analysis. It is EPA's preliminary opinion that fill in this canyon would not constitute the LEDPA as required by the CWA Section 404(b)(1) alternatives analysis for this project.

The DEIS states that compensatory mitigation of impacts to waters of the U.S. shall occur at a minimum of 1:1 ratio (p. xvii). We note that as of June 2008, mitigation is subject to the new Army Corps of Engineers - EPA Mitigation Rule[2] which will require consideration of functions

[1] This addendum was included under the first Appendix E (there are 2 Appendix E's) after the water balance calculations in our hard copy appendices, and does not appear to be present in the electronic versions.
[2] "Compensatory Mitigation for Losses of Aquatic Resources; Final Rule" Corps of Engineers 33 CFR Parts 325 & 332, EPA 40CFR Part 230.

and values lost, likelihood of mitigation success, and time lag. A mitigation plan must be submitted with the CWA 404 permit application, including long term protection, performance standards, and long term monitoring.

> *Recommendations:* EPA has objections to, and strongly recommends against, construction of the wastewater storage reservoir. EPA recommends seasonal discharge to the intermittent creek be pursued using a NPDES permit (Option 2), along with maximum recycled water reuse. A year-round NPDES permit may also be a possibility. For more information regarding NPDES permit requirements, please contact John Tinger of EPA's Water Division at (415) 972-3518.
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> The FEIS should include additional information regarding impacts to resources from construction and operation of the reservoir, as indicated above. Impacts to dam material borrow areas should be part of the EIS scope. If this is unknown, include estimates as to quantity and potential borrow site/impacts. We recommend also including CWA Section 404 permitting requirements, alternatives analysis to demonstrate the LEDPA, and mitigation requirements.

Watershed and Vernal Pool Impacts from Parking Lot

The parking lot footprint is large. Total buildout of the proposed action includes 3,731 parking spaces. Increasing impervious surfaces cause impacts to hydrology. The parking lot is configured to surround a vernal pool on 3 sides (Fig 2-1, 2-7). Since drainage from the lot will be directed to the detention basin, the vernal pool will be indirectly impacted by the reduction of flows. The DEIS should discuss this and way of altering the project footprint to avoid these impacts.

> *Recommendation:* The parking lot footprint should be reduced by reducing the number of parking spaces, using design options to reduce impervious surfaces, and designing the lot so that at least 30% of the spaces have smaller dimensions for compact cars, consistent with new car buying trends. We recommend that BIA and the project proponents include a parking structure in the site plan to reduce the project footprint and include this analysis in the FEIS. The majority of recent proposed Tribal casinos have utilized a parking structure.
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> The FEIS should identify the parking ratio used to size the parking lot and indicate how this ratio is justified based on the experiences of other regional casinos. EPA recommends the parking lot design be modified to conform to "green parking" guidelines. For more information on green parking, see http://www.epa.gov/smartgrowth/parking.htm or http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=factsheet_results&view=specific&bmp=89.

Energy Efficiency / Green Building

The electrical demand of the proposed project exceeds the capacity of the nearby power transmission lines, therefore a mitigation measure is included to upgrade the power lines to

support project demand (p. 4.9-6). This is the only energy-related mitigation identified in the DEIS. The project does not commit to ensuring construction of an energy efficient building nor does it explore alternative energy elements such as solar hot water. Additionally, the parking lot offers an opportunity to generate clean, renewable energy through installation of photovoltaics on carport structures. Photovoltaic carports provide highly desirable shade for parked cars and offer the opportunity for public education, energy reliability, and better air quality.

Additionally, the project offers an opportunity to construct a high performance and sustainable building utilizing energy efficient elements. BIA and the Tribe should commit to a facility that is certified as a green building per the Leadership in Energy and Environmental Design (LEED) green building rating system. LEED emphasizes state of the art strategies for sustainable site development, water savings, energy efficiency, materials selection, and indoor air quality. More information about the LEED green building rating system is available at http://www.usgbc.org.

We understand that indoor smoking provides some limitations to LEED certification. The DEIS states that nonsmoking sections of the casino would be provided (p. 2-5). An alternative would be to provide smoking sections separately which would allow the rest of the facility to pursue LEED certification. A recent survey by J.D. Power and Associates shows that a vast majority (85%) of Southern California Indian gaming casino customers prefer a smoke-free environment (See http://www.jdpower.com/corporate/news/releases/pressrelease.aspx?ID=2008082). Additionally, a separate survey of hotel guests showed that 82 percent of hotel guests say they prefer a smoke-free hotel environment. (http://www.jdpower.com/corporate/news/releases/pressrelease.aspx?id=2007116)

> *Recommendation:* EPA recommends the FEIS identify additional mitigation measures to minimize energy use for the project. Solar hot water and photovoltaics on carport structures should be considered and the feasibility explored. These project elements should be become an integral part of the project description.
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> BIA and the Tribe should specify that the project will be constructed for certification by LEED. This specification will guide the building process and create a high-performance, sustainable building. LEED certification will enable the Tribe to establish themselves as recognized leaders in the green building sector and offer them the opportunity to market their venue as an environment-friendly facility.

Air Quality

The Air Basin is not in attainment with National Ambient Air Quality Standards (NAAQS) for ozone, and the DEIS discloses the emissions of Reactive Organic Gases (ROG) and oxides of Nitrogen (NOx) from the project, but does not disclose emissions of any other pollutants. The discussion of air emissions in the Administrative DEIS was more thorough in this regard.

The DEIS does not disclose or discuss the emissions of diesel particulate matter (DPM) from the project. Diesel exhaust is classified by EPA as a "likely" human carcinogen at environmental exposure levels (Health Assessment Document for Diesel Engine Exhaust, EPA 2002). Exposure to diesel exhaust may contribute to respiratory irritation and lung damage. There is no

threshold of diesel exposure under which there is no risk.

> *Recommendation:* Expand the discussion of impacts to air quality from construction and operations to include other pollutants, especially diesel exhaust, which is a likely human carcinogen. Include additional measures to mitigate impacts. The following are some recommendations:
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> - Locate construction equipment and staging zones away from the residences east of the project site,
> - Establish an activity schedule designed to minimize traffic congestion around the construction site,
> - Utilize EPA-registered particulate traps and other appropriate controls to reduce emissions of diesel particulate matter and other pollutants at the construction site.

Enforcement of Mitigation Measures

Chapter 5 of the DEIS states that to ensure mitigation measures are enforceable, they have either been included as an integral part of the project description or are enforceable by the National Indian Gaming Commission (NIGC) via the Tribal Gaming Ordinance (p. 5-2). Additional information would be useful regarding this enforcement structure. It is unclear what responsibilities the BIA will assume in its approvals and include in its Record of Decision, or if NIGC will assume the entire enforcement role. The CEQ Regulations allow for other agencies to fulfill an enforcement role (40 CFR 1505.3 states that "mitigation Section 1505.2(c) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency"). If the enforcement by NIGC is through the Tribal Gaming Ordinance, it would be useful to include a draft of the Tribal Gaming Ordinance in the EIS as an Appendix.

The DEIS references NIGC's enforcement authority under 25 CFR Parts 522, 571, 573, 575, and 577. However, 25 CFR Part 580[3] discusses the limited enforcement of environmental measures by NIGC and it appears this policy may limit enforcement of environmental mitigation measures. An expanded discussion of this would be appropriate for the FEIS.

> *Recommendation:* Provide additional information regarding the enforcement structure identified in the DEIS, include a draft Tribal Gaming ordinance with committed mitigation identified in the Appendix as appropriate, and identify any limitations to this structure that 25 CFR Part 580 may present to enforcement. If there are limitations to the enforcement of environmental mitigation commitments per 25 CFR Part 280, identify the other, specific enforcement structures that will be used to ensure compliance with environmental mitigation commitments.

Additional Comments

- The DEIS states that no connectivity between fractures was observed during the

[3] Available: http://www.nigc.gov/LawsRegulations/CommissionRegulations/25CFRPart580/tabid/247/Default.aspx

hydrogeological survey (Appendix B) therefore utilizing groundwater from on- and off-site wells would have no impact on the municipal groundwater wells supplying the City of Plymouth (p. 4.9-3). We were unable to find this information or conclusion in Appendix B and request clarification in the FEIS regarding this conclusion.

- Water Supply Option 2 (groundwater wells and water treatment plant) may be a public water system. A public water system (PWS) is defined under the Safe Drinking Water Act (SDWA) as any entity serving water for the purposes of human consumption to 15 or more active service connections or 25 or more people at least 60 days out of the year. The proposed water system being described for the project would be provisionally classified as a Non-Transient/Non-Community (NTNC) public water system and would be subject to the requirements of the SDWA for NTNC systems. Since the Tribe is not subject to State Law, the regulatory authority falls to EPA. Please contact Roger Yates of EPA's Region 9 office at 415-972-3549 with any questions. Please be aware that baseline monitoring must begin and be submitted to EPA before water may be legally used by the public.
- On page 3.3-9 and 3.9-2, the DEIS states that there are 36 domestic wells in Plymouth, however Appendix C states there are 96 wells (p. 4). Please clarify this discrepancy.
- Domestic water use estimates (average day domestic water demand) increased substantially from that estimated in the Administrative DEIS to the DEIS (from 121,300 to 200,000), however, the Design Wastewater Treatment Plant flows did not change. Please address this in the FEIS.
- The results of the Soil Mantle and Percolation Tests (Appendix S) indicate thin soil at the site and elevated levels of Total Dissolved Solids in discharge water could be a concern for the spray disposal system due to accumulation of precipitated dissolved solids. A maintenance and monitoring plan should be included to ensure the sprayfields are operating effectively and tailwater is not discharging to surface waters.
- The capacity of the wastewater treatment plant exceeds expected flows by over 22 percent for the preferred alternative. This excess capacity could induce additional development. The project purpose and need statement lists specific socioeconomic improvements including the improvement and construction of new Tribal housing (p. 1-6). The DEIS should state whether it is reasonably foreseeable that housing or other facilities will be built on the site in the future. The DEIS states that the WWTP will not service additional flows beyond the project, but this is confused by the inclusion of housing objectives in the purpose and need statement. Future expansion should be evaluated in appropriate environmental documentation.