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

MAY 19 2014

Amy Dutschke
Regional Director
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

Subject: Final Environmental Impact Statement (FEIS), Cloverdale Rancheria of Pomo Indians Fee-to-Trust and Resort Casino Project, Sonoma County, California (CEQ # 20140117)

Dear Ms. Dutschke:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document 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.

EPA reviewed the Draft Environmental Impact Statement (DEIS) and provided comments to the Bureau of Indian Affairs (BIA) on October 20, 2010. We rated the DEIS as Environmental Concerns - Insufficient Information (EC-2) due to concerns regarding the possible development of drinking water infrastructure and a wastewater treatment plant on a parcel adjacent to, and in, the 100-year floodplain of the Russian River, which has a history of flooding and drainage issues. Constructing these facilities in a floodplain would result in the loss of 32.2 acres of floodplain capacity. As a result, flood water that would have been stored in this area would be displaced into surrounding areas during a 100-year flood event. The Federal Emergency Management Agency has recognized, in general, that increased flood damages are already occurring outside of designated 100-year floodplains[1]. In addition, the potential impacts of climate change threaten to increase the frequency and severity of heavy rainfall events and floods in many regions. Maintaining floodplains is an important strategy for adapting to climate change and is consistent with the recent *Executive Order 13653 - Preparing the United States for the Impacts of Climate Change,* which encourages actions by the Federal government to enhance climate preparedness and resiliency. We continue to strongly recommend that BIA and the Tribe avoid floodplain development for the project.

BIA continues to rely on FEMA approval for a Conditional Letter of Map Revision (CLOMR) and defers responsibility for floodplain impacts to this process, which is identified as a mitigation measure (p. 5-2). However, the CLOMR process does not mitigate floodplain impacts. This process simply confirms the modification of base flood elevations that might occur as a result of the project and leads to a revision of the floodplain maps after a revision request is submitted. In our previous comments, EPA recommended that BIA and the Tribe include floodplain mitigation as part of the project. The FEIS indicates that the Tribe shall establish a Tribal Mitigation Plan, but it is not clear whether this will

[1] Page 9, *Further Advice on Executive Order 11988 Floodplain Management,* Federal Emergency Management Agency (FEMA). Sept 2007.

include actual floodplain mitigation, i.e., creation of floodplain capacity to replace that lost by the project. Compensatory storage mitigation at a minimum ratio of 1:1 should be required to support the goals of E.O. 13653. If the project has the potential to impact existing flood protection structures or neighboring properties, mitigation should also include ways to reduce or compensate for harm to such structures or properties.

We also continue to recommend that the wastewater treatment plant and potable water system option receive protection for a "critical facility" (i.e., to withstand a 500-year flood event). Critical Facilities are facilities/infrastructure that are critical to the health and welfare of the population and that are especially important following hazard events. Lifeline utility systems - those vital to public health and safety, including potable water and wastewater, are included in this definition.

The FEIS indicates that development in the floodplain would not be permitted to begin until the CLOMR is completed and approved. If floodplain development would occur for the project, we recommend that BIA condition any approval to require that development not occur until the Tribe has submitted its application to FEMA for participation in the National Flood Insurance Program. The mitigation measures state that the Tribe shall seek such participation; however we believe it is important for that process to have commenced before any development proceeds, as it is not clear whether the project can be reviewed through the CLOMR process prior to obtaining participating status.

EPA remains very concerned regarding potential plans for managing wastewater for the on-site wastewater treatment plant option. This option proposes to dispose of treated wastewater via land spraying and temporary storage. Land disposal of wastewater is generally not regulated by EPA and does not require a National Pollutant Discharge Elimination System (NPDES) permit so long as no wastewater reaches a water of the United States. The FEIS states that no NPDES permit will be needed (p. S-4); however, the FEIS has not demonstrated that a sprayfield of 14.6 acres has the necessary capacity to absorb all of the treated wastewater to prevent any discharge to the Russian River.

Additionally, EPA is concerned the wet weather storage ponds may create a direct hydrologic connection to the Russian River, based on the close interaction of surface and groundwater hydrology at the site and its location within the floodplain of the Russian River (see 9th Circuit decision of Northern California River Watch v. City of Healdsburg[2]). As described in the FEIS, storage ponds would be required to hold treated wastewater during the wet winter months when sprayfields are not operable. The proposed wastewater storage ponds would be constructed to hold 73 acre-feet of wastewater, would be 26 feet below ground surface, and could interact with groundwater, which, according to the FEIS, lies between 6 and 23 feet below ground surface. While the FEIS states that the ponds would be lined with either a natural soil liner or artificial welded seam plastic liner (App. J, p. 4), EPA's experience with lined ponds is that they can leak over time and they can degrade and require replacement. We have also seen instances in which burrowing animals have caused significant problems with lined ponds. The highly permeable, young alluvial soils characteristic of the site, together with unconfined groundwater conditions, increase the chances that wastewater treatment plant effluent may discharge to the Russian River via pond water seep. In addition, the infiltration of groundwater into the ponds could reduce their storage capacity, and large precipitation events could cause the Russian River to flood the ponds, even with the levees in place. It is EPA's opinion that the proposed on-site wastewater storage and disposal option could lead to violations of the Clean Water Act. EPA requests that BIA not approve this option unless an NPDES permit is pursued and is a condition of BIA's approval.

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[2] See http://caselaw.findlaw.com/us-9th-circuit/1348704.html

We continue to have concerns regarding drainage and stormwater management. The drainage issues have been deferred to a future comprehensive design-level drainage plan. While this is normally sufficient for the NEPA process, because the site has substantial existing flooding and drainage issues, we recommended that additional investigation occur, prior to BIA approval, regarding the capacity of the site to effectively accommodate stormwater and floodwaters. Given the limitations of the site, such management may require changes to the project footprint or size. The preliminary stormwater quality management plan provides some understanding of how the site will accommodate flows, but it does not provide any predictions as to whether the proposed BMPs would be capable of handling the existing site flooding plus the flows that would result from the hydromodifications that are proposed under the project. It does not show or explain the subterranean stormwater detention system nor the upland drainage release system on the site plan. As presented, it does not appear that the FEIS' conclusion of less than significant impacts to existing drainage patterns is fully supported.

We expressed concerns regarding impacts to wetlands in our DEIS comment letter. We are unclear as to some of the details regarding the avoided wetlands and the wetland mitigation area; however, since this project will require an individual Clean Water Act Section 404 permit, EPA can obtain additional information when coordinating with the Army Corps of Engineers during the permit phase.

EPA appreciates the opportunity to review this FEIS. Because we have continuing concerns, we would appreciate receiving a copy of the Record of Decision when it is available. Please send a copy to the address above (mail code: ENF-4-2). If you have any questions, please contact me at (415) 972-3521, or contact Karen Vitulano, the lead reviewer for this project, at 415-947-4178 or vitulano.karen@epa.gov.

Sincerely,

Kathleen Martyn Goforth, Manager
Environmental Review Section

cc: Patricia Hermosillo, Chairperson, Cloverdale Rancheria of Pomo Indians
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