UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

April 28, 2008

Amy Dutschke
Acting Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, California 95825

Subject: Draft Environmental Impact Statement for the Proposed Enterprise Rancheria Gaming Facility and Hotel Fee-to-Trust Acquisition Project, Yuba County, CA (CEQ # 20080090)

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 had agreed to be a cooperating agency for the EIS but did not receive a copy of the Preliminary Draft EIS in a timely manner and therefore did not review or comment on that early draft. BIA agreed that it was sufficient for EPA to provide comments on the DEIS when it was released to the public.

Based on our review, we have rated the proposed project as Lack of Objections (LO) (see enclosed "Summary of Rating Definitions"). We appreciate that BIA and the Tribe have avoided direct impacts to the 2.13 acre palustrine emergent wetland, and will avoid the wetlands in the drainage ditch through the use of bottomless culverts or bridges (p. 5-18). We understand that BIA and the Tribe will implement all conservations measures for the federally listed giant garter snake recommended by the U.S. Fish and Wildlife Service, and will make various improvements to the local road network to mitigate traffic impacts. We appreciate the inclusion of various mitigation measures to mitigate air impacts.

While we have no objection to the project, we have the following recommendations to improve the project and minimize impacts.

1. EPA recommends a mitigation monitoring and enforcement program be developed and included in the Final Environmental Impact Statement (FEIS) and Record of Decision per 40 CFR 1505.2 (c) describing responsible parties for implementation and enforcement for each measure and how the success of mitigation measures will be monitored. It is

important that mitigation be implemented so that significant impacts from the project do not occur.

2. While the DEIS identifies some operational mitigation measures for impacts to air quality, the Feather River Air Quality Management District identifies the following additional mitigation measures for commercial operations, and EPA recommends these measures for the project: (1) Prohibit gas powered landscape maintenance equipment. Require landscape maintenance operators to use battery powered or electric equipment; (2) Install electrical outlets on the exterior walls of all commercial buildings to promote the use of electric landscape maintenance equipment; (3) Schedule goods movement for off-peak traffic hours to reduce vehicle idling and traffic congestion; (4) Adopt a Vehicle Idling Policy requiring all vehicles under company control to adhere to a 5 minute idling policy. Also, enforce an onsite idling policy of 5 minutes or less including tribal-owned, contract, vendor, and delivery vehicles. Include signage and training programs as well as contractual language.

3. We note the presence of a residence 200 feet to the west of the site. BIA and the Tribe should ensure construction equipment and staging areas are located away from this residence and that noise, light, and dust impacts are minimized.

4. The project will be located in a floodplain, and the DEIS states that all building pads will be constructed at least 3.5 feet above the 100-year floodplain elevation (p. 2-17), but this is not listed in the mitigation measures in Chapter 5. Please clarify this mitigation commitment. We note that climate change is expected to result in an increase in heavy rainfall events in many regions and increased frequency and severity of floods as well as droughts[1]. Increases in the flooding of the Yuba site, which has an existing inundation easement, is a possibility. This potential impact should be discussed in the FEIS with contingency measures identified, including mitigating risks of water contamination from hazardous materials during both construction and operation. We also recommend removing the statement on page 3.2.4-15 that "..many in the scientific community contend that global climatic variation is not necessarily related to human activities" since this is inconsistent with the findings of the Intergovernmental Panel on Climate Change.

5. The DEIS states that the Tribe would reduce the amount of light and glare escaping the site by providing nighttime lighting that shines only on the parking areas and not surrounding areas (p. 2-6), however the architectural rendition in Figure 2-2 illustrates three large beams of light extending into the night sky. Please reconcile these contradictions and clarify the mitigation commitment for light impacts. No mitigation measures are listed for this impact in Chapter 5. EPA recommends mitigation of light impacts.

6. The project will convert 30 acres of the 40 acre site to impervious surface. While stormwater detention is proposed, there are opportunities to further reduce the amount of impervious surfaces from the large parking lot by modifying it to conform with "green parking" guidelines (info at http://www.epa.gov/smartgrowth/parking.htm or

[1] Intergovernmental Panel on Climate Change, Climate Change 2007: Synthesis Report. Available: http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf

http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=factsheet_results&view=specific&bmp=89). We recommend that at least 30% of parking spaces have smaller dimensions for compact cars, and that spillover parking with pervious surfaces be included in the design. Pervious alternative pavers include gravel, cobbles, wood mulch, brick, grass pavers, turf blocks, natural stone, pervious concrete, and porous asphalt.

7. The DEIS states that water supply would be provided by an on-site system consisting of a new groundwater well, tank and pump station (p. 2-12). 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.

We appreciate the opportunity to review this DEIS, and we are available to answer questions you may have regarding our recommendations. When the FEIS is released for public review, please send one copy to the address above (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,

Karen Vitulano for

Nova Blazej, Manager
Environmental Review Office

Enclosures: Summary of EPA Rating Definitions

cc: Glenda Nelson, Chairperson, Enterprise Rancheria of Maidu Indians
Ren Reynolds, Environmental Contact, Enterprise Rancheria of Maidu Indians

SUMMARY OF EPA RATING DEFINITIONS

This rating system was developed as a means to summarize EPA's level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the EIS.

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

ADEQUACY OF THE IMPACT STATEMENT

Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."