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

September 13, 2010

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

Subject: Final Environmental Impact Statement, Ione Band of Miwok Indians 228.04 acre Fee-to-Trust Transfer Project and Casino Project, Amador County, California (CEQ # 20100316)

Dear Mr. Morris:

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 July 2, 2008. We rated the DEIS's preferred Alternative A as Environmental Objections - Insufficient Information (EO-2) specifically objecting to: (1) water supply option 2, if implemented without the use of recycled water, due to impacts to groundwater in an existing overdrafted basin, and (2) wastewater disposal option 1 due to impacts to waters of the United States from the construction of a wastewater storage reservoir in a nearby canyon involving installation of a 75-foot earthen dam and diversion of an intermittent stream. EPA also expressed concerns regarding impacts to hydrology from the parking lot, which would surround a vernal pool on 3 sides. EPA is a cooperating agency on the project and also provided comments to BIA on the Administrative FEIS on January 12, 2009.

The FEIS states that, for water supply option 2, recycled water would be used to meet the nonpotable water demands of Phase I of Alternative A, which is approximately one-third of the total water demand. We commend BIA and the Tribe for this commitment. The preferred water option for Phase II of the project (hotel complex and conference center), however, would require trucked water to meet the increased water demand. EPA expressed concerns regarding this aspect of the project, and continues to discourage project planning that depends on trucked water since it is inefficient and potentially unsustainable. We recommend that BIA and the Tribe scale the project to a size that the available on-site water supply could support.

We are pleased that the FEIS indicates the preferred wastewater disposal option is option 2, which would dispose of treated wastewater to surface waters during the wet season under a National Pollutant Discharge Elimination System (NPDES) permit, obviating the need for constructing an earthen dam and diverting a creek for a storage reservoir. This option would

avoid substantial impacts to waters of the U.S. as well as impacts to riparian vegetation. The Response to Comments in Appendix Y indicates that the treated effluent reservoir option would only be constructed if an NPDES permit is not obtained. We note that should the treated effluent reservoir option go forward, it would require a Clean Water Act (CWA) Section 404 permit from the U.S. Army Corps of Engineers (Corps), which requires an alternatives analysis pursuant to CWA Section 404 (b)(1). EPA shares a regulatory role in the implementation of Section 404 of the CWA and would review the 404(b)(1) analysis. The Corps can only permit the Least Environmentally Damaging Practicable Alternative (LEDPA) for the discharge of fill material. If seasonal NPDES discharges would practicably accomplish the same purposes as the construction of a reservoir for treated effluent, then the reservoir alternative would not be the LEDPA and could not be permitted by the Corps. EPA looks forward to working with the Tribe on its NPDES permit. Please contact John Tinger of EPA Region 9's Water Division at (415) 972-3518 for assistance.

We appreciate the additional information regarding the conceptual groundwater monitoring plan and mitigation for potential future impacts to adjacent wells in the mitigation measures chapter of the FEIS; however, the plan lacks specificity regarding what the "not to exceed" maximum drawdown levels would be. Furthermore, the mechanism of implementation for the mitigation is not clear, including how the Tribe would coordinate with potentially impacted well owners. Contracting with a third party to implement this element of the plan should be considered.

The FEIS includes alternative site plans that reduce the development footprint of the parking lot through the use of a parking structure. These alternative plans are proposed as mitigation and are located in the mitigation measures chapter, while the description of the proposed action in Chapter 2 still contains the original site plans, so it is unclear how to interpret the inclusion of the alternative site plans in the FEIS. The ROD should clearly specify that the proposed action alternative, as described in Chapter 2, is being modified with the alternative site plans in Chapter 5. We strongly recommend BIA and the Tribe select the alternative site plans, and we commend their inclusion, as they would reduce the amount of impervious surface coverage by 25 acres and reduce impacts to the vernal pool.

EPA appreciates the opportunity to review this FEIS. 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 M. Goforth, Manager
Environmental Review Office

cc: Johnny Jamerson, Chairperson, Ione Band of Miwok Indians
Sarah Norris, Environmental Planner, Ione Band of Miwok Indians